

**Fifth Session - Thirty-Eighth Legislature**  
**of the**  
**Legislative Assembly of Manitoba**  
**Standing Committee**  
**on**  
**Social and Economic Development**

*Chairperson*  
*Ms. Marilyn Brick*  
*Constituency of St. Norbert*

**Vol. LVIII No. 1 – 10 a.m., Monday, December 4, 2006**

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**MANITOBA LEGISLATIVE ASSEMBLY**  
**Thirty-Eighth Legislature**

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**LEGISLATIVE ASSEMBLY OF MANITOBA**  
**THE STANDING COMMITTEE ON SOCIAL AND ECONOMIC DEVELOPMENT**

**Monday, December 4, 2006**

**TIME – 10 a.m.**

**LOCATION – Winnipeg, Manitoba**

**CHAIRPERSON – Ms. Marilyn Brick (St. Norbert)**

**VICE-CHAIRPERSON – Mr. Doug Martindale (Burrows)**

**ATTENDANCE – 11 QUORUM – 6**

*Members of the Committee present:*

Hon. Ms. Allan, Hon. Messrs. Mackintosh, Selinger

Ms. Brick, Mr. Hawranik, Ms. Korzeniowski, Mr. Martindale, Mrs. Rowat, Messrs. Schuler, Swan, Mrs. Taillieu

*Substitutions:*

Mr. Caldwell for Hon. Ms. Allan at 11:52 a.m.

Mr. Reid for Ms. Korzeniowski at 11:52 a.m.

**APPEARING:**

Hon. Jon Gerrard, MLA for River Heights

Mr. Kevin Lamoureux, MLA for Inkster

**WITNESSES:**

Bill 2–The Employment Standards Code Amendment Act

Mr. Shannon Martin, Canadian Federation of Independent Business

Ms. Darlene Dziewit, Manitoba Federation of Labour

Bill 4–The Consumer Protection Amendment Act (Prepaid Purchase Cards)

Ms. Deborah Green, Polo Park – Cadillac Fairview

Ms. Laura Kwiatkowski, General Manager, Rogers Communications Inc., Midwest

Bill 6–The Registered Retirement Savings Protection Act

Mr. Shannon Martin, Canadian Federation of Independent Business

**WRITTEN SUBMISSIONS:**

Bill 2–The Employment Standards Code Amendment Act

Mr. William Gardner, Manitoba Employers Council

Bill 4–The Consumer Protection Amendment Act (Prepaid Purchase Cards)

Mr. Lanny McInnes, Retail Council of Canada

Mr. Edward Bachewich, Private Citizen

Bill 5–The Personal Investigations Amendment Act (Identity Protection)

Mr. Joel Heft, Equifax Canada

Bill 9–The Grandparent Access and Other Amendments Act (Child and Family Services Act Amended)

Ms. Eileen Britton, Grandparents Requesting Access and Dignity Society

**MATTERS UNDER CONSIDERATION:**

Bill 2–The Employment Standards Code Amendment Act

Bill 4–The Consumer Protection Amendment Act (Prepaid Purchase Cards)

Bill 5–The Personal Investigations Amendment Act (Identity Protection)

Bill 6–The Registered Retirement Savings Protection Act

Bill 9–The Grandparent Access and Other Amendments Act (Child and Family Services Act Amended)

Bill 38–The Housing and Renewal Corporation Amendment Act (Fund for Housing Revitalization)

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**Madam Chairperson:** Good morning. Will the Standing Committee on Social and Economic Development please come to order.

This meeting has been called to consider the following bills: Bill 2, The Employment Standards Code Amendment Act; Bill 4, The Consumer

Protection Amendment Act (Prepaid Purchase Cards); Bill 5, The Personal Investigations Amendment Act (Identity Protection); Bill 6, The Registered Retirement Savings Protection Act; Bill 9, the Grandparent Access and Other Amendments Act (Child and Family Services Act Amended); and Bill 38, The Housing and Renewal Corporation Amendment Act (Fund for Housing Revitalization).

We have a few presenters registered to speak this morning, including, on Bill 2, The Employment Standards Code Amendment Act, Shannon Martin from the Canadian Federation of Independent Business and Darlene Dziewit, president of the Manitoba Federation of Labour; on Bill 4, The Consumer Protection Amendment Act (Prepaid Purchase Cards), Deborah Green, Polo Park-Cadillac Fairview, Ed Bachewich, private citizen, and Laura Kwiatkowski, Rogers Communication; and on Bill 6, The Registered Retirement Savings Protection Act, Shannon Martin, Canadian Federation of Independent Business.

On the topic of determining the order of public presentations, I will note that we do have one out-of-town presenter in attendance marked with an asterisk on the list.

In what order does the committee wish to hear the presentations?

**Mr. Doug Martindale (Burrows):** I recommend that we follow the normal procedure which would be to hear out-of-town presenters first and then the remainder.

**Madam Chairperson:** Is that agreed by the committee? *[Agreed]*

Written submissions from the following persons have been received and distributed to committee members: Lanny McInnes of the Retail Council of Canada, on Bill 4; Joel Heft of Equifax, on Bill 5; and Eileen Britton of the Grandparents Requesting Access and Dignity Society, on Bill 9.

Does the committee agree to have these documents appear in the *Hansard* transcript of this meeting? *[Agreed]*

I would like to remind all present that a second meeting of this committee has been announced for 6 p.m. this evening in the event that we do not

conclude our business at this meeting. How long does the committee wish to sit this morning?

**Mr. Martindale:** Madam Chairperson, I recommend that we sit until 12:30 and reconsider at that time whether we should sit longer or not.

**Madam Chairperson:** Is that agreed by committee? *[Agreed]*

Before we proceed with presentations, we do have a number of other items and points of information to consider.

First of all, if there is anyone else in the audience who would like to make a presentation this morning, please register with the staff at the entrance of the room.

Also, for the information of all presenters, while written versions of presentations are not required, if you are going to accompany your presentation with written materials, we ask that you provide 20 copies. If you need help with photocopying, please speak with our staff.

As well, I would like to inform presenters that, in accordance with our rules, a time limit of 10 minutes has been allotted for presentations, with another 5 minutes allowed for questions from committee members.

Also, in accordance with our rules, if a presenter is not in attendance when their name is called, they will be dropped to the bottom of the list. If the presenter is not in attendance when their name is called a second time, they will be removed from the presenters' list.

Finally, the proceedings of our meetings are recorded in order to provide a verbatim transcript. Each time someone wishes to speak, whether it be an MLA or a presenter, I first have to say the person's name. This is the signal for the *Hansard* recorder to turn the mike on and off.

Thank you for your patience. We will now proceed with public presentations.

#### **Bill 4—The Consumer Protection Amendment Act (Prepaid Purchase Cards)**

**Madam Chairperson:** The first presenter I would like to call on Bill 4, The Consumer Protection Amendment Act, is out-of-town presenter, Ed Bachewich, private citizen. Mr. Bachewich's name will be dropped to the bottom of the list.

**Bill 2—The Employment Standards Code  
Amendment Act**

**Madam Chairperson:** We will now move to The Employment Standards Code Amendment Act, and our first presenter is Shannon Martin from the Canadian Federation of Independent Business.

Mr. Martin, do you have copies of the presentation? No? Okay. Please proceed, Mr. Martin.

**Mr. Shannon Martin (Canadian Federation of Independent Business):** Good morning, committee members. Thank you very much. It's always a pleasure to be here. Minister, always nice seeing you.

On behalf of the Canadian Federation of Independent Business and our 4,800 members here in the province of Manitoba, there is no piece of legislation that more profoundly affects the labour climate here in the province of Manitoba than The Employment Standards Code Act.

That being said, I think it is important to note our appreciation of the minister and her department's efforts to ensure a wide consultation process on this bill and the best efforts to ensure that compromises are made when it comes to this legislation. In any piece of legislation, such as changes to the Employment Standards Code, you're always going to have very divergent views, and I think at the end of the day the legislation that is before the committee does represent some excellent compromises.

That being said, however, I would be remiss in not acknowledging some of our members' concerns on some aspects of the legislation, in particular the application to agricultural workers. When we surveyed our agribusiness members, I can tell you that 92 percent of our agribusiness members reject mandatory inclusion under the Employment Standards Code. As well, 68 percent of those members also indicate that such inclusion would have a negative impact on their ability and their operation.

On the issue of overtime, I would also like to urge the committee to take a look at a provision in Newfoundland and Labrador's Employment Standards Code which allows that if an employer approves a written request by one or more employees, as a result of the change that employee would be working more than 40 hours a week, the employer would not be liable for overtime. This kind of flexibility, especially given Manitoba's tight labour market and shortage of qualified labour, I

think, is something that is worth considering by the committee.

\* (10:10)

On the subject of holiday pay, 84 percent of our members reject changing any eligibility requirement to make it easier for part-time employees to qualify for statutory holiday pay.

On the issue of family leave, and I know this issue received a great deal of debate under LMRC, and I do recognize that the LMRC did make best efforts to compromise on this. However, I can indicate to the committee that approximately 69 percent of our members rejected providing employees with the additional unpaid leave. That is not to say our members in any way reject providing their employees with unpaid leave; the issue here is when government tells employers that they must provide it.

We know that in our surveys of our employers they do provide their employees a great deal of unpaid leave to deal with family responsibilities and other situations that arise. Their concern here, as noted before, is that it is now mandatory and is no longer left to the discretion of the employer.

That being said, we also asked our members that if the government should introduce unpaid leave, what criteria should be brought in with the legislation? Seventy-three percent of our members suggested that the employee should have to be with the same employer for a minimum of one year, as opposed to the 30-day requirement that is now included under the legislation.

As well, our members had concerns about the termination by employer. The changes to The Employment Standards Act outline a notice period of anywhere from one to eight weeks, depending on the term of employment; 68 percent of our members reject the idea of a graduated-notice period. As well, a further 71 percent of our members support the idea of a similar notice period for both employers and employees. The provision that is laid out under The Employment Standards Code Amendment Act allowing for up to eight weeks of notice on behalf of the employer, but two weeks on behalf of the employee, I don't think achieves the balance that the government is trying to maintain with these amendments.

In conclusion, again, I would like to emphasize that the minister and her office did, indeed, consult with affected stakeholders, and, from our opinion,

actually went above and beyond that process. I think that, in large part, the legislation and the amendments contained there within do provide a great deal of compromise, and I would just urge the committee to reflect on some of our members' further concerns when it comes to some specific clauses within the legislation. I thank the committee for their time.

**Mr. Ron Schuler (Springfield):** Thank you very much. We appreciate your presentation.

Section 2(5) "Except as otherwise provided in the regulations, this Code applies to persons employed in agriculture."

Are you and your membership under the impression that that now brings agriculture workers under labour legislation in Manitoba?

**Mr. Martin:** There is the concern that this legislation opens a window to inclusion for agricultural workers in the province of Manitoba. I can tell you that, in our surveying, specifically, our members in agribusiness reject wholeheartedly that inclusion, and indicate that inclusion under The Employment Standards Act will have a detrimental impact on their operations.

**Hon. Jon Gerrard (River Heights):** You mentioned, in particular, the difference in the time length for notice depending on whether it is an employer or an employee giving. Can you expand on why you think that that's so important that it should be similar in both cases, and why you think that what's in the bill, currently, is not in the best interests of everybody?

**Mr. Martin:** As with any piece of legislation, legislation attempts to strike a balance. In today's labour climate, we have never seen employees with this level of power that they do today. The level of shortage that we have here in the province of Manitoba is at critical levels, not unlike other jurisdictions. When the government starts imposing requirements on employers that far exceed requirements on individual employees, then that balance is further tilted. Our members are simply saying that, if you want to ensure a fair, balanced approach to the issue of termination notice, then the same provision should be provided for employees to provide additional notice to employers.

**Madam Chairperson:** Seeing no other questions, we thank you—oh, I am sorry.

**Hon. Nancy Allan (Minister of Labour and Immigration):** Thank you, Shannon, for your presentation this morning. We appreciate you being here and always appreciate the research that you do in regard to bringing forward the comments from your members.

Just in regard to the inclusion of ag workers in Bill 2, I just wanted to make sure there was no misunderstanding. The LMRC asked me for further time in regard to any kind of changes in regard to the agricultural industry. They originally thought that they would be able to do some consultation with the agricultural stakeholders and that they would be able to get back to me in June and that didn't occur. So they are actually in consultation with the stakeholders right now, and we'll continue that dialogue.

I've also had the opportunity to meet with, as well as the Minister of Agriculture (Ms. Wowchuk), the stakeholders. We had a meeting in June just to make sure that people understood that there is integrity in the process; there's integrity in regard to the dialogue and the consultation. We want to move forward with some changes. Hopefully, that will be in the spirit of the legislation and will be consensus.

Just one other thing, Shannon, the Leader of the Liberal Party gave a speech in the House in regard to Bill 2, and he advocated for another statutory holiday. I was wondering if you had any comments on that.

**Mr. Martin:** In reference to your initial comments, Minister, I absolutely acknowledge the efforts LMRC and your department have made in consulting with the agricultural sector, and those are appreciated. I know deadlines have been pushed back, and I know every effort has been made to ensure that agricultural stakeholders have been properly consulted on a very important piece of legislation. So I do want to acknowledge that.

Specifically on the issue of statutory holidays, I know this issue does come up on occasion, and I can tell you that our members categorically reject the idea of an additional statutory holiday. We have a productivity problem here in the province of Manitoba. I think the number of statutory holidays that are currently made available in the province of Manitoba are very much within the realm of averages within the country of Canada. The addition of a new statutory holiday, I think, would be

something that our members, consistently, in their survey would reject.

**Madam Chairperson:** Thank you, Mr. Martin.

**Mr. Martin:** Thank you.

**Madam Chairperson:** For the information of the committee, we have received a written presentation from the Manitoba Employers Council. Is it the will of the committee to have this written presentation appear in *Hansard*? [Agreed]

Darlene Dziewit, president of the Manitoba Federation of Labour. Do you have a written presentation?

**Ms. Darlene Dziewit (Manitoba Federation of Labour):** No, I don't. I apologize.

**Madam Chairperson:** That's fine.

**Ms. Dziewit:** Our staffing level isn't such that we could have one ready in this quick notice, so my presentation is verbal.

**Madam Chairperson:** Sure. Please proceed.

**Ms. Dziewit:** I want to thank the committee for allowing us the opportunity to speak. I speak for the Manitoba Federation of Labour on behalf of our 96,000 members in the province of Manitoba. I want to start by pointing out that the Employment Standards Code amendments don't affect very many of our members. Most union members enjoy terms and conditions of employment that far exceed the Employment Standards Code. This proposed legislation is designed to protect those in society and the working force in society who are among the most vulnerable. That's those who don't have unions and who are usually on the bottom end of the scales, so we commend the government for bringing this legislation forward, and we fully support it.

I want to, first of all, talk about the process that was used to come up with this legislation. It was a great process, and I speak as a member of LMRC in saying that. The rest of my comments will be as the president of the Manitoba Federation of Labour, but I do want to say that the amount of consultation that went in and the process that was used by the government was very good, first of all, to have hearings on the matter and public consultation. I attended some of those meetings and can tell you that they were extremely well attended and were well received.

\* (10:20)

So I want to commend the government for doing that and having Mr. Michael Werier, who's the chair of the LMRC, chair those consultation meetings. The process, then, of going to the LMRC and obtaining unanimous recommendations was also a good one and I think almost unheard of. In most provinces, at least, when I speak to my counterparts across the country, that's what they tell me. So the process has been good and I think it's resulted in a fair and balanced piece of legislation.

Specifically on some of the issues, and I'm not going to address them all, but on some of them I'd like to make some comments. First of all, the three new unpaid days for illness or to attend family responsibilities as well as the three bereavement leave days just bring us into the mainstream and bring us into the rest of Canada, to where the rest of Canada is at, and I think it's a step that's been long overdue and will be well received by employees.

I'd like to think that every employer would automatically give these days to employees. Unfortunately, we know that's not true, so having the legislation there to protect employees who need time off to look after sick kids or who need time off to look after the arrangements around funerals and that kind of thing is very well supported by my organization.

Improving the statutory holiday pay provisions for part-time workers is another big one. A lot of people don't realize that the legislation was written at a time when everybody was full time, so the old current regulations requiring that people work 15 of the previous 30 days before they're eligible to receive statutory holiday pay is sort of archaic and old-fashioned. It comes from a time, as I said, when people worked 5 days a week, 40 hours a week. They don't do that anymore. They may work 5 days a week and 4 hours, or they may work two 8-hour days a week, and people who work two 8-hour days a week wouldn't be eligible for stat holiday pay under the legislation. So we applaud the change and we think, once again, it brings us sort of mainstream.

The graduated termination notice rules for employees based on years of services is I think something that will assist employers in getting employees to stay by providing the kinds of rules that should be in place in the workplace.

One of the things that I did want to talk about was the new measures to promote compliance and to deal with repeat offenders. I listened to the previous speaker and would find it difficult to believe that an

employer who is a good employer and is an employer who supports the provisions of everybody being treated equally would be upset about having repeat offenders to the Employment Standards Code dealt with fairly harshly. There's no doubt about it, that compliance legislation and fines for repeat offenders would be much harsher than they are now, but I think the overwhelming number of employers would support that because most employers, I believe, do support the legislation and do support complying with legislation when dealing with their employees. So going after those that would abuse or those that would not comply with the legislation I think is a good way to level the playing field for everybody.

I am very happy about the protections for children under the age of 16 and prohibiting those under the age of 18 from working alone at night. We need to do more to protect children in the workplace. I think there are good reasons to have young people in the workplace, but they ought to be covered by stricter regulations and legislation.

So those are things in terms of the legislation that I find worthy of highlight. In addition, under some of the regulatory amendments, the provisions for preventing deductions of pay where there's no direct benefit to employees is an important one. We all hear about the dine-and-dash or the gas-and-dash situation that occurs where people who work in the hospitality sector, for example, have been held responsible when somebody eats and then leaves without paying their bill or in the case of people who work in gas bars, where they have to pay for gas when people have filled their tank and have simply taken off. That is, in and of itself, a pretty dangerous situation and I think almost a health—it is a health-and-safety issue. In British Columbia, I understand that there was a death of a young person who was caught in a gas-and-dash situation where they were trying to chase the person who had filled their tank and left.

So the fact is that nothing should be deducted off of people's paycheques unless it's statutorily required or unless it is of direct benefit to employees, and, quite frankly, having a uniform that can only be worn at work is hardly what I would call a benefit. I think most young people who work in fast food places would probably agree with me. I don't think they'd be caught dead in their fast food uniform anywhere else and would only have it for work.

I think the coverage for domestic workers in lowering the number of hours that are required before domestic workers are recovered to 12 hours a week is a good one, and it's a step in the right direction. Also, the prohibitions for employment for those under 18 in high-risk industries is a good one as well. So, all in all, and, overall, I think that the changes here are a good start.

The Manitoba Federation of Labour would like to see more changes, of course, but we recognize that you have to move forward in smaller steps. We were quite happy to endorse the legislation when it came down the pike, especially when it's approved by the Labour Management Review Committee in a process that we participate in and that we endorse. So, all in all, I think it's a good piece of legislation, and I want to commend the government and the minister for bringing it forward. It's brought us into the mainstream, and I think is a good way to go.

With regard to agriculture workers, I can tell you that the Manitoba Federation of Labour believes that there ought to be some support for agriculture workers. I think most people in this province would agree that everybody should be covered by things like the minimum wage, and things like parental leave and maternity leave coverage, the kinds of core benefits that all workers ought to have. I don't think there ought to be exclusions on most of those things, and we would certainly support provisions in legislation that cover Ag workers for some aspects, if not all aspects of the Employment Standards Code.

So thank you very much again. If anyone has any questions, I'd be happy to answer them.

**Madam Chairperson:** Thank you. Are there questions for the presenter?

**Ms. Allan:** Thank you very much, Darlene, for taking time out of your busy schedule to be here with us this morning. I'm glad you had an opportunity to speak about the process at LMRC. I think we're very fortunate here in Manitoba that we're the only jurisdiction in Canada with a Labour Management Review Committee. They are a committee that worked through some very, very thorny issues.

This certainly was a huge amount of work that the volunteer members—because I think we have to remember that all of the members that sit on LMRC are volunteers, and this is the first review of employment standards' legislation in almost 30 years. I want to commend the members from the labour community.

I know you sat on that committee, as well as Bill Comstock. I'm pleased that Bill Gardner was able to get a letter to us this morning supporting Bill 2. I know that he and Peter Wightman, who is the employer management rep, did a lot of work on this legislation. I just think it's very, very important to put this on the public record that the staff people that were the support to the LMRC throughout this process—and this process has been going on now for over a year; we launched the review of this legislation a year ago—said that it was one of the most respectful processes that they had ever seen.

So I just want to say thank you. It's important that you were here this morning. Thank you.

**Ms. Dziewit:** Oh, you're welcome. I just wanted to say that it wasn't all for nothing. We did have a nice Greek salad once in a while.

**An Honourable Member:** That's good to hear.

**Madam Chairperson:** Thank you very much.

**Bill 4—The Consumer Protection Amendment Act  
(Prepaid Purchase Cards)**

**Madam Chairperson:** The committee will now move to consideration of Bill 4, The Consumer Protection Amendment Act.

The committee calls Deborah Green from Polo Park-Cadillac Fairview.

**Ms. Deborah Green (Polo Park-Cadillac Fairview Corporation Limited):** Can I start?

**Madam Chairperson:** You can proceed, Ms. Green.

**Ms. Green:** Thank you.

Good morning. My name is Deborah Green, and I'm the general manager of Polo Park Shopping Centre that is owned by the Cadillac Fairview Corporation Limited. I do thank you for being invited to speak this morning.

Cadillac Fairview Corporation is one of North America's largest owners and managers of commercial real estate. We own and manage some of Canada's landmark retail shopping centres, such as Polo Park here in Winnipeg, the Toronto Eaton Centre in Toronto, Chinook Centre in Calgary and Pacific Centre in Vancouver, just to name a few.

\* (10:30)

I'm here representing Cadillac Fairview and a growing coalition of companies across Canada who issue and/or administer multi-store gift cards. Multi-

store gift cards are cards that can be used at more than one store or chain of stores. Typically, they are used at unrelated stores in a single mall. They are different from retail gift cards issued by single stores or chains.

I am pleased to discuss Bill 4, The Consumer Protection Amendment Act, as it relates to multi-store gift cards.

At the outset, it is very important to understand that the phrase "prepaid purchase card" used in the bill covers a wide range of cards that offer very different features and services. Accordingly, the regulations that are developed must reflect these differences. Gift cards are a segment of this market and, as between gift cards, there are many differences. While it may sound complicated, the bottom line is to ensure that consumers can purchase a gift card with the features and services they want, with the assurance that they are getting full value.

Our purpose for appearing before you today is:

(1) To provide an overview of the difference between multi-store gift cards and retail gift cards, and the services provided by multi-store gift cards;

(2) To provide examples of the current marketing and administrative practices associated with multi-store gift cards in Canada and, in particular, Cadillac Fairview;

(3) To provide background information on multi-use gift cards in the U.S. and Canada;

(4) To provide insights in to how the US states have approached legislative guidelines for the issuance and redemption of gift cards and how they have accounted for the differences between multi-store gift cards and retail gift cards; and

(5) Finally, we hope to have time at the end to answer any of your questions.

I'd like to sort of explain a little bit, the difference between multi-store gift cards and the single retailer cards. Unlike single retailer cards, the recipient of a multi-store gift card can use the gift card at multiple retailers, usually located within a shopping mall or a designated shopping district.

In the case of Cadillac Fairview, our gift cards can be used in any of our malls or retail centres across Canada. Single retailer programs can only be used at a single retailer. Single retail gift card programs are sponsored and operated by the issuing retailer. When the card is redeemed at the retailer,

the costs of the program are covered from the retailer's profit margins on the sale of goods or services.

Multi-store gift cards, on the other hand, are issued on behalf of the shopping centre or shopping centre owner, through a company such as Store Financial to implement, process and provide program managed services for the gift cards. At Cadillac Fairview, we do not earn a profit from the operation of our multi-store gift cards. Rather, we operate as a service to our retailers to attract consumers who want the convenience of a multi-store gift card.

The individual retailer, located at a shopping centre, does not create or design the program. They are a participating merchant because they are located at a particular shopping centre connected to a global payment network, for example, American Express, Visa, MasterCard or Discover and they have elected to accept the shopping mall gift card as a form of payment for goods or services.

Some retailers issue, promote and accept their own single retailer gift card, while also accepting the shopping centre in the mall's multi-store gift card.

I'll explain how the multi-store card works. Multi-store gift cards are sold to consumers of a shopping centre. The gift card holder uses the card to purchase merchandise and services from the participating merchants located in a particular shopping centre. Gift cards can range in value from \$10 up to \$500 or more. The gift card is the same size and shape as a debit or credit card—I think we're all familiar with those—and uses a magnetic strip. It is a stored value card, in that the funds are loaded and stored on the gift card account at the time of purchase. The gift card is a single load card which cannot be reloaded with additional funds.

Multi-store gift card programs operate through the use of a sponsor bank and will typically utilize a global payment network such as MasterCard, Visa or American Express. When the gift card is sold, the funds are loaded on the gift card account and are held on deposit at the sponsor bank. When the gift card is redeemed by a retailer, the transactions are processed, settled and paid to the retailer by the sponsor bank, again, through MasterCard, Visa or American Express payment networks in the same manner as a transaction using a debit or credit card.

I'd like to explain the services provided by the multi-store gift cards. Multi-store gift cards have a number of unique features and services provided by

companies like Store Financial Services, who administer the program for the shopping centre.

These services and features are:

(1) unlike single store gift cards, the cardholder can use the gift card at more than one chain or store;

(2) cardholders can return merchandise to the retailer, with funds credited back to their gift-card account.

Another service provided. The cardholder and shopping centre can access information on a 24-7 basis, either through the Internet, automated phone enquiry, a toll-free customer number, sorry, a toll-free customer service line. The information available includes the terms and conditions of the gift card, the original amount funded on the gift card, the date it was activated and the place and amount of each transaction from the gift card, so you can really keep track of all of your purchases. It also provides a daily reconciliation of individual gift card accounts. Lastly, there is a program in place to replace lost, stolen or damaged gift cards.

It is important to remind you that, from all owners like Cadillac Fairview, multi-store, gift card programs are not a business we run for profit. We offer multi-store gift cards because it's a service consumers clearly want, and they are welcomed by our tenants. The operating and service fees associated with multi-store gift cards are covered by service fees and maintenance fees paid by the consumer.

Service Fees. The multi-store, gift card service fee is paid when the card is purchased. Generally, this fee is paid at the time of purchase and ranges from \$1.00 to \$1.50 per card. In some cases, multi-store gift cards are used by corporations for corporate gifts and/or incentives and, when purchased in bulk, the per card fee diminishes. In the case of Cadillac Fairview's shop card, the service fee is \$1.50. So, if you come to our shopping centre and purchase a \$20 gift card, you would pay \$21.50 at the time of purchase.

As for the maintenance fees, typically, there are no additional fees if the card is used within a certain amount of time. If the card is not used within a certain period of time, then a monthly account maintenance fee is charged against the card to pay for the services that have been provided since the card was first activated and for the services that will be provided to maintain an active gift card account. Most gift card programs don't charge maintenance

fees until after 12 months at the time of purchase. That is, the card is fully redeemed within 12 months of purchase. There are no maintenance fees.

In the case of Cadillac Fairview's shop card, a \$2 account maintenance fee commences 15 months from the date the card is purchased. The rationale for 15 months is that, if a gift card is purchased in the fall as a gift for the holiday season, 15 months gives the cardholder two holiday season cycles to fully redeem the card. Cadillac Fairview's experience has been that 15 months gives cardholders sufficient time to use the full value of the card; 90 percent of our multi-store gift cards are fully used within fifteen months.

All the costs of purchasing the services are clearly and fully disclosed at the time of purchase and on the gift card itself. The terms of the gift card purchase are clearly explained at the point of purchase, both verbally and with signage at the customer service desk. It's clearly printed on the purchase receipt. It is printed on the cardholder packaging, and our policy of charging a \$2 monthly maintenance fee for 15 months after the card has been purchased is also clearly printed on the back of the gift card. Consumers who purchase multi-store gift cards are fully informed of its costs, and recipients are also notified the terms of the card. Again, this would explain why 95 percent of Cadillac Fairview's shop cards are used within the first 15 months before any maintenance fee comes into effect.

There is a little more information on the regulation of gift cards in the U.S., but I see my time is starting to run out, so I will let you read through that.

But, in conclusion, clearly there are many different types of prepaid purchase cards. I appreciate the opportunity to appear before you today. The features and services provided to consumers are different. The two business models are different and, accordingly, the way two businesses are regulated should be different. It has been recognized in almost all U.S. states that have introduced gift card legislation. Consumers have welcomed our gift cards because they make gift giving easy, and we provide full disclosure of all terms and fees. With the gift card programs run by Store Financial at 250 shopping centres and districts in North America, including 100 in Canada, they currently receive about one inquiry related to fees for every 10,000 gift cards they issue.

We look forward to working with the Manitoba government to ensure the consumers continue to get the benefit of multi-store gift cards.

### ***Regulation of Gift Cards in the United States***

*Multi-store gift cards have experienced rapid growth in the United States. Store Financial Services administers card programs in 40 states and Puerto Rico. Since 2000, 24 states have enacted consumer legislation that specifically addresses gift cards with the focus being on expiry dates and the assessment of fees. To follow is a summary of how those 24 states break down:*

*On fees, six states (including New York and Texas) permit the assessment of fees for all gift cards if there is clear disclosure and/or 12 months have passed from a date designated in the statute. Thirteen states (including California) ban or regulate fees for single store gift cards but exempt multi-store gift cards. In three states (including Illinois) they allow fees for all cards if a group of requirements are met but exempt multi-store gift cards.*

*On expiry dates, eight states (including Texas) permit the use of expiry dates after a set period of time and/or if there has been proper disclosure. Four states (including California) ban expiry dates for single store gift cards, but exempt multi-store gift cards. Eight states (including New Jersey) permit expiry dates after a designated period ranging from one to six years but exempt certain multi-store gift cards. Two states (including Illinois) permit expiry dates if disclosure requirements are met but also exempt multi-store gift cards.*

*With respect to these 24 states, since 2000 only two states have enacted consumer oriented gift card legislation that places a ban upon fees or expiry dates on all multi-store gift cards. The laws in both states are being challenged in court with respect to multi-store gift cards issued by a federally regulated sponsor bank. A lower court in one case has ruled that the statutes cannot be applied to such cards.*

*In August 2006, the Comptroller of the Currency issued OCC Bulletin 2006-34 to address multi-store gift cards issued by national banking institutions. The bulletin requires full disclosure of service fees and expiry dates on the gift card.*

### ***Conclusion***

*Clearly there are many different types of prepaid purchase cards and I appreciated the opportunity to*

appear before this committee to outline the significant differences between single store retail gift cards and multi-store gift cards. The features and services provided to consumers are different, the two business models are different, and accordingly the way the two businesses are regulated should be different as has been recognized in almost all U.S. states that have introduced gift card legislation. Consumers have welcomed our gift cards because they make gift giving easy, and we provide full disclosure of all terms and fees. With all the gift card programs run by Store Financial at 250 shopping centres and districts in North America, including 100 in Canada, they currently receive about one inquiry related to fees for every 10,000 gift cards they issue.

We look forward to working with the Government of Manitoba to ensure consumers continue to get the benefit of multi-store gift cards.

**Mr. Gerald Hawranik (Lac du Bonnet):** Thank you very much for your presentation, for your thoughtful presentation, and for taking the time out of your schedule to appear before committee.

I note that the Retail Council of Canada—in fact, they provided me with some information—

**Madam Chairperson:** Mr. Hawranik, if could just come a little closer to your mike. I apologize, we can't quite hear you.

\* (10:40)

**Mr. Hawranik:** Sure. I note that the Retail Council of Canada came forward with a presentation or some information to me this morning, and, of course, many of the retailers you represent will be members of the Retail Council of Canada. They were somewhat disappointed by the lack of consultation by the minister prior to introducing this legislation.

My question to you, I guess, is did you meet with the minister regarding this legislation prior to committee, and the effect it would have on your operations or the people that you represent, the businesses that you represent. Were you at all consulted prior to this legislation being introduced?

**Ms. Green:** No, I did not meet with the minister ahead of time, and I have not met with the Retail Council of Canada. I was just asked on behalf of Cadillac Fairview to present this morning.

**Mr. Hawranik:** I note that when I looked at some of the presentation that was given to me by the Retail Council of Canada with respect to the legislation, their particular concerns really centred around the

definition section of prepaid purchase cards. The prepaid purchase cards definition section indicates that it's a card that could be either issued or sold. So it could be, in fact, a promotional and charitable card that could be covered under the legislation to promote people to come to businesses to use their business.

Under the legislation, those kinds of cards would, in fact, be subject to no expiry date. So you would have a card that has no expiry date even though it's given away. It doesn't have to be sold; it's caught under this legislation. Do you have any thoughts about that in particular, given the fact that, of course, if it's a purchase card, something that someone pays a retailer for, clearly if there's no expiry date, that may be fair in terms of being caught under the legislation? But when you have a card that's a promotional or a charitable card and then being caught under the legislation as having no expiry date, would that be fair to a retailer?

**Ms. Green:** Again, I can't speak on behalf of the individual retailers with their own individual cards. I'm only sort of up to date on the multi-store gift cards because that's what Cadillac Fairview is involved in. We do have a service fee to purchase the card but there are a lot of services that we provide through the sale, I guess if you want to call it, of that card.

**Hon. Nancy Allan (Minister of Labour and Immigration):** Thank you, Deborah, for your presentation this morning. Unfortunately, you weren't able to get through the whole presentation, so I was wondering if we could have the complete presentation put in the *Hansard* so that we have the value of all of that in *Hansard*.

**Madam Chairperson:** Agreed? [*Agreed*]

**Hon. Jon Gerrard (River Heights):** Thank you for your presentation. What I would like to get from you is sort of a clearer understanding. I think your major concern is in the regulations because the bill really sets up the government to be able to make regulations, but can you tell us quickly how this would compare with other jurisdictions—the States, you've mentioned them—and whether there are particular problems in this legislation which need to be addressed even before we get to the regulations?

**Ms. Green:** Again, I've just been asked to present this morning. I can get you some answers from Cadillac Fairview if you would like to go a little bit further on that topic.

**Mrs. Mavis Taillieu (Morris):** Thank you for your presentation. I just had a question in regard to these gift cards. Do these gift cards contain credit card information or any other personal information embedded in them?

**Ms. Green:** No, they don't.

**Madam Chairperson:** Any other questions? Seeing no other questions, we thank you very much for your presentation.

The committee calls Laura Kwiatkowski from Rogers Communications.

**Ms. Laura Kwiatkowski (Rogers Communications Inc., Midwest):** I have a sheet to hand out.

Thank you, Madam Chairperson, and members of committee. My name is Laura Kwiatkowski, and I'm the general manager for Rogers Communications, Midwest. I'd like to thank the committee for providing us with the opportunity to discuss Bill 4, The Consumer Protection Amendment Act.

Rogers' concern today is the potential application of Bill 4 to payment and billing methods that the Legislature did not intend. The term "prepaid card" is broadly used to describe many types of payment systems and, as such, any law using the term must be narrowly defined. One of the primary methods used by wireless carriers to offer services and bill customers is through the use of "prepaid" cards. In effect, a customer purchases a card, either physically or digitally, and the dollar value purchased is placed on the customer's account. The account is drawn down upon as the customer uses minutes.

It is our submission that wireless prepaid cards are not "prepaid cards" in the traditional retail definition. Most prepaid cards are generally bought by one person and are given to another person as a gift. Wireless prepaid cards are generally not given as a gift by one person to another; rather they are generally bought and used by the end consumer. This is a significant point of differentiation between the two products. A customer who buys a wireless prepaid card is aware of the terms and conditions associated with it, and he or she buys the prepaid card usually with the expectation to use it almost immediately. In essence, the customer is buying the prepaid card as a tool to manage his or her costs associated with his or her personal usage of a wireless telecommunications service.

Another important differentiation is that the retail prepaid cards are essentially cash equivalents, whereas wireless prepaid cards are not. Customers exchange money for an equal value in retail prepaid cards. They then use the retail prepaid card to purchase products and services in the same manner they would otherwise have used cash. On the other hand, a prepaid wireless card is essentially a billing mechanism that the carriers use to charge customers for a distinct service. A customer buys a prepaid card and activates it, thereby triggering the alignment of the wireless network with the associated billing systems. This alignment ensures that both the customer and the carriers understand how much usage is permitted by individual customers at a given rate. The purchase of a prepaid card is, therefore, a mandatory component of the provision of this wireless service.

The nature of the service purchased through a wireless prepaid card is also very different than most items purchased with traditional retail prepaid cards. For example, a retail prepaid card issued by a clothing retailer can be redeemed for potentially thousands of different clothing items. A prepaid wireless card is an actual purchase of one specific item, minutes of airtime on a wireless telecommunications network over a defined period of time.

Unlike the clothing retailer who doesn't need to increase inventory because of the number of retail prepaid cards sold, wireless carriers must manage their network capacity, understanding the number of calls that may be attempted at any one time. It is, therefore, crucial that we have the tools to manage the usage of the wireless network by prepaid customers. The time limitation associated with the wireless prepaid card is an essential network management tool.

Wireless carriers also make provisions for our customers to keep and maintain unused airtime that they have purchased. If the airtime is not entirely used up in that one month, the customers can roll the unused airtime over to the following month by activating a new prepaid card. As long as they maintain their active status, they do not lose their minutes. In fact, wireless carriers will contact customers when their cards are close to expiry to remind them to activate a new card in order to preserve their existing minutes.

Another differentiation between wireless prepaid cards and the retail prepaid card is that, even though

the customer is only charged for consuming minutes of airtime, the carriers do, in fact, provide a service to that customer during the entire month. The customer receives the benefit of having available wireless service at all times, 24 hours a day, seven days a week, to make or receive calls at his or her convenience. In addition, emergency 911 service is available even when the customer does not have any airtime available under the prepaid program. This is unlike the traditional retail prepaid card where the customer receives no benefit until such time as the retail prepaid card is, in fact, used. Essentially, the prepaid customer is purchasing access to a wireless network, even though they are being billed by the minute.

In providing the monthly access, the carriers incur additional costs even when the customer does not use any of the airtime purchased. When a wireless device is on, but is not being used to hold a conversation, the device is actually continuously communicating with the network. As such, whether or not the customer makes or receives calls in any given month, the wireless carrier incurs costs to run the network, provide 911 services, and IT management costs. These are costs that the carrier will only recover when the airtime is used up by the customer or when the prepaid card expires.

In our opinion, all of these arguments significantly differentiate wireless prepaid cards from the traditional retail prepaid card. We are concerned that if the term "prepaid cards" is drafted too broadly, it could easily be interpreted to capture wireless prepaid cards. This would severely impact a wireless service relied upon by millions of Canadians.

\* (10:50)

Other jurisdictions have recognized this distinction as well. Of the 27 U.S. states that have passed prepaid or gift card legislation, 21 have specifically exempted wireless prepaid cards. The remaining six states impose requirements for the display of expiry dates on the card. Rogers prints information regarding both expiry on the front and back of its wireless prepaid cards. As a result, Rogers would comply with the legislation affecting the prepaid wireless cards in all 50 of the U.S. states.

In conclusion, Rogers asserts that wireless prepaid cards are not the same as the traditional retail

prepaid card. For the customer, wireless prepaid cards are a cost-management mechanism, and for the carriers, wireless prepaid cards are an account and billing management mechanism.

We would encourage the government to clearly define "prepaid cards" in Bill 4 so as not to capture prepaid wireless cards, or in the alternative, draft the regulations in such a way that clarifies that wireless prepaid cards are not the same as traditional retail prepaid cards.

Thank you for allowing us this opportunity to make this submission.

**Mr. Hawranik:** Yes, thank you very much for your presentation and for coming forward to committee and making that presentation.

I guess my question to you is: Did you have a presentation to the minister prior to the drafting of this legislation or were you consulted at any time by the minister?

**Ms. Kwiatkowski:** No, we were not consulted.

**Mr. Hawranik:** I note that there is a very similar legislation that has passed in Ontario recently with respect to this, and, obviously, Rogers Communications would have had, I would take it, some input in Ontario prior to the drafting of the legislation. If so, how is that Ontario legislation different from Manitoba's, and does it, in particular, exempt wireless prepaid cards?

**Ms. Kwiatkowski:** We have made that request to the Ontario government, and it is being considered at this time.

**Mr. Hawranik:** Specifically, with regard to some of the concerns that you've mentioned in your presentation, how would the legislation, as you see it, be amended to address some of your concerns?

**Ms. Kwiatkowski:** We would like the legislation to actually exclude wireless prepaid cards completely or, if not available to us, then at the end of the presentation I had mentioned we could also clarify that wireless prepaid cards are, in fact, different than retail prepaid cards.

**Madam Chairperson:** Seeing no other questions, we thank you very much for your presentation.

The committee calls Ed Bachewich. Oh, I am sorry, we are going to go to Bill 6 first, and then we will call Mr. Bachewich one more time.

**Bill 6—The Registered Retirement Savings Protection Act**

**Madam Chairperson:** On Bill 6, The Registered Retirement Savings Protection Act, the committee calls Shannon Martin from the Canadian Federation of Independent Business.

Did you have a written presentation you wanted to circulate? No. You can proceed, Mr. Martin.

**Mr. Shannon Martin (Canadian Federation of Independent Business):** Good morning, committee members. Once again, on behalf of CFIB and our 4,800 members, we are pleased to be here this morning to speak in support of Bill 6, The Registered Retirement Savings Protection Act.

Currently in Manitoba, unlike registered pension plans, RRSPs are treated like any other personal asset and are subject to seizure by creditors. The majority of small businesses do not have access to pension plans and Bill 6 will ensure that they are offered a similar level of protection.

Upon passage, this bill will also have the effect of encouraging small business owners to invest more in RRSPs and help ensure they have a financially secure retirement.

By way of background, in 2004, Department of Finance officials approached CFIB to seek our members' views on this issue. As a result, we asked the following question: Should the Manitoba government introduce legislation to protect RRSPs from debt collection? Two thirds of our members supported this legislation, 25 percent of our members rejected the idea, and 9 percent of our members were undecided.

As a result of this survey data, CFIB urges this committee to pass Bill 6 without amendment as soon as possible.

**Madam Chairperson:** Thank you. Are there any questions for the presenter? Seeing no questions, we thank you very much for your presentation.

**Bill 4—The Consumer Protection Amendment Act (Prepaid Purchase Cards)**

**Madam Chairperson:** On Bill 4, the committee calls Ed Bachewich, private citizen. One last time, the committee calls Ed Bachewich, private citizen. Mr. Bachewich's name will be dropped from the presenters' list.

**Madam Chairperson:** That concludes the list of presenters I have before me. Are there any other persons in attendance who wish to make a presentation? Seeing none, that concludes public presentations.

In what order does the committee wish to proceed with clause-by-clause consideration of these bills?

**Mr. Doug Martindale (Burrows):** In the order printed on the standing committee order paper.

**Madam Chairperson:** Agreed? [*Agreed*]

During the consideration of a bill, the enacting clauses and titles are postponed until all other clauses have been considered in their proper order.

Also, if there's agreement from the committee, for the longer bills I will call clauses in blocks that conform to pages with the understanding that we will stop at any particular clause or clauses where members may have comments, questions or amendments to propose. Is that agreed? [*Agreed*]

We will now proceed to clause-by-clause consideration of the bills.

**Bill 2—The Employment Standards Code Amendment Act**

**Madam Chairperson:** Does the minister responsible for Bill 2 have an opening statement? Minister Allan? We thank the minister.

Does the critic from the official opposition have an opening statement?

**Mr. Ron Schuler (Springfield):** Yes, thank you very much. I think the minister, during one of her comments to one of the presenters, probably laid out what she wanted to say about the legislation.

I did want to touch on a couple of issues. I guess we could probably do this through line-by-line as well. Basically, I'd like to say to those individuals who were involved with consulting on this legislation, I would like to extend the appreciation of this committee. Certainly, LMRC spent a lot of time, as the minister said, volunteer time, and I'm glad to hear that Greek salads were provided. At least they were doing this on a full stomach and not hungry. We certainly appreciate when Manitobans step forward and want to improve legislation. As time goes by, legislation does get stale dated, needs to be updated, and certainly that's what this piece of legislation does.

There are a couple of areas of concern, and I think probably what can happen here is the minister just speaking about it and placing in *Hansard* the intent of what she and her department had wanted. I think as we go through line-by-line we'll be looking at 2(5), agriculture. I think it's very important once again, and I'll be asking the minister a little bit more, when we do that, to put on the record again on agriculture what the intention was.

On section 59.3(1), I certainly will have a few questions for the minister there. Then, 61(2), we'll have a few questions there of the minister.

Again, these are not substantive questions or changes that we're looking for; I think perhaps more clarification, if not some tweaking. But, by and large, individuals have spent a lot of time within the department, within groups that serve the government and do so on a more volunteer basis. We would like to thank all of them for their hard work and would at this point in time like to see the bill go through line-by-line.

**Madam Chairperson:** We thank the member.

Shall clauses 1 and 2 pass?

**Mr. Schuler:** I do have a question, as I previously stated, and that has to do with 2(5).

**Madam Chairperson:** I am going to stop you at this point. Clause 1—pass.

Shall clause 2 pass?

**Mr. Schuler:** Again, the concern is coming on 2(5): "Except as otherwise provided in the regulations, this Code applies to persons employed in agriculture."

\* (11:00)

**Madam Chairperson:** Mr. Schuler, I am sorry to interrupt again. Are you talking about on top of page 4, just for clarification.

**An Honourable Member:** Yes, he is.

**Mr. Schuler:** The top of page 4. I'm sorry, I'm working off a copy from the Internet.

**Madam Chairperson:** That's all right. Just a moment. It's part of clause 3.

Clause 2—pass.

Shall clause 3 pass?

**Mr. Schuler:** Now we found the right section to ask the question in, once again: "Except as otherwise provided in the regulations, this Code applies to

persons employed in agriculture." There seems to be some concern in regard to this section. Individuals are not quite sure, and I quote from the side by side. There were two points in the explanations. One was based on a consensus recommendation of the LMRC, any change to the existing agriculture exclusion would only take place after further consultation and LMRC deliberations.

The next one was section 2(5). It simply clarifies that the possible inclusion of some agricultural workers for various entitlements of the code is a regulatory issue. That still doesn't seem to allay individuals' concerns that the act is changed to say, "Except as otherwise provided in the regulations, this Code applies to persons employed in agriculture."

Can the minister take a bit of time and just make it very clear, does this legislation apply entirely to agriculture, except when exempted by regulation, or is it as an explanation agriculture is exempted? If she could just take a bit of time and just lay that out.

**Hon. Nancy Allan (Minister of Labour and Immigration):** There is absolutely no difference in Bill 2 in regard to how the code applies to agriculture workers. The regulation will not change. In fact, we received a unanimous report from LMRC on the regulations. That unanimous report is on the Minister of Labour's Web site, and it outlines the fact that there is no change, and that the LMRC is continuing to dialogue with the agriculture stakeholders. So, basically, section 2(5) means that it is the status quo, that there is no change to the regulation. It is exactly the same as it is now.

**Mr. Schuler:** Is there any place else in law where agriculture is exempted that would supersede this, or, if regulation comes in, it would then supersede where agriculture is exempted in any other legislation?

**Ms. Allan:** This only applies to the Employment Standards Code.

**Mr. Schuler:** In the Employment Standards Code, again, as mentioned by the minister, currently, agricultural workers are exempted until the minister hears back from LMRC and some kind of consensus.

**Ms. Allan:** That is correct. We have the broadest exclusion in Canada in regard to agricultural workers. The only way that they are covered by the code is for the recovery of wages. That is the only section of the code that applies to agricultural workers. We are continuing the LMRC. I am not privy to those discussions. Those discussions are happening at arm's length from me, and we are

continuing the LMRC process. They are continuing to dialogue with the stakeholders and, hopefully, they will make recommendations to me in regard to any changes to that regulation. They've actually decided on a time frame; I believe, next spring. We have been flexible with that time frame, and we will continue to work with the stakeholders.

**Mr. Schuler:** Basically, I think what's important is that we have those comments on the record. If there's any doubt again, you always go back to Hansard to see what the intent was. I think the committee appreciates the fact that that's been made very clear by the minister and, by virtue, the government.

So we'd be prepared to move on to the next clause where we have some questions.

**Madam Chairperson:** Clause 3—pass.

Shall clauses 4 through 7 pass?

Mr. Schuler, which clause are you referring to? Mr. Schuler, which clause?

**Mr. Schuler:** Under Family Leave, 59.3(1)—

**Madam Chairperson:** Just a minute.

**Mr. Schuler:** My notes are all on the legislation that I ran off.

**Madam Chairperson:** Mr. Schuler, which clause?

**Mr. Schuler:** 59.3(1) in the category of Family Leave, section 25.

**Madam Chairperson:** Okay, I will go back to this then.

Clauses 4 to 7—pass; clauses 8 and 9—pass; clause 10—pass; clauses 11 and 12—pass; clauses 13 and 14—pass; clause 15—pass; clauses 16 through 18—pass; clauses 19 through 21—pass; clauses 22 through 24—pass.

Shall clause 25 pass?

**Mr. Schuler:** Having spent a bit of time speaking to individuals, as the minister knows, one of the practices we have out of my office is legislation is sent out to stakeholders, and the minister and her department were kind enough to even give us a list of individuals that they had contacted. Again, by and large, the response back was fairly positive.

There were a couple of requests, clearly not bill killers. On this one, 59.3(1), it states: "An employee who has been employed for at least 30 days may take up to three days of unpaid leave each year, but only to the extent that the leave is necessary . . ."

One of the requests or questions was, is it not possible to make that: an employee who has been employed for at least six months may take up to three days of unpaid leave.

The reason is, and I know this from personal experience, and if the committee would indulge me, I can remember during the Pan Am Games we had such a heavy turnover in our business where we found students were basically accepting a job, working for a minimal amount of time and then using that job to bid up to better jobs. We finally got to the point where we would start the interview and say, there's no contract where we can force you to stay. We can't force you to sign in blood or anything like that. Could you please be honest enough with us, do you really intend to work here or are you just using this to bid up to another job?

It was epidemic and it wasn't just my businesses that were suffering from that. It was a tool because labour was in such high demand. Things improved a little bit after the Pan Am Games, but universally aren't much better. The 30-day provision is a little short, and I'd like to know from the minister, is there any will to accept from this committee any change, to make that six months rather than 30 days?

**Ms. Allan:** Well, the recommendation in the report is a unanimous recommendation from LMRC, and I wouldn't want to start to cherry-pick this bill because I think it would come unravelled pretty quickly. The legislation reflects every unanimous recommendation that was made by the LMRC, so I guess the bottom line is no.

**Mr. Schuler:** Certainly, we on the opposition side would view all of the individuals who have worked on this as being reasonable. We don't think this would be an unreasonable change. I think we do have to be aware that there are difficulties being faced by employers, and a 30-day provision being moved to six months isn't unreasonable, but seeing as, as my American friends would call it, we are the minority party, there isn't much chance of getting a change through, something we would be agreeable to.

\* (11:10)

I think it would be something that would show some understanding of where small business—and, again, this is a provision, I think, for small retailers, for small business. I mean, predominantly small businesses are driven by families, predominantly by women retailers, individuals who are trying to get a

business up and running. This is pretty onerous on a new business trying to start up. We would've cut them a bit of slack, but, again, we being the minority party, there is not much chance of getting that change through.

So I think it's just important to put on the record that we understand where small businesses, and the difficulties they're having right now in a very tight, labour-shortage market. So we're prepared to move on.

**Madam Chairperson:** Clause 25—pass; clauses 26 and 27—pass.

Shall clause 28 pass?

**Mr. Schuler:** Under clause 28, if the committee would look down to section 61(2). I know that this was a consensus report. The minister will point that out, but there is a weakness in the legislation here. You have very clearly laid out for business. Again, what concerns me here is small business. I guess (a) it's my background, and (b) we, again, are in a very tight labour-shortage economy.

It lays out very clearly what the penalties are, what needs to be done if you wish to terminate an employee. It lays it out very clearly. After 10 years, for instance, there is an eight-week notice period. It lays out penalties and such. For employees, basically, they have to give two weeks' notice, which is a standard. I, probably, at this point in time, wouldn't have as much of a difficulty of the fact that an employer has to give eight and the employee only two, except that the employee doesn't have to give two weeks because this legislation takes out any form of penalty. So the two-week provision is basically gratuitous. You can get up, walk out. You still have to get all your back pay owing to you, and, basically, there's no provision of any kind for any kind of holdback. There's no stick, no carrot, whatsoever.

The employee, even though it says here, must give two weeks. It's moot because, if there's no penalty, you get your cake and eat it too. I think that is a problem for small business. I would point out to the minister, having been somebody who employed lots of people over the years, I know that we all want employees, whether they're friends or relatives or strangers off the street, we want them all to do better. We all understand that, but we still have a business to run. At least the two-week provision, whereby an employer could say: Listen, if you don't live up to your obligations, there is, at least, some kind of a

hammer that we have over you that you should give two weeks; you have to work your two weeks. That gives you an opportunity to go back out into the workplace, to go out and look for someone else to replace these people leaving.

In one instance I know of, a manager left and took all the staff. The beauty was that they all had to give two weeks, and the worse part about it was they had done it when the owner went on holidays. So they all still had to do their two weeks' scheduled hours, had to live up to that obligation because the business owner had the opportunity to withhold something. They all lived up to that obligation, and it allowed the owner to get back and at least find some people to cover off until that individual could get the staffing component up to a reasonable level.

That is a bit of a problem with this. I don't think they were necessarily thinking in those terms, but, having lived in a small business environment, it's very important. It's probably less so important for a big company; it probably means very little, but to a small retailer this can be deathly. I'd like to point out to the committee that, if you go to Polo Park, and I don't know if our presenter is still here, if you don't open your doors regularly scheduled hours whether its 10 till 9 or whatever it might be, if you don't open exactly on time, the mall has the right to fine you.

So now we've got small business in a double jeopardy. If you don't open up because your employees have basically quit on you and you have no hammer on your employees, how do you open your business? You don't have that two-week window to find other employees. I think what we're doing inadvertently is perhaps creating a perfect storm that could hit a business, because I don't know of a shopping mall that doesn't have the provision of a penalty if you don't have your shop open on a Sunday or Saturday regular business hours. They can come in and they can fine you. I don't know what it is for the major shopping malls but I think it's fairly substantial. I know in my case, and I haven't read the lease for years because I'm out of it, but I think it was up to a \$500-a-day penalty.

So you have no way to force your employees to open up on a morning, yet you have to be open by the contract you've signed with your landlord and you have no hammer over your employees. There's no way to force them to come in because the way we've taken out that provision with this legislation, you are basically powerless. In this environment, I don't think anybody's quibbling with the two weeks.

I don't think anybody believes that after having worked for 10 years, you have to give 8 weeks. Nobody is stating that, but at least that you have those two weeks, in this environment, that they must work or you can withhold some wages.

I would ask the minister: Is there any desire on behalf of government to put in at least some kind of a holdback provision?

**Ms. Allan:** Well, I just want to clarify, first of all, in regard to the notice of termination, I just want to make sure that the Labour critic understands that there is termination requirements on the employee, one week for less than one year of service and two weeks for one year or more, at the bottom of page 22 in the legislation.

Basically what you're talking about is the forfeiture, and we are one of the few jurisdictions in Canada that has this. The changes that we have made in Bill 2 brings us into the Canadian mainstream in regard to what other jurisdictions are doing. Not even Alberta has what you're talking about. I think we have to remind ourselves that one of the reasons that we're doing these kinds of changes to this legislation is because of the skilled worker shortage that we have. We want to maintain our young people and we want to retain workers and we want to provide a level playing field for employees.

I have been informed by Dave Dyson, who is the director of the Employment Standards branch, that the concept of what you were talking about was discussed at the LMRC. I was not privy obviously to those conversations in regard to holding back pay, but that was rejected by the committee and it was also rejected by business.

**Mr. Schuler:** I don't believe that point was unanimous on the side of business. Again, I believe that it's small business that tends to get screwed on these. They're the ones that bear the brunt of it.

I understand the minister and her government are not prepared to make those changes and I still felt it was important to raise the issue at committee. Now was the time to do it and I felt it was an issue worthy of raising and bringing forward to this committee.

**Madam Chairperson:** Shall clause 28 pass?

**Some Honourable Members:** Pass.

**Some Honourable Members:** No.

\* (11:20)

### Voice Vote

**Madam Chairperson:** All those in favour of clause 28 passing, say yea.

**Some Honourable Members:** Yea.

**Madam Chairperson:** All those opposed to clause 28 passing, say nay.

**Some Honourable Members:** Nay.

**Madam Chairperson:** In my opinion, the Yeas have it.

Clause 28 is accordingly passed.

\* \* \*

**Madam Chairperson:** Clauses 29 through 31—pass; clauses 32 and 33—pass; clauses 34 and 35—pass; clause 36—pass; clauses 37 and 38—pass; clauses 39 and 40—pass; clauses 41 through 43—pass; clauses 44 through 46—pass; clauses 47 through 52—pass; clauses 53 through 55—pass; clause 56—pass; clauses 57 through 59—pass; clauses 60 and 61—pass; clause 62—pass; enacting clause—pass.

Shall the title pass?

**Mr. Kevin Lamoureux (Inkster):** Madam Chair, first off, I just want to indicate to the minister that I did appreciate the opportunity to be able to get the briefing on the bill. There is just one issue that I wanted to get her to comment on. I did raise it at the meeting, and that was the impact of Bill 2 on a commissioned salesman at a dealership in dealing with overtime. I appreciated the comment I got back last week, but I thought it might be beneficial just to get her understanding of that aspect and the impact it has on commission sales for overtime work.

**Ms. Allan:** Well, I'm not exactly aware of your concern or what you raised with Mr. Dyson, so maybe, perhaps, you would like to relay that information to me.

**Mr. Lamoureux:** The issue is that, if you have a car salesman who puts in, let's say, 60 hours a week, 20 of which would then be overtime if it's within the week, what sort of an entitlement would that 20 hours be for the car salesman?

**Ms. Allan:** Well, I just want to remind the Member for Inkster that this was an unanimous recommendation in the report. I think what the labour and management caucuses were trying to do is they were trying to compensate individuals who work in commission jobs, sometimes part-time jobs with varying hours. What they were trying to do was

set up a formula so that they could be compensated appropriately for overtime pay. The present structure that we have right now relies on a minimum wage structure, and we didn't feel that that was appropriate; we supported the unanimous recommendation of the LMRC. The department staff has been in touch with the motor vehicle dealers' association, and there doesn't seem to be any resistance at all to what is in the legislation, so we believe it should be moved forward.

**Madam Chairperson:** Title—pass. Bill be reported.

**Bill 4—The Consumer Protection  
Amendment Act (Prepaid Purchase Cards)**

**Madam Chairperson:** Does the minister responsible for Bill 4 have an opening statement? We thank the minister.

Does the critic from the official opposition have an opening statement?

**Mr. Gerald Hawranik (Lac du Bonnet):** No, I don't have an opening statement. I'll confine my remarks simply to line-by-line review of the bill.

**Madam Chairperson:** We thank the member.

Clause 1—pass. Shall Clause 2 pass?

**Mr. Hawranik:** I have a question with regard to clause 2 and that's, when it comes to the legislation, section 170, the Definition section. Clearly, the minister heard the presentations today that were made, one of which was done by Rogers Communications. It was indicated that 21 U.S. states exempted wireless prepaid cards in the Definition section, and clearly Ontario is likely going to move in the same direction.

Is the minister prepared to amend this particular section to reflect that, or will he be exempting those kinds of cards in the regulations, or is he prepared to make a commitment in that respect?

**Mr. Greg Selinger (Minister of Finance):** On the Rogers presentation, we're happy to get their advice and we will be consulting them as we prepare regulations, as we will all the groups that have registered concerns today. We've indicated that to them already.

The first thing we have to determine with the Rogers cards is whether they fall under provincial or federal jurisdiction. As you know, communications has now been moved to the federal level in the last decade and mostly falls under the CRTC.

So we'll have to sort that out first. Then once we get a clear read on the jurisdictional authority that we have, we will work with them to come up with a solution which is reasonable but also protects consumers.

*Mr. Vice-Chairperson in the Chair*

**Mr. Hawranik:** I thank the minister for that commitment. Another concern, and it was expressed to me by the Retail Council of Canada. It sort of was driven home by the fact that this morning I received a card in the mail, a promotional card which has an expiry date on it. It does have an expiry date and it says I can save \$10 as long as I use it before December 24. Now, I didn't pay for this card and I've received several in the mail, in fact, over the last few weeks because of the Christmas season promotions and so on.

But, when I look at the Definition section, the prepaid purchase card definition would cover this particular card in spite of the fact that I didn't pay for it. So as a result of the Definition section, because it says "issued or sold . . . for the future purchase or delivery of goods or services," the "or" creates a bit of a problem in the sense that this was a card that was issued for future purchase or delivery of goods and services, yet what you're saying in the legislation is that if this particular card is issued, there will be no expiry date.

It can be corrected quite simply by changing the word "or" to "and." I'm wondering whether or not the minister would consent to that. I know he may, in fact, indicate, well, it's subject to the regulations. Well, yes, it's subject to the regulations but it can be very clearly changed at this point, and it can exempt then all of those kinds of cards that aren't paid for at this point. If it isn't in the regulations, there is a problem, too, because if someone is likely to challenge it, it will go to court, and to be quite honest with you, I believe that a judge would rule in favour of the fact that this should not have an expiry date.

So it's fairly clear. It's easily done and I'm wondering whether the minister would consent at this point to amending the legislation to change the word "or" to "and."

**Mr. Selinger:** Regrettably not. We do plan to deal with those very specific situations that the member has raised, and I already indicated in my communications to the public that we would be looking at exempting charitable cards that were not sold as well. But we also recognize that this whole

field of prepaid cards is evolving extremely rapidly in terms of the types of cards that are offered, as we saw with the multi-store card offered by a major retail outlet, a physical site like Cadillac Fairview, for example.

\* (11:30)

Also, in technology, there's a dramatic increase in technological advances going out, so the legislation is intended to allow through regulation the ability to deal with new forms of services offered like this and to be able to make sure consumers are protected. There will, of course, be consultation with the specific people that have made representations here today and we will be reasonable, and, of course, the regulation will be available for scrutiny by members of the opposition. So we wanted to retain, not go too rigid on this word "and" versus "or," to be able to stay flexible to address the new practices.

There's been a dramatic growth, even from last year to this year, in the amount of prepaid gift cards that are out there. I don't know if the members—I, for example, at my local grocery store walked in and saw a rack with four different sides on the rack with probably 20 to 30 different gift cards available on it. So we need to stay flexible in terms of our legislation, but accountable in terms of publishing the regulation and having the consultations with the industry and members of the Legislature to accommodate the rapidly changing landscape in this area.

In effect, we have to remember that, when a consumer buys these cards, they're paying their money in advance of receiving a good or service. In other words, they're lending their money to the retailer before they've received a good or service, and the retailer actually is able to benefit from having that money in their accounts. We want to make sure that the consumer gets the value that they've paid for in these cards at the end of the day.

**Mr. Hawranik:** I'm not disputing the fact that, if a consumer purchases a card, there should be no expiry date. That's not the issue. The question is whether or not a card that's not paid for should be within the legislation and then being indicated as having no expiry date by the legislation. Clearly, these kinds of cards would disappear otherwise, and to just leave it by regulation, I think, is a problem.

Clearly, if you give a card away, you should have the flexibility, or the ability as a retailer to have an expiry date on it. I think that's the point I wanted

to make, that if you do change the word "or" to "and," it would only allow the prepaid purchase cards that are, in fact, purchased for consideration, and then they would have no expiry date. I can see that being caught within the legislation and should be regulated within the legislation. But, when we're talking about something that's given away, I don't think there should be expiry dates on it. To just hope that regulations cover that situation, I think, is wrong. You can actually make that amendment today, and that would, in fact, cover the whole problem.

**Mr. Selinger:** Yes, I take the member's point about not wanting to capture in the regulation a card that's offered for no cost up front to the consumer, but we want to ensure that, even in those circumstances, we can require through regulation, for example, proper disclosures of any conditions for which that free card is made available. A free card sometimes has little hooks in it in terms of what you might have to pay to get that free service. This happens quite frequently, where you get something that looks free up front, but it has conditions on it. We want to make sure that, through regulations, these kinds of retail offers or marketing techniques are in the best interests of the consumer, and they don't have anything within them that is not fully disclosed to the customer, so that if they think they're getting a free service, they really are getting a free service through the appropriate disclosures.

By doing it in regulation, it allows us to, once again, cope with the rapidly changing marketing techniques that are available in this whole area of prepaid, or cards that have a value on them related to a good or service you could acquire later on. That card may give you access to a good or service, but it's not clear what the conditions are on that, depending on the specifics. Now, the one you may have may have no conditions on it, other than by doing it by a certain date. If you show up at the store and buy the Mark's Work Wearhouse or whatever-it-is shirt by December 24, you may get \$10 value, or the price might be higher before December 24 than it is after December 24. We don't know. So the regulatory capacity to manage these things allows us to make sure that retail practices are fully disclosed to the consumers so they understand what good or service they're receiving.

**Mr. Hawranik:** Obviously, the minister and I have the same card because it does expire December 24. He must have read it. In any event—

**An Honourable Member:** We could go together.

**Mr. Hawranik:** I think only one purchase. My comment, simply, with these cards that are not purchased is that we should—and I have no argument with ensuring that consumers are aware of the conditions of the card and so on; it should be clear. My argument is why should we not allow them to have an expiry date. Clearly, in the legislation itself, unless you're going to do that by regulation, and if you're going to do that by regulation, I'd like to hear that from the minister today.

**Mr. Selinger:** As I indicated earlier, we are considering allowing expiry dates for certain types of activities such as charitable cards that are made available. There may be a case for this type of a card here. We will have to examine the specifics of it and make sure that we've read the fine print.

The member will know that often contracts do have fine print in a font size not normally readable by a person with eyes other than glasses. I do not know if you have read the fine print on that card, and we don't even know if all the information and all the conditions of that \$10 card are disclosed on the card. We want to make sure we understand what is going on in this practice and have disclosure for the public even if we allow an expiry date. So there may well be a case for an expiry date in these types of situations given adequate disclosure. So we will look at that and we will be fair about that. If the member wishes, I'll get back to him on the specifics of that as we work through the regulations.

*Madam Chairperson in the Chair*

**Madam Chairperson:** Clause 2—pass; clause 3—pass; enacting clause—pass; title—pass. Bill be reported.

**Bill 5—The Personal Investigations  
Amendment Act (Identity Protection)**

**Madam Chairperson:** Does the minister responsible for Bill 5 have an opening statement? We thank the minister.

Does the critic from the official opposition have an opening statement?

**Mrs. Mavis Taillieu (Morris):** I just want to say a few words in regard to Bill 5, The Personal Investigations Amendment Act, in that I think that there is a reasonable small step here to be taken in this. However, I do feel that the title of the bill when it says "Identity Protection" may be a bit of a

misnomer because we did see a headline in the paper the following day saying that there was an identity theft law introduced. So I have a few concerns about that with the public believing that there is identity theft legislation in place when this is really not specifically that. It's just a small step I think here, and, of course, any step in that direction is good.

I would just like to say a few things about the bill in that it really only applies after someone's personal information may have been compromised or stolen. So it doesn't really address the overarching theme of identity theft. I think it is well recognized that identity theft has become the most increasing crime that we've seen. Personal information has become the new currency in that crime. So there is a need to protect a person's information at the very root.

Having said that, we could go through the bill. I have a few comments on a couple of sections in the bill just to ask a couple of questions as we will proceed.

**Madam Chairperson:** We thank the member.

Clauses 1 through 3—pass. Shall clause 4 pass?

\* (11:40)

**Mrs. Taillieu:** Yes, in clause 4, in 12.1(1) at the top of page 2, clause 4: A subject may request a personal reporting agency to include a security alert in his or her personal file.

In consultation with Brian Bowman, who is a lawyer with Pitblado and who's quite renowned in areas of identity theft prevention and privacy issues, he has asked the question here, and I would like to reiterate that. It says that anybody can request that a security alert be placed on their personal file. There is no need to prove any belief that their identity has been compromised or may be subject to identity theft. Why not just make these security alerts mandatory and subject every request for a personal investigation to the same level of heightened scrutiny? Is there any thought on that?

**Hon. Greg Selinger (Minister of Finance):** Well, there are two reasons we decided not to make it mandatory. The first is that it's not necessarily the case that all consumers want that process where every credit check has to be verified back with them. They may wish to have a credit transaction proceed more quickly than that for their own personal reasons and not have to have people come to them to verify everything, because their credit is in good order; they

haven't had any problems; they're looking for speed, and they feel things are well in hand.

The other reason is that, if we made this mandatory, it would dramatically increase costs for all these credit transactions, and Canada would be completely out of step with every other jurisdiction by having it mandatory. It probably would cost the consumer more money, quite frankly, to have everyone verified in this way. There would be extra charges back to the consumer, so we wanted to give the consumer choice and put the power in their hands to decide when they wanted an alert to go on their file. That allows them to have an additional tool to protect themselves. Once again, it's consistent with what's occurring in at least one other jurisdiction that's moving on this, and that's Ontario.

**Mrs. Taillieu:** This bill does actually place the onus on the consumer to contact personal reporting agencies and ask for the security alert and recognize that the onus is on the individual. With the flow of personal information that does occur and the number of breaches that have occurred, it might be proactive, I think, to look at how to educate and protect people's personal information before it gets to the stage that someone has to recognize that it is stolen and has to go to the reporting agency. It also is noted that there's no central agency they can call in about this such as the Consumers' Bureau. They have to do it with every single reporting agency.

So I think that while, as I said in the first place, it does take a step in the right direction, it's not really addressing the root causes when you talk about identity theft or identity theft prevention.

**Mr. Selinger:** Yes, there's two main credit agencies in Canada that they would have to contact to get the credit alert put on. There's an additional one which, apparently, mostly serves Québec. Once again, the member is correct. This is not a 100 percent total solution to identity theft. This is an additional tool to help people who feel that their identity has been stolen.

We intended to give the choice to the consumer, whether they want to exercise this additional power to have all credit verifications come back to them, but it does not solve the problem of identity theft in its entirety. The member is right; the best solution is prevention, where people know how to protect their identity more thoroughly. We do have educational materials available for them; we have to promote that more and more these days as the sophistication of

identity thieves grows. We have to be more alert as to how they can take advantage of our identities.

I know there's a lot going out there. A lot of the credit-granting agencies themselves now have staff that verify every transaction when it goes through, and, if they see something, they have their own alert system in place already. I'm aware of one young person in my community who does this for a living. If they see an alert pop up, they actually go through a set of procedures to verify it. They are catching a good deal of this right now because it's in the interest, obviously, of the credit card companies to reduce their overhead costs through identity theft.

So there are a lot of procedures in place, but not everybody is necessarily up to that level of verification. This allows the consumer, say their wallet is stolen, to be able to go to these credit agencies and to make sure everything is verified with them before any additional credit is offered under their name. We think it's a fairly powerful tool, but it does require the consumer to make the phone call to these credit agencies to do that. Of course, our Consumers' Bureau would advise them how to do that, and we have information on our Web site that they can get immediate access to on how they can protect themselves as well as information about how they can protect themselves from being a victim of identity theft in the first place.

**Madam Chairperson:** Clause 4—pass.

Shall clauses 5 and 6 pass?

**Mrs. Taillieu:** Trying to find out where clause—

**Madam Chairperson:** If you look for the page numbers.

**Mrs. Taillieu:** Yes, I'd just like to ask for leave to go back to clause 4, just to section 12.4(2).

**Madam Chairperson:** Is there leave to refer?  
[Agreed]

**Mrs. Taillieu:** Thank you. Just in regard to 12.4(2), User to take reasonable steps to verify person's identity, there is, I see a bit of a problem with this clause in that, if my wallet is stolen and someone has a number of pieces of my personal information, they may then be able to call into a credit bureau to put a credit alert on my information, using my information so that the actual identity thief, as you will, would have my information. Then, if needed to be reported back, you know, to confirm that this was me, they have the identity thief's phone number and information. So it's almost like making it a little

easier, if you will, because the information is already in the hands of the wrong person and they could convince someone that they are the person, so when reporting back they would phone the actual thief's number to get to verify that they are that person. So that, to me, may be something that would not happen, but I think that all those things have to be identified as weaknesses, I think.

As we know, whenever you have a law with good intentions, there are always those unintended consequences. So perhaps this is a loophole that someone could actually use as a blueprint to identity theft. I wonder if there is a way to address that.

**Mr. Selinger:** Well, if somebody phones a credit agency and asks for an alert to be put on, the first thing the credit agency does is it has a set of procedures to verify your identity, who you are. That's asking for that, and they will ask often what they call experience questions, when was your mother born, how long have you lived at your current address. They will ask questions that ascertain that you are the person whose identity you're trying to put an alert on. They have these techniques of verification already built into their process, and so the individual who has stolen your identity would have to know quite a bit about you.

In most cases, the procedures, I think, protect thieves from being able to get additional information. If the thief, for example, said I want you to call me at this number and the file shows you're at a different number, that's going to be an alert to them right away to check out and make sure that you haven't changed your address. If you do change your address or your phone number, they verify that it's the right person doing that. I have been through this myself when I've activated certain accounts, say, with my credit union or whatever, and they ask questions that the average person wouldn't have a clue. What's your mother's middle name? Only a few people know that.

\* (11:50)

**Mrs. Taillieu:** Yes, thank you. Just want to make note of the fact that one of the chief areas for collection of personal information to be used in impersonating another person or identity fraud is family members which would have—we wouldn't like to think that, but in fact that is the case. They would be able to have that information. So, even though that may sound like something that may not happen, it does. I think it really needs to have a stronger look there.

**Mr. Selinger:** Well, again, I'm not trying to suggest that the system is foolproof, but they usually ask you two or three questions. Even if you get one, you've got to be really, really sophisticated to get all three of the verification questions.

It's not 100 percent foolproof, but this system would be better than what we have now which is nothing. That's the point. It's a step forward. But I acknowledge your point. It's not a total solution. It's just an additional tool for somebody to protect themselves quickly if they feel they've been a victim of identity theft.

**Madam Chairperson:** Just to confirm that we have already passed clause 4, just for confirmation for the committee.

Clauses 5 and 6—pass; clause 7—pass; enacting clause—pass.

Shall the title pass?

#### Committee Substitutions

**Madam Chairperson:** Just for the information of the committee, we do have substitutions that are happening. Mr. Caldwell is here for Minister Allan, and Mr. Reid is here for Ms. Korzeniowski.

\* \* \*

**Mrs. Taillieu:** I just wanted to make a comment on the name of the bill, as I did already, that I think that the name of the bill is a bit of a misnomer. It's misleading in the fact that it has led the public to believe that there's identity theft legislation on the table, and I don't believe this is truly identity theft legislation.

I do believe it is a good step. I will support it, but I don't believe the title is adequately reflecting what the bill is doing.

**Mr. Selinger:** I understand the member's point. We put "Identity Protection" in brackets and referenced the specific legislation we already have, The Personal Investigations Amendment Act. So it's an amendment to existing legislation and we've been very clear to the public that it's nothing more than that.

The other point I would like to make is the member was concerned about verification procedures. Both of the major credit reporting agencies, TransUnion and Equifax, have already committed to the councils of ministers for consumer protection, that their procedures for verifying alerts are going to be more sophisticated. They're going to increase the

level of security there to make this system work, and they've agreed to the approach we've taken here.

**Mrs. Taillieu:** Just a further comment to that, that both TransUnion and Equifax have both had breaches of security themselves. So nothing is absolutely foolproof.

**Madam Chairperson:** Title—pass. Bill be reported.

**Bill 6—The Registered Retirement Savings  
Protection Act**

**Madam Chairperson:** Does the minister responsible for Bill 6 have an opening statement?

**Hon. Greg Selinger (Minister of Finance):** No.

**Madam Chairperson:** We thank the minister.

Does the critic from the official opposition have an opening statement? We thank the member.

Clause 1—pass. Shall clause 2 and 3 pass?

Mr. Hawranik, on clause 2 or 3?

**Mr. Gerald Hawranik (Lac du Bonnet):** Yes, I believe—

**Madam Chairperson:** Which clause, Mr. Hawranik?

**Mr. Hawranik:** Well, it would likely deal with clause 3.

**Madam Chairperson:** Clause 2—pass.

Shall clause 3 pass?

**Mr. Hawranik:** I have a question of the minister with respect to that clause. I'm sure he's seen the media release given by the Manitoba Bar Association with respect to the fact that RSPs are protected, and they agree with that. I don't think there's any argument from our side of the House as well, that we agree that there should be protection for RSPs similarly as there is protection for other registered pension plans, company plans and so on.

But the Manitoba Bar Association came out with a news release—and, as I say, I mentioned that I believe the minister probably has seen it—in the sense that they believe that there isn't really any protection with respect to payments out of the plan once the plan matures and once retirees are taking money out of the plan to help them with their living expenses when they retire. Certainly, there is no exemption for that.

While I agree somewhat with the Bar Association, there still is some protection, I believe,

in the bill in the sense that it's still subject to garnishment. There are exemptions under The Garnishment Act with respect to allowing a certain amount of money, depending on how many dependents you have, to be exempt from garnishment.

Having said that, that it's not necessarily particular to this bill, I can tell you that the amount that's left in an individual's hand after a garnishing order has been used to take away income from an individual is very little. There's very little left to allow the individual enough money to live on, and, if this is the only source of income or one of the only sources of income for a retiree, I'm wondering whether the minister would consider reviewing, of course, the amounts that are exempt under The Garnishment Act with a view to increasing them.

**Mr. Selinger:** First of all, on the main point the member made, the Uniform Law Commission recommended the approach we're taking here, and that's support for it. Our bill doesn't require funds to be locked in. We had to allow for some collection by creditors so that funds, RRSPs couldn't be used to allow somebody to avoid their obligations by putting money there and then taking it out for non-retirement purposes and avoiding their credit obligations. This gives the creditor some protection on the other side. It's a balanced approach.

But you are right. A debtor can, in some cases, when the money comes out, the courts can allow them to keep up to 70 percent, and 30 percent, for example, be available to creditors. If the member raises the question whether that's sufficient to give an income under garnishment orders, we can take a look at that and see what's reasonable there, but I don't think it's fundamental to this bill. I think this bill is a step forward for people with RRSPs. It puts them on the same level playing field as people with registered plans, which are already protected, and some forms of insurance which are partially protected, so it allows a leveller playing field for people saving for retirement to have their retirement funds protected relatively equally across the different types of retirement vehicles. But, in all cases, even under a registered plan, when you take your income out, the creditor could make a claim on it because it is a source of income at that stage. So to go the additional step and have no ability to claim it even as income would privilege it above other forms of retired income which, I think, would trigger a whole bunch of demands in that regard too.

**Madam Chairperson:** Clause 3—pass; clauses 4 through 7—pass; enacting clause—pass; title—pass. Bill be reported.

**Bill 9—The Grandparent Access  
and Other Amendments Act  
(Child and Family Services Act Amended)**

**Madam Chairperson:** Does the minister responsible for Bill 9 have an opening statement? We thank the minister.

Does the critic from the official opposition have an opening statement?

**Mrs. Leanne Rowat (Minnedosa):** I would like to just put a few comments on the record regarding Bill 9, The Grandparent Access and Other Amendments Act. I want to put on record first that I'm pleased that the government has seen fit to recognize the rights of the grandparents, something for which hundreds of grandparents from across the province have been advocating for years.

\* (12:00)

For the last two years, I've had the privilege of travelling the province and meeting with some extraordinary people, all of whom have shared a common goal, to one day share in a loving, caring relationship with their grandchildren. Individuals like Eileen Britton, who provided a brief to be read into the record earlier today, her comments regarding grandchildren and saying that this legislation is important for them, that they are the ones who will benefit, that it definitely will be in their best interests to see this legislation move forward, is key.

I also want to recognize Bill and Corinne Gamble. Bill Gamble's here today to witness the bill moving past committee, and I want to thank him for coming out today and also for all the support that he and Corinne have shown in our efforts to move this initiative forward.

It's Corinne Gamble's birthday today, so I think this is a monumental piece of legislation to be presented for a grandmother who has worked tirelessly to have something like this put forward. It's a wonderful birthday present, I would say.

I want to thank the minister and the staff for providing the briefing and sharing information on the Grand Relations and also the legislation. I'm pleased to see that the interests of the majority of my grandparents have been represented in this legislation. There are some areas that would need

further consideration, but we want to move this bill forward and have it become law before Christmas.

The Grand Relations, the announcement for an adviser and new staff, I trust that they will exercise accountability and good management with this program. We see a clear role for the grandparent adviser, and I would like to see grandparents being made more aware of the options available to them through this means and other programming, such as For the Sake of the Children and any mediation and conciliation that would be available to address problems before court proceedings need to begin, if at all.

The reality is that the situation for some families has progressed beyond the point where mediation would be effective, and some grandparents will be forced to apply for access through the courts. We encourage the courts and other stakeholders to be receptive and supportive of grandparents and actually grandchildren as they move through this process.

I guess in conclusion we are cautiously optimistic about the government's ability to adhere to the spirit of this legislation in order for these provisions to work to the benefit of children. You know there are backlogs in the court system that must be addressed, so we look to the government to address the prongs or supports in the system to ensure that the supports are expedited.

Grandparents have waited far too long for this legislation, so I am pleased that this government has finally recognized the potential benefits of positive relationships between grandchildren and grandparents. Thank you.

**Madam Chairperson:** We thank the member.

Did you want to make a statement, Minister Mackintosh?

**Hon. Gord Mackintosh (Minister of Family Services and Housing):** Just to give credit where credit is due. I thank all the grandparents and other stakeholders who have advised us. It's great to see Mr. Gamble back again today to see the fruit of the efforts, but part two of credit where credit is due is to the Member for Minto. Perhaps you might want to put a few words on the record. He has been out working on this one since I understand, I think, it was the spring of '05. I'd invite him to put some remarks on the record.

**Madam Chairperson:** I need leave.

Is there leave for the Member for Minto to speak? *[Agreed]*

**Mr. Andrew Swan (Minto):** Thank you, Madam Chairperson. Indeed, this has been an interesting file, and I appreciate the minister giving me the chance to work on it.

Of course, in the spring of 2005, a group of grandparents in Brandon wrote to every MLA in the province looking for some action on what they saw was a lack of grandparent rights, to use that term. Certainly, I've been very grateful to the grandparents from all across the province who've been prepared to share their stories, which are heart-rending and tragic in some cases. Certainly, I'm very happy that this bill is going forward.

We think that it, along with the entire Grand Relations strategy, deals with the main thing that grandparents have told us, which is that they would like to see a system which does everything possible to avoid the emotional and the financial expense of a contested court proceeding. So we believe the bill is an important part of that, but certainly the rest of the strategy is going to be most useful.

Certainly, I heard not just from grandparents but also from extended family members. As the Member for Morris (Mrs. Taillieu) herself said the day that the opposition bill was introduced, oftentimes it's great-aunts, great-uncles, other extended family members who also have a close relationship with the child. I'm very pleased this bill includes consideration of them, of parents who are *in loco parentis* and have been part of the child's life.

I heard from many grandparents who said their issue was more than just a simple access issue. It was also a question of guardianship. I'm very pleased that the bill that's before committee today is going to look at those situations as well. Certainly, every grandparent has a different expectation of how the relationship can work, and it was heart-rending to hear people who are told they're not even allowed to attend dance recitals or Christmas concerts or sports contests. I'm very pleased that the bill includes some specific remedies that will twig lawyers, the parties and judges to try to find some creative ways to get the relationship going again for the benefit, certainly, of the grandparents and the extended family members, but most of all the children of Manitoba.

I think it's also very helpful that the court can remain involved, if need be, to come back and review an order. Many times, unfortunately,

grandparents haven't seen their children or grandchildren for some period of time, and there may be a staging-in period where that can improve. So certainly I credit the Member for Minnedosa (Mrs. Rowat), for I think attuning her caucus to this issue. It's clear the bill that was passed in 1998 wasn't doing the trick, and for that I do give her credit. So I look forward to moving on with the bill, and I want to thank, from my opinion, the work of the Family Law branch and also the work of Family Conciliation services. I know from practising family law for 14 years that they do very, very good work for the benefit of all families. So those are my comments.

**Madam Chairperson:** Thank you, I have a couple of other people who would like to speak. But, prior to doing that, I just want to make committee members aware that we do have one registered presenter who has come to speak to one of the other bills that have already been passed. So I just wanted to make committee members aware of that. I'm not going to interrupt this particular clause by clause, but I am going to put that information on the record.

Is there leave for Mr. Caldwell to speak? *[Agreed]*

**Mr. Drew Caldwell (Brandon East):** Just very briefly, I echo all of the comments of my colleague the MLA for Minto. This was an important issue in western Manitoba, and I'd like to commend my colleague from Minto as well as the MLA for Dauphin (Mr. Struthers) who took time in Brandon to meet with grandparents. We did it independently of the Member for Minnedosa (Mrs. Rowat). In the main, it was a very enlightening series of conversations and dialogues that we had with those grandparents, and they deserve full credit for providing the information that allowed our government to put this legislation into place. I just wanted to commend the Westman grandparents, and that's the gist of my remarks, Madam Chair.

**Madam Chairperson:** Thank you, Mr. Caldwell.

Is there leave for Mrs. Taillieu to speak? *[Agreed]*

**Mrs. Mavis Taillieu (Morris):** I won't take long, but I do think it's very, very important to recognize the Member for Minnedosa who first introduced this as a private member's bill in the spring of '05 and worked tirelessly around the province over the last year and a half meeting with grandparents and having input from them. I know she's made a lot of contacts and a

lot of friends through this. She's worked very hard at it, and I know that the government has taken this legislation and they're going to go forward, move forward with it. But I do think that there needs to be credit given where credit is due here, and that is the Member for Minnedosa, who spearheaded this bill, who brought it forward as a private member's bill. Now we will support it and see it go into legislation. Thank you.

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

**Mr. Kevin Lamoureux (Inkster):** Yes, Madam Chair, you know it was probably a number of years ago when I met with some grandparents over at McDonald's. They were telling me about problems in terms of the whole issue of custody and the division that it caused within the family. I, back then as an MLA, I guess, could have thought of bringing forward legislation of this nature.

\*(12:10)

The bottom line is, there's no doubt there are 56, or there must be 57 MLAs that have had the opportunity to talk about grandparents. But I believe in giving credit where credit is due, and it was the Member for Minnedosa (Mrs. Rowat) that actually took it the next step. The next step was bringing forward legislation. I supported her legislation when she introduced it back in the spring of 2005. I applaud her as the MLA that took the next step. As we all might think about it and talk to other people about what it is that would be nice to see happen, it was the Member for Minnedosa that had taken the next step. My hat is off to the Member for Minnedosa in doing that. I recognize that the government has recognized what the Member for Minnedosa has actually done and now has brought in government legislation which brings it even further.

My concern is that we give credit where credit is due. When a private member brings forward a good idea, that member should be applauded for the actions that they have taken, much like what we did with the Member for Carman (Mr. Rocan) when he did public smoking. So I tip my hat to the Member for Minnedosa, Madam Chairperson.

**Madam Chairperson:** We thank the member.

Clauses 1 and 2—pass; clause 3—pass; clauses 4 and 5—pass.

Shall the enacting clause pass?

**Hon. Greg Selinger (Minister of Finance):** I was just following the conversation here, and I noted that everybody was sharing credit for what had happened here. Well, I was informed that one of the original people to raise this matter was the former MLA for St. Boniface, Neil Gaudry, and I just wanted to acknowledge him on the record as well as having had concern about this and brought it forward many years ago, in the '90s.

**Madam Chairperson:** We thank the member for his comments.

Enacting clause—pass; title—pass; Bill be reported.

**Madam Chairperson:** I would like to ask leave from the committee to hear an out-of-town presenter, Mr. Bachewich, who has come to speak to Bill 4, The Consumer Protection Amendment Act. Is there leave from the committee?

**Mr. Doug Martindale (Burrows):** Madam Chairperson, I wonder if, instead, we could have his presentation be part of the record—

**Madam Chairperson:** Providing he has a written copy.

**Mr. Martindale:** If he has a written copy, because the bill has already passed the committee, so if we could just include it in *Hansard*.

**Madam Chairperson:** What is the will of the committee?

Mr. Bachewich, you do have a written copy to—

**Mr. Edward Bachewich (Private Citizen):** Yes, I do have one written copy.

**Madam Chairperson:** Thank you very much, Mr. Bachewich.

Is it agreed from the committee to have the written comments appear in record as they have been presented to us? *[Agreed]*

Mr. Bachewich, we thank you very much for travelling from out of town to present to the committee.

#### **Bill 38—The Housing and Renewal Corporation Amendment Act (Fund for Housing Revitalization)**

**Madam Chairperson:** Does the minister responsible for Bill 38 have an opening statement?

**Hon. Gord Mackintosh (Minister of Family Services and Housing):** No.

**Madam Chairperson:** We thank the minister.

Does the critic from the official opposition have an opening statement?

**Mrs. Mavis Taillieu (Morris):** This bill, The Housing and Renewal Corporation Amendment Act, which will direct profits from properties owned by the government into affordable housing, inner city housing, is a good bill. I think that we recognize the need to support housing opportunities and initiatives within the inner city.

Just a few comments, though, in regard to the profits that will be seen from Waverley West, whether or not there actually will be profits available. It's speculated that there will be, but I don't think it's any time a good practice to spend your money before you have it, and that is the case right now. So, even though there's a good projection for profits, I know that, with some of the upgrades and things that are wanting to be done in that neighbourhood, that might erode into the profits. So there's a caution, I think, into taking money before you have it and spending it or even allocating it. Having said that, though, we do recognize that there are good intentions here to allocate money into less economically viable areas of the city.

However, one of the provisions of the bill was that the profits would go to these initiatives, and now we see that half of it may go to the extension of Kenaston Boulevard. Again, that is admirable because I know that there will be issues around that area in terms of traffic flow and whatnot; but, having said that, you know, when you propose a bill to designate profits to one area, and before you even pass the bill, you aren't even adhering to the bill, that does raise some concerns. So we look forward to hearing a little bit more about these provisions as we go along. Certainly, I think the intent of the bill, as we see it, to redirect funding, is a good thing.

I also want to make mention of the fact, though, that the Manitoba Housing Authority is under a review at present. This review was called last summer, and I believe it's ongoing at this time. I think that, when you're directing funds into an organization that's under scrutiny, there may be some prudence there to have a look and also recognize that the Manitoba Housing Authority on the most recent line diagrams in the department has moved out from under the Manitoba Housing and Renewal

Corporation into Income Assistance in Housing, with the new CEO at the head of MHRC.

So, with these things happening within the department and dedicated funding going on, we'd like to have a clear understanding as to exactly what and how that money will be spent. Thank you.

**Madam Chairperson:** We thank the member.

Clauses 1 and 2—pass; clauses 3 through 5—pass; clause 6—pass; clauses 7 and 8—pass; enacting clause—pass; title—pass. Bill be reported.

**Madam Chairperson:** Just for the information of the committee, we are now getting copies of Mr. Bachewich's written submission to be circulated to committee members, so you will get them in your caucuses.

The time being 12:17, what is the will of the committee?

**Some Honourable Members:** Committee rise.

**Madam Chairperson:** Thank you for your work this morning, committee.

**COMMITTEE ROSE AT:** 12:17 p.m.

#### **WRITTEN SUBMISSIONS PRESENTED BUT NOT READ**

Dear Minister Allan:

Re: Bill 2 – An Act to Amend the Employment Standards Code

On behalf of the Manitoba Employers Council I am writing to express our support for this bill.

It is noted that the proposed legislation is modelled after the consensus recommendations submitted by the Labour Management Review Committee (LMRC). These recommendations represented a compromise which was agreed between representatives of the Management and Labour caucuses.

While the LMRC recommendations and the resulting proposed legislation do not embody everything that employers asked for, we expect that labour representatives also would agree, they did not receive all of their desires either. On the other hand, the proposed legislation represents a compromise which should strike a reasonable balance between competing interests and bring Manitoba into a position which more accurately reflects the main

stream of Employment Standards legislation across Canada.

In our view, Bill 2 along with preceding legislation regarding Workers Compensation and Workplace Safety and Health adopts the appropriate approach for labour legislation representing as it does a consensus reached between representatives of labour and employers.

If you have any questions or wish to discuss this matter, please contact the writer at your convenience.

Yours very truly,

Manitoba Employers Council  
William S. Gardner

Chairperson

\* \* \*

Submission to the Standing Committee on Social and Economic Development

Bill 4 – The Consumer Protection Amendment Act (Prepaid Purchase Cards)

December 4, 2006

## **Retail Council of Canada**

### **History and Mandate:**

Retail Council of Canada (RCC) has been the Voice of Retail in Canada since 1963. We speak for an industry that touches the daily lives of Canadians in every corner of the country—by providing jobs, consumer value, world-class product selection, and the colour, sizzle and entertainment of the marketplace.

RCC is a not-for-profit, industry-funded association representing 40,000 store fronts of all retail formats, including department, specialty, discount and independent stores, and on-line merchants.

Whenever the opportunity presents itself, RCC is there promoting retail as a profession; as a portal to the world of work; as an economic driver; as a barometer of consumer tastes and confidence; and as an intensely competitive arena that delivers to Canadian consumers one of the highest standards of living in the world.

With offices in Winnipeg, Edmonton, Vancouver, Toronto and Ottawa, Retail Council of Canada is a vigorous advocate for retailing in

Canada and lobbies all levels of government on a range of retail-oriented issues. RCC also provides members with a full range of cost-saving benefits, as well as educational products and services through the Canadian Retail Institute. RCC hosts five national conferences annually, regional events and workshops, and produces a number of publications, including the award-winning bi-monthly magazine *Canadian Retailer*.

### **Manitoba Overview:**

The retail sector is a vital contributor to Manitoba's economy. In 2005, it accounted for 6.1 percent of provincial GDP. Retail sales in Manitoba topped a record-breaking \$12 billion in 2005—a robust increase of 6.4 percent (unadjusted) from the previous year. Manitobans' per capita retail spending is third only to Alberta and British Columbia.

There are approximately 7,000 retail establishments in Manitoba, directly employing more than 69,000 Manitobans. This represents over 11 percent of the province's total employment, making the retail industry Manitoba's third largest employer.

The contributions made by this economic sector are felt in very corner of the province and affect the lives of all residents.

### **Bill 4—The Consumer Protection Amendment Act (Prepaid Purchase Cards)**

#### **Process:**

Retailers have expressed their commitment to working with provincial governments to create rules for gift cards. Retail Council of Canada (RCC) has indicated our willingness to create rules that respond to the concerns of consumers but also take into consideration the legitimate needs of retailers. RCC has also recommended that provincial governments take a harmonized approach to developing these rules. We were pleased to hear from department officials that the Manitoba government will be adopting the rules governing gift cards which are being developed in Ontario.

RCC has been extensively involved in the consultations conducted by Ontario's Minister of Government Services in the months leading up to the introduction of Ontario's *Consumer Protection and Service Modernization Act, 2006*. In stark contrast, however, the Manitoba government gave retailers no indication that they were planning on introducing similar legislation. In fact, retailers only learned of

the government's intention to introduce gift card legislation when it was announced in their Speech from the Throne on November 15, 2006.

RCC must stress to the Minister of Finance our disappointment with the process in which this legislation was announced. The Minister of Finance's decision not to inform retailers of his intention to introduce legislation, nor to provide retailers with information in terms of his department's time frames or how the legislation was developed caused confusion and stress for a number of retailers during their busiest time of year.

Retailers had no way of knowing if the provincial government was planning on implementing the proposed changes before the end of 2006, which would significantly impact their operations. This, for very obvious reasons, created concern among retailers in the province. RCC immediately contacted Consumer and Corporate Affairs officials following the Throne Speech to clarify the government's intentions and time frame and passed this information on to our members. We have also shared our members' concerns with department officials following the introduction of Bill 4. This unnecessary situation could have easily been avoided had the minister simply contacted RCC to inform retailers that his department intended to follow Ontario's lead and introduce similar legislation.

Our members were, however, pleased to hear that Manitoba has based Bill 4 on Ontario's legislation, that the accompanying regulations will be based on the regulations being developed in Ontario, and, as such, that Manitoba will be following Ontario's time frame for implementing these rules.

**Definition:**

Again, RCC has supported and stressed the importance of provincial governments taking a harmonized approach to developing rules for gift cards. One area where Bill 4 differs from Ontario's legislation is by including a definition of "prepaid purchase card." RCC has concerns that Bill 4's very vague definition will mean cards not intended by the government to fall under these rules will be captured under the legislation.

The Ontario government's legislation will focus only on gift cards purchased by consumers. This is an absolutely critical issue for the retail industry as, despite the name, gift cards are not solely something

purchased by a consumer to be given and received as a gift. Rather, retailers often give gift cards away as a promotion or for customer service purposes while many retailers donate gift cards to charity as prizes or to be auctioned off. Gift cards are used by retailers for a variety of marketing and reward initiatives.

While Consumer and Corporate Affairs officials have verbally indicated that "promotional and charitable" cards will be excluded from the legislation in the regulations, we must stress how critical it is that Bill 4 focusses only on gift cards purchased by consumers. The Manitoba government must recognize the very real benefits to consumers that gift cards can present and we want to continue to work with them to ensure that retailers are not discouraged from continuing to offer these benefits and be innovative in the way that they do so.

**Expiration Dates:**

Gift cards are one of the fastest-growing products in the marketplace today. Most large retailers offer gift cards, and in response to consumer demand, a lot more small and mid-sized retailers are beginning to offer cards as well. Gift cards offer security, convenience and choice to the consumer and these things will continue to drive gift card sales and innovations.

While gift cards are extremely popular, it is important to note that they are still a relatively new and developing phenomenon in the Canadian marketplace. As such, there is a lack of consensus with respect to best practices regarding their administration. One area in which there is a great diversity of practice in the marketplace is with respect to expiration dates.

For most consumers, gift cards burn a hole in their pocket and the vast majority of gift cards are redeemed within a relatively short period of time after issuance. It is in fact only a very small percentage of gift cards that necessitate an expiry date.

While there is a great diversity of practice in the marketplace with respect to expiration dates, retailers who place an expiry date on their gift cards do so primarily for accounting reasons. Specifically, retailers must show gift cards as a liability on their balance sheet until the card is redeemed. Expiry dates are a means of clearing the liability with respect to cards that have not been used for a period of time.

Also, managing gift cards becomes more complex and costly over time. The older the gift card, the more difficult it becomes to track the validity of the gift card and how much value it has stored.

Consumer demand has driven the popularity of gift cards and for retailers the needs of consumers will always win out. RCC and its members recognize that some consumers have concerns about expiration dates on gift cards. That is why we are working with the Ontario government to eliminate expiration dates on gift cards that are purchased by consumers in a way that is fair and responsible. It is our expectation that Manitoba will follow this example and incorporate Ontario's regulations to ensure a harmonized approach is taken.

#### **Service Fees:**

Another area in which there is a great diversity of practice in the marketplace is with respect to service fees.

Retailers who levy service fees do so primarily to recoup some of the costs associated with them. Depending on the type of card issued, how many are ordered, the type of technology employed, and the services offered with it, the cost of gift card production and implementation can be significant. As such, some retailers charge fees similar to service fees charged by financial institutions for dormant bank accounts in order to recognize the continuing cost to a retailer of maintaining the balance of a card that has not been used for some time. If a retailer engages a third party to manage its gift card program, there is typically a charge for maintaining each gift card "account." These costs are ongoing, whether or not the card is used and continue in perpetuity in cases where cards do not expire. Sometimes the cost for maintaining a gift card account exceeds the value remaining on the card.

RCC and its members recognize that some consumers have concerns about service fees associated with gift cards. That is why we are working with the Ontario government to create rules regarding fees that are fair and responsible. For retailers, the needs of consumers will always win out, and we look forward to working with both the Ontario and Manitoba governments to develop and implement rules that are fair for all parties.

#### **Disclosure:**

Most retailers clearly disclose the terms and conditions of the gift card to the purchaser directly

on the gift card. However, due to the abundance of information that is communicated, it is sometimes a challenge to fit all relevant terms and conditions on the card itself. For example, in addition to information regarding expiration dates and services fees, if applicable, many retailers include information on where the card can be used and for what purposes, how to access the retailer's customer service personnel, and what the consumer should do if the card is lost or stolen. Other retailers include bar codes and foreign currency conversions in the case of global companies. These space considerations are exacerbated by the fact that terms and conditions are communicated in both official languages. In cases where space does not permit the information to be communicated to consumers directly on the card, some retailers disclose the terms and conditions on the accompanying sleeve and/or on the sales receipt.

RCC will be working with the Ontario government to create rules regarding what information is communicated to consumers and how that information is disclosed. Again, it is our expectation that Manitoba will adopt Ontario's regulations to ensure a harmonized approach. Having harmonized standards in this area will assist both retailers and consumers alike.

#### **Timing:**

Gift cards are a complicated issue, and we commend the dedicated public servants at the Consumer and Corporate Affairs Division for accommodating our request to meet with them to discuss Bill 4 and the plan to develop and institute these new rules in 2007. It is our expectation that they will consult with the retail industry and other affected stakeholders before proceeding with rules that will have both a financial and administrative effect on our sector.

We look forward to working with the Manitoba government on the regulations and ensuring that retailers are equipped to implement them without any disruption in service to either the consumer or the business.

All of which is respectively submitted,

Lanny McInnes  
Director, Government Relations and Member Services  
(Manitoba/Saskatchewan)

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Re: Bill 4

Hearing December 4th, 2006

### **Consumer Protection Legislation**

I would like to congratulate the government in taking steps with this legislation to protect the consumer.

The consumer needs protection in the following areas:

- gift cards
- gift certificates
- telephone prepaid cards
- prepaid cards for services
- coupon booklets, expiry dates or changes to services
- mail-in rebates

This presentation does not condemn the business community; most are fair and practice fair consumer service.

Old-fashioned gift certificates are basically on this way out.

The sales of gift cards are exploding.

On March 21, 2006, StatsCan reported those gift cards helped retail sales to the area of 31.8 million last January. We can only guess what the sales will be in this year and especially at this season.

Retailers have fallen in love with gift cards. The consumers no longer have to go to a particular store for that store's gift card. The gift cards can be purchased over the phone or the Internet and pay with their credit card. The consumer can purchase over 20 different cards at the local grocery or department store; they are very convenient.

#### **What are the advantages of the gift cards?**

People can purchase gifts for business partners, workers, friends or family without spending the time going out to shop.

The people receiving the gift cards can purchase what they need.

They can purchase on-line.

#### **The retailers like the gift cards despite the cons.**

Set-up costs could be up to \$50,000

Costs for distribution and sales by other stores can add from 50 cents to \$3 per card.

People have a tendency to spend more than the value of the gift card.

The average gift card was \$50 in 2004.

There is a tendency of people not to use up the entire amount on the card. They may not spend all the money at one time. There is a tendency to lose the card, misplace the card or not go back to the store and spend the balance.

It is reported that 10 percent of what people spend on the cards never gets spent, which is direct profit to the businesses.

#### **What are some of the disadvantages for the consumer?**

The expense of the cards is included for all people who shop at the particular stores; the cost is included in the prices.

Some of the cards carry fees. Some of the cards have early expiry dates.

If the cards are not used in the assigned date, there are at least two consequences: They are no longer valid; you lose their value. They may have administrative fees if not used within the specific time.

The cards can only be used to purchase at a particular retailer or for a mall for specific purposes.

If you do not use the entire amount, you may lose the balance.

And while some stores don't put expiry dates on their cards, many retailers do. Cards sold at The Bay and Canadian Tire expire two years after the purchase date while Loblaws cards are invalid after only one year.

Meanwhile, stores like Zellers begin deducting a portion of the card's value if it's not used within a certain time frame.

In Manitoba we used to have a public telephone system that provided a service called **Pay As You Go**. This service was available to people who wished to have an emergency phone service. This service was available to people who did have the money to purchase a telephone with a contract for three or five years. This service was available to people who did not have a bank to have automatic payment. This service was available to people who did not have a credit history. This service allowed you to purchase a minimum of time for an amount of \$15, and this amount would remain until you used it up or added to the amount.

Well, the new MTS introduced a new service which was basically the same as "Pay As You Go,"

and they called it Envoy except that your \$15 minimum purchase will expire in 30 days if it is not used up or you do not add additional amount. If you purchase an amount on the thirtieth day of the month and wanted to add an amount on the 20th of next month, then your total amount will not run from the 30th to the 30th but now it will run from the 20th till the 20th. Therefore, you will lose the 10 days, and if you do not pay before 12 a.m. on the particular day, you will lose all your acquired time.

Some of the American states and now Ontario have passed or are passing laws outlawing service fees on gift cards, and expiry dates.

The companies love gift cards. The businesses take "no-date-limit cash" and exchange it for gift cards with expiry dates. All of a sudden they have an instant cash cow.

The second consumer protection item should be mail-in rebates.

I wish to address the use of mail-in rebate offers. I would like to ask all companies to stop using and promoting mail-in rebates. There are a few major companies that have now started to stop the mail-in fiasco.

There are several reasons the consumers wish to have companies stop mail-in rebates:

1. Many companies can and do use the information for other promotions.
2. It costs the consumer more money with a mail-in rebate than if you had just given the consumer the "great price" at the checkout.
3. It costs money to process the rebate, just pass it on to the consumer at the till (company estimates that the cost of a rebate is anywhere from \$5 to \$10).
4. A large percentage of consumers will not send in the rebate form.
5. The rebate request is to turn in your UPC Code and usually your **original** bill.
6. When you need service or return you need your original box and your original bill. Some companies will issue a gift bill for such

purchases, but you must get this at the time of purchase.

7. The promotional material may be included in the package and the date may have expired.

Please check the enclosed letter to Nintendo as to the effect of a \$30 rebate.

#### **WHAT DO WE NEED:**

The government should include the following in its legislation:

1. There should be no expiry date on gift cards.
2. All gift cards should be redeemable similar to a debit card at any retail store and the balance should be available as cash.
3. If a company goes out of business, then the amount not used should be available at another business.
4. The money collected for gift cards should be in a trust fund until the consumer uses it.
5. The easy way would be to have the gift cards as CASH cards. That can be used at any store and the money will not be removed, except by the consumer.
6. The government should eliminate mail-in rebates to the consumer.

Nintendo Rebate Office  
PO Box 9502  
Station Terminal  
Vancouver, B.C.  
V6B 6J2

To Whom It May Concern:

It is great that an organization like yours would like to promote the purchase of your product by offering a rebate.

**Please stop offering mail-in rebates.** Mail-in rebates **cost you** and **the purchaser** a lot of money and it does not really benefit the purchaser. The **purchaser** has to submit the **UPC Bar Code**. (cutting up the box, etc.)The **purchaser** has to submit the **Original Sales Receipt**. (What happens if

you have to take an item back to the store or for warranty work? Or return other items purchased at the same time?) The **purchaser** has to wait 8-10 weeks for the rebate. **A large percentage of purchasers do not mail-in rebates forms.**

It costs the rebater extra money in that they must pay a rebate company to prepare the information, issue a cheque, supply postage and mail the envelope with the rebate. You could pass this savings on to the consumer in the form of reduced pricing.

Secondly, in the price of a Super Mario Sunshine Bundle costing \$279.00 with a \$30 rebate is not really a \$30 rebate.

	With Mail-In Rebate:	Rebate at Point of Sale:
Cost of Bundle:	279.00	279.00
Less Rebate	0.00	30.00
Price for Taxes:	279.00	249.00
PST 7%	19.53	17.43
GST 7%	19.53	17.43
Postage to Mail	1.00	
Total Price	319.06	<b>283.86</b>
Less Rebate	30.00	
Total Purchase Price	289.06	283.86

**Difference in savings to the consumer is an additional \$5.20, not including the costs to the company issuing the rebate.**

**Please stop mail-in rebates. Give the rebates at the point of sale.**

Yours truly,

Edward Bachewich

\* \* \*

Re: Bill 5

To the Standing Committee on Social and Economic Development

The purpose of this e-mail is to express our deep concern with the lack of consultative process which seems to have taken place regarding Bill 5, The Personal Investigations Amendment Act (Identity Protection).

Having just completed a similar effort with you counterparts in the Province of Ontario, I wish to

propose that your government slow down your effort and give interested stakeholders a fair chance to have their opinion heard. I believe that if you were to contact your counterparts in Ontario, you would likely hear that the consultative and co-operative efforts which they undertook led to a mutually acceptable and workable solution.

Once again, we are of the opinion that your government, in their haste to bring forth this piece of legislation, has by-passed what some stakeholders feel is a critical element in the legislative process, that being an open and honest dialogue on the topic.

I hope that the committee can find reason in my argument and will be willing to either postpone or reconvene its hearings to a time when interested stakeholders will be able to be present and to put forth their ideas in a timely and organized manner.

Thanks for your consideration

Joel Heft

Vice-President, Legal Counsel and Chief Privacy Officer

Equifax Canada Inc.

\* \* \*

Re: Bill 9

Madam Chair, The Honourable Gord Mackintosh and Members of the Committee.

My name is Eileen Britton, I am the President of the G.R.A.N.D. Society (Manitoba Chapter). G.R.A.N.D. is an acronym for Grandparents Requesting Access & Dignity. We are a national non-profit organization that offers support for grandparents who have been denied access to their grandchildren.

Thank you for allowing me to address this committee today.

Having dealt with grandparents issues for 13 years this legislation is slow in coming. During these past 13 years some grandparents gave up, some died never seeing their grandchildren; grandparents who had had a healthy, loving relationship with their grandchildren. Now that legislation is about to change and finally recognize the importance of a grandchild-grandparent relationship, it is to be hoped that these situations and others will be rectified.

Grandchildren are special. This legislation is more important for them. They are the ones who will benefit and it definitely will be in their best interest.

I would like to take this opportunity to thank Leanne Rowat for addressing this long-overlooked issue. Without her perseverance and concern for grandparents and grandchildren, this would not have been possible.

Thank you, Mr. Mackintosh, for supporting and recognizing the importance of making definite changes in introducing this legislation.

This is about grandchildren our most precious resource.

Thank you all on behalf of the G.R.A.N.D. Society.

E. Britton

The Legislative Assembly of Manitoba Debates and Proceedings  
are also available on the Internet at the following address:

**<http://www.gov.mb.ca/legislature/hansard/index.html>**