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STATUTORY REGULATIONS
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Chairman
Mr. P. Fox
Constituency of Concordia

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LEGISLATIVE ASSEMBLY OF MANITOBA
THE STANDING COMMITTEE ON STATUTORY REGULATIONS AND ORDERS
Tuesday, 15 June, 1982

Time - 10:00 a.m.

MR. CHAIRMAN, P. Fox: Ladies and gentlemen, we have a quorum. The first person this morning is Mr. Michael Nozick.

Mr. Nozick.

BILL NO. 2 - THE RESIDENTIAL RENT REGULATION ACT

MR. M. NOZICK: Yes, I'm Michael Nozick. With the indulgence of the Committee, I have a problem standing for more than five minutes at a time. My feet give out, so may I sit?

MR. CHAIRMAN: Yes, go ahead and sit down except I don't know what we're going to do about sound. It'll pick it up.

MR. M. NOZICK: Mr. Chairman, and Members of Committee, I propose to read through my letter and to amplify certain aspects of it as we go along.

I would like you to consider the following matters that relate to the Act. First of all, there is a relationship of the Act and the regulations that is troublesome to me. The Act is basically administrative in nature. It establishes the procedures by which rents will be regulated. However, the substantive provisions of the act are proposed to be included in the regulations which, of course, we haven't seen. By embodying the substance of the Act in the regulations, the public is being deprived of the opportunity of input. Moreover, the Legislature itself is being deprived of the opportunity of debate. This is a new piece of legislation, stipulated to be part of a program of economic reform. As such, its provisions should be addressed with particularity and certainty.

The hearings before this Committee are, in my view, rendered somewhat of a sham and that the matters which are and should be debatable, that is the regulations, and which have their direct effects on the owners of residential property in Manitoba are not yet known. Furthermore, once they are known they will be subject to revision without further review or public or legislative debate.

The regulations ought to be tabled at this time and they should be debated. Those provisions which are proposed to be the subject matter of regulation, which are perhaps more properly the subject matter of legislation, such as, the right to pass through operating costs and any right to receive a reasonable return on investment, should then be passed as part of the Act, rather than as part of the regulations.

I have to say that I'm quite surprised at the approach taken. I appreciate that the tendency in government today is to do as much as possible by regulation and as little as possible by legislation. This allows flexibility; it allows a sense of timing, rather than a lack of timing, to prevail. However, in this particular case, I can't foresee the types of circumstances which may prevail which would require that sensitivity to timing. The only thing that might be required to be changed rapidly would be if the impact of controls was adverse and was bringing about a collapse of the housing market. With that one exception, surely, the types of things that are being considered could be tabled at this time and be the subject matter of debate.

This administration has quite properly addressed the issue of open government when regulations, which are the guts of a piece of legislation, are determined in caucus or in camera or in secret without the benefit of public input and without the benefit of public debate, then that is a step backward for my view of the democratic process; that is not open government. I've been told that the regulations will be fair. I believe that the people responsible for the administration of the Act believe that the regulations will be fair but I'm not sure that what they think is fair and what I think is fair may necessarily be the same thing, and that's okay; but what's troublesome is I don't have an opportunity to discuss whether or not it's fair. I'm being told this is what it is and sometimes open discussion or open debate can lead to change, whereas decisions once made are usually not changeable or revocable and so I do have this concern that we're sitting here debating a piece of legislation that is really a piece of administrative legislation and the matters which affect us all greatly are being done afterwards.

The matters which have been addressed and which the media, I suppose, has latched onto, which the Minister has alluded to in speeches are the 9 percent limit, the pass through of certain costs, the non-pass through of certain costs. That is just discussion because, again, that's part of the regulations, there's nothing in the Act that says an owner can pass through costs; there's nothing in the Act that says an owner can receive a return on investment. All the Act does is set out administration and so I address that concern. I think it's backward and not necessary in this particular piece of legislation.

The next think I'd like to deal with is discretion given to the rent regulation officer and that's item No. 2 in my brief. I want to preface my remarks by stating that I've been told that the intent of the legislation was not as I perceive it; that, indeed, it does read that way but that was not the way it was intended to read. However, I would like for the record to again review what I have perceived and if it's to be changed, well and good.

The Sections 21(2) and 22(1), those deal with the rent regulation officers' decision and Sections 27(1) and 27(3) which deal with appeals, give a broad discretion to the rent regulation officer or panel, as it may be, in determining what is an allowable rent level. These sections and other portions of the Act refer to the formulae which are to be included in the regulations. The formulae, it says, are to be considered, but they don't say if a rent increase can be justified or, if it falls within the formulae, that an increase will, in fact, be allowed. This type of discretion is, in my view, dangerous. It permits directions to be given to those administering the Act as to what should or should not be allowed and to whether or not these directions are in the Act or in the regulations. I believe it's a source of potential corruption, a source of patronage, favourit-

ism and mistrust and should be changed. If the concept of the Act is to establish formulae by which rent increases are to be limited, then surely it is not unreasonable for the Act to provide that if the formulae are met and the increase, in fact, can be justified that the rent increase will be allowed.

I'd like to deal with Item No. 3, the protection of tenants from, what are referred to as excessive increases. During the course of the election campaign the Premier indicated that there were two fundamental thrusts to a program of rent control. First, there was protection of the tenants from "excessive" rent increases; secondly, there was the right of owners pass-through costs and to receive a reasonable return on their investment. I'm not quoting directly but almost directly; those were the thrusts of the promises.

In a tightening market, the social fear is that owners will attempt to extract from tenants, who have no bargaining power when there is no alternate accommodation, unfair or unconscionable rental increases, increases which are beyond those required to cover operating costs and a reasonable return on investment. And presumably these were the types of increases which were considered as "excessive" and rightly so.

Unfortunately, the Act appears to have taken a turn in a different direction. While the intent may have been to protect tenants from excessive increases, the effect of the Act appears to be to provide accommodation at rent levels acceptable to the government, irrespective of the economic impact on the property owners, and as indicative of that changing intent I would like you to consider the following:

First, because the Act is not part of a uniform program of economic controls, wage and price controls, the Minister has suggested that there will be a "threshold" amount of allowable rental increase which bears some relationship to certain components of the Winnipeg cost of living index. Presumably this is advocated so as not to "pick on" a single isolated segment of society for control measures. If public and private sector employees are receiving income increases in the vicinity of 12 or 13 percent per year, as they currently are, there is a logic which suggests that some similar factor ought reasonably to be allowed to owners as a minimum to allow them to keep pace - parity, as it were.

Whether or not the proposed 9 percent threshold limit is adequate will undoubtedly be the subject matter of much commentary by others, it is not my commentary. My concern is that even the stipulated threshold amount, whatever it is, will not be allowed.

Under the Act, any increase whether or not it is less than the threshold amount will, on the application of any tenant, be reviewed. Presumably it matters not whether the tenant is well able to afford the increase because his own income has been increased. Rather than being concerned about protecting tenants from excessive rent increases, the Act appears directed at restraining income or profit levels of owners.

I'm given to understand that the fear is that the threshold limit will become the base and that some owners who really only need a 7 or 8 percent increase will "take" 9 percent and thereby marginally increase the profitability on their investment. That fear is real; that will occur in some cases.

It is my view, however, that every tenant will object to every rental increase whether it is 2 percent or 32 percent. Good judgment has not been demonstrated by tenants in the past and they have always objected "in principle" even under the arbitration provisions which were in force under the previous administration. They have always objected "in principle" to increases where they got a free "kick at the cat." The time and expense incurred, not only by owners, but by the administrators of the Act is, I suggest, simply not warranted. Reason should prevail over the fears that some owners may be getting slightly more than they would otherwise have gotten.

Secondly, the Act goes further than protecting tenants from excessive increases. It applies - and I might want it noted - with retroactivity, to suites that have been vacant since January 1st or which will become vacant.

Voluntarily vacated suites should be exempt, there are three easily identifiable benefits to all concerned if this happens. First, there's no question that tenants continue to be protected - I'm talking about tenants in possession - the unit is only free of control when it's vacated by a tenant of volition. I was at the hearing last night and there was a Brief addressed to that issue, that what if an owner tries to force a tenant out. There are ample ways, and if you like in questions I have a number of specific suggestions to address that issue. There are ample ways of precluding that from happening, stopping it dead in its tracks.

Second, it allows some upward movement of rental in the marketplace. Before a lender will lend into a controlled market, it will wish to be as to the rental levels which might be attainable. If rentals in the existing marketplace are all controlled, then it is total guesswork as to what rental level the market might sustain. Without some barometer by which to measure acceptable rental levels, whether or not new construction is exempt totally or partially from the effective controls, financing will simply not be available.

Third, to the extent that there is additional revenue generated to owners because of their ability to obtain a higher rental in the open market, their total rental income becomes increased and this reduces the cash requirements from other tenants remaining in the building in "controlled" units.

Of particular concern is the proposal that voluntarily vacated suites will be effected retroactively. Where a tenant agreed to pay rent in January, 1982 - and in Winnipeg vacancy rates were about 3.5 percent at that time and the tenant had total freedom of choice as to whether or not to accept that level - by what equity, by what rationale ought the legislation to renegotiate retroactively that contract? It wasn't protecting anybody with retoactivity; there was nobody in the suite. It simply says that when someone new comes along and wants to rent that suite, you have to rent it to them at this level. Again, it doesn't address the issue of protecting tenants, it addresses the income and profit levels of the landlord.

Thirdly, the Act does not address the issue of what an excessive rent increase is. All the talk up until about January was protect tenants against excessive rent increases; tenants have to be protected against these kind of excessive rent increases, these gouges. "Excessive" should not be used synonymously with

the word "large." Where operating expenses, and the principal ones are real property taxes, utility costs and interest, are matters outside the control of property owners, increases to cover these costs surely cannot be considered excessive. Yet, the Minister has publicly stated that the regulations will not, for example, allow increased interest costs to be passed through.

And where operating costs exceed rental income, that is, a project is losing money but expenses have not increased, we are given to understand that an owner may not be allowed to increase rentals. How can it be considered an excessive increase when an owner is merely increasing rents in attempt to get to a "break-even" position?

On the one hand, both the Federal and Provincial Governments have programs available whereby they, the governments, will assist homeowners whose similar operating costs are beyond their means by a system of grants and loans from the public purse. The Act seems to propose that when the same costs are incurred by private owners who are providing accommodation in bulk to tenants, that the owners should provide the grants or subsidies to the tenants from their private pockets.

This is a far different piece of legislation than that which the Premier promised during the campaign and I want to draw to the attention of this Committee that there are those who felt that the control program under the previous administration was lacking and believed that the current administration's views, that a system which allowed cost pass throughs and a reasonable return on investment, was perhaps a more enlightened view. Some people voted upon those promises, voted for the current administration. I, for one, certainly believe the Premier to be a sincere man and I believe he intended the legislation to develop as he perceived it at the time he promised it. What troubles me is that the legislation doesn't bear any relationship to those promises, none. What we have here is not a piece of legislation which protects tenants from rental increases but rather it's a selective, an isolated and a discriminatory piece of price-control legislation directed at owners of property. I note that great care has been taken at every opportunity that the word, "control" not be used. It's not called The Rent Control Act. Very nicely the word is "rent regulation," but it's not rent regulation; it's control.

First, the controls don't relate to the tenants; they relate to the units. They aren't trying to protect tenants; under the legislation the administrators are trying to protect the units.

Second, the controls don't relate to increases, which are successive; rather they relate to the incomes and profits of the owners.

Third, there is no threshold limit which is not considered excessive. Every increase is proposed to be reviewable.

Now, looking at just those three items, one can't come to any other conclusion then that this has nothing to do with regulating against excessive increases. What it does is it takes the opposite side of the picture and directs it against the position of the owners. If that were stipulated as the intent and that were done openly, I guess the response to the legislation would be different, but right now it's being perceived as a piece of rent regulation legislation and we haven't seen the regulations.

The Act, as I understand it, is considered advanced in terms of its administration. I have to tell you that from a legal perspective, I used to practice law, the Act is extremely well conceived and drafted as an administrative piece of legislation. I understand that large parts of it were taken from legislation in other provinces, that some of the concepts came from other provinces.

What's important though, is that the framework of the legislation from which it's taken was wage and price controls. Rent control in Canada, substantially, came about in 1976 with the Wage and Price Control Legislation from the federal level. All the existing pieces of legislation are offshots because it was part of a program of wage and price controls. The formulae, the considerations upon which rental levels were considered acceptable are based upon the incomes and profits of the owners. In the absence of wage and price controls, surely, to use the word again, an enlightened view can be taken whereby owners would be allowed to pass through costs, to receive a reasonable return on investment, and the legislation could be directed at the gougers, those who were trying to take advantage of tenants in a tightening market.

What I'm stating is that the factors which are the fundamental basis of most rent control legislation, the genesis of it, do not apply to the economic base today. In Winnipeg, our rents are amongst the lowest in Canada. Yet, considering our property tax base which is amongst the highest which exist in Canada, our operating costs are at least as high, if not higher, than they are in most other jurisdictions. Construction costs don't differ dramatically across the country. Yet, our rents are substantially, as compared to the rest of the west, about half what they are. The tenants are getting a good deal.

There are many reasons for this. We have not had a strong economy over the last three or four years. There was a lot of building that went on here. Primarily, the building went on here because this is the developers backyard, if I can use the bad word "developers." You have eight or nine major Canadian developers all operating out of the west who, for some reason I think unknown to everyone, have their head offices or their base of operations in Winnipeg. Whenever the market shows a sign of loosening up they pounce, jump and take advantage and build. As a result, Winnipeg has always had an abundance of housing stock, at least to date. As will be addressed later in this submission, this situation resulted in a dramatic overbuilding of the Winnipeg marketplace.

The objectives, which the Premier had earlier stated are not inconsistent. It is possible to have protection of tenants from excessive rent increases whilst at the same time allowing cost pass throughs and break-even positions or even a reasonable return on investment. However, the current legislation does not, in my view, address those objectives.

I'd like also to comment about the voluntarily vacated suites. The argument can be made that what happens is if you allow voluntarily vacated suites to be exempt, you have a decontrol process for a period of time and you don't offer a full selection of accommodation to tenants at fair rentals because you're going to have vacant suites moving up in price and that's

what will happen.

However, the tenants are being protected and the supply problem which develops has nothing to do with rent regulation or rent control. The supply problem is just that; it's one of supply. If government or private industry or wherever else the supply is going to come from is there, then voluntarily vacated suites don't become an issue. It becomes sort of a chicken and egg type of thing. You bring in rent controls and therefore you have to control the other accommodation and because you control the other accommodation, nothing else gets built so you have a supply problem and it goes round and round and round and I'm sure I'm addressing issues that you're all familiar with. But exempting these voluntarily vacated suites at the present time when the Winnipeg market is not tight would be an alleviation of some of the problems that I think this legislation will bring on.

I'd like to next address the issue of certain anomalies that exist in the Winnipeg rental market. That's Item No. 4. The Act cannot be applied uniformly in Winnipeg because the Winnipeg market has not developed uniformly. Because the legislation is part of a program of economic reform, it must recognize the peculiarities of the marketplace which it will affect.

In Winnipeg, two different categories of housing exist. The first category are units built prior to 1973 and '74 and I refer to them in my submission as Category A units. These units were built prior to the large surge in construction prices and interest rates which were caused by inflation which commenced pretty well in those years. They were chiefly built at costs not exceeding and usually substantially less than $15,000 per suite and they were characterized by mortgages which were available at that time for longer terms and which had interest rates of 7 percent to 10 percent. These units comprised about 80 percent of the marketplace by actual statistical count.

Category A units have rentals attaching to them which substantially reach at the upper levels, about $350 per month. Except for situations where mortgages have come due and have been renewed at increased interest costs, and that problem could be dealt with separately under the legislation, these projects are not using money and are providing some return of investment to their owners. These units could, quite properly, be the subject of rent regulation.

The other are units built after 1973 and '74 and I'll refer to them later in this paper as Category B units. The bulk of these units were developed under the provisions of The National Housing Act and they comprise about 13 percent of the marketplace. They were characterized by increased construction costs, increased interest rates and short term mortgages. Construction costs for these units ranged generally between $20,000 and $40,000 per suite and had interest rates ranging between 10.25 percent and 12.25 percent. Rent levels in these units generally run from about $350 per month and up to about $550 per month and they're still losing money.

These units have not yet been able to reach economic viability for the following reasons: First, there was a net population loss in Manitoba over the years 1976 to 1981; that doesn't do anything great for demand. Second, a mis-assessment of the Winnipeg marketplace by local builders during the years in question. As I mentioned all the developers have their head offices here and everyone built at the same time and the market was flooded and vacancies reached 20 or 25 percent. Third, approximately 90 percent of the market during this period of time was controlled under previous rent control legislation. Because of the vacancy factors which existed in the marketplace, tenants had total freedom of choice and bluntly, could virtually negotiate whatever deal they wanted to. When 90 percent of the markets controlled, and there are vacancies, rental levels in the remaining 10 percent of the market cannot rise, they simply cannot.

In fact, between 1974 and 1980 it would be fair to say that rental levels not only did not increase, in spite of increases in expenses, but in fact probably decreased with the owners being extended to their limits to cover losses. If CMHC had not themselves taken strong action to curtail planned construction the apartment market in Winnipeg would have collapsed in totality.

During this period of time tenants got a virtual "free ride." And now, at a point in time at which the market is able to absorb rental increases which could not be charged in the past, a program of rent regulation will apply; the inequity cannot escape you.

I'd like to address a specific type of project that was built - a Category B type project, these are ARP projects - the units constructed pursuant to provisions of The National Housing Act, whether they be limited dividend programs or ARP, should be exempted from the application of the Act, except perhaps from the reporting provisions because I understand that a central registry is an important part of the administration of the Act, and they should be exempt until they've reached economic viability, that is, until on an operating basis rental income covers operating expenses, including debt service. There are cogent reasons for these exemptions.

In the first place, there are agreements which govern return on equity; they are agreements entered into with the Federal Government under The National Housing Act. Now they aren't truly rent control agreements, rents are not subject to rollback or downward movement by CMHC, but they are monitored and there are affects if rents exceed projected levels. Depending upon the particular agreement with CMHC the return on equity that CMHC will allow on those projects will range between 0 percent and 10 percent on investment, it depends on where the agreement was struck and when it was struck. The investment has been assessed and valued by CMHC in each case and, I think, no quarrel will be taken with their assessment as to the valuation of equity invested.

As long as these agreements continue, CMHC monitors the rental levels. In the event that in any one year more than the permitted return is achieved, the return is adjusted downwards in subsequent years. It could even be argued that the returns on equity which were negotiated with CMHC are outdated and should be higher, but CMHC, of course, would not agree to this. I don't think anyone could seriously complain if these units were exempted because they are monitored, and returns on equity are limited under the provisions of The National Housing Act.

Perhaps of more importance, these projects are losing money. Now, I'm not talking about losing money before subsidy assistance because in some of these

programs CMHC has arrangements whereby, if you lose money, they will lend you the money - you have to repay it together with interest but they will lend you the money - to cover a certain amount of operating losses. I'm talking about losses over and beyond those amounts which CMHC has agreed to lend. In some cases, as I mentioned, CMHC makes available these loans and they are step-down repayable loans to cover a portion of the deficiencies, but all that does is postpone the moment of truth until a later date at which point these amounts will have to be repaid together with interest. It doesn't matter whether it's funded from the pocket of the owners or from CMHC, the fact is the projects are losing money and money has to be put into them. If any of these projects are the subject of rent rollback one does not know where the money could possibly come from and a safe assumption will be that many of them will be forced into foreclosure.

Detailed audited financial statements in respect of these projects have already been filed with the Assistant Deputy Minister for his review. I am reluctant, because these projects are owned by groups of small investors, to file them publicly here, but if this Committee wishes to have access to that kind of information you have permission to review those things with the Assistant Deputy Minister or we will make available such statements for your review. What I'm stating in this letter, that these projects are not only not economically viable within the confines of the ARP program but they are losing money on top of that is demonstrable.

I will explain at little more length some of the mechanics of how the ARP things were put together because there are other factors, other than simply return on equity, that come into play. Category B units comprise less than 14 percent of the total marketplace. All of these projects have raised rentals by more than the suggested 9 percent ceiling and I believe the minimum increase in these projects has been in the 15 percent to 20 percent range. These increases can be justified.

The administrative costs, both to the government and to the owners, in reviewing these situations pursuant to the Act is undoubtedly not warranted. We believe that CMHC has not only suggested that these projects ought to be exempt from the provisions of the Act, but have also independently verified to you the economic non-viability of these projects.

The Minister has suggested that over a period of four years of "start-up" a project should reach economic viability. This start-up time certainly wouldn't apply in Winnipeg. Units which have been built since 1974 have not yet reached economic viability, some eight years later.

On the one hand, the Minister proposes to exempt new construction for a period of four years to allow it to reach economic viability. However, units which have come onto the market since 1974, those are the Category B units, are in no different position than new units which will be constructed because the Category B units are still losing money. If it's considered reasonable to exempt projects until they break even, then the reality of the marketplace demands that projects which are not yet breaking even and which have been built since 1974, should have the same criteria apply to them.

The fact is that the Category A and Category B units are totally different in the way in which they would be affected by rent regulation, and the Act ought to specifically address that issue in three ways:

1. By exempting all limited dividend housing - and I understand that that is being considered and may well be the case because that is a rent control agreement.

2. Exempting all ARP housing until such time as such projects are no longer receiving subsidy assistance from CMHC. Because of the way the program works they would, at that point in time, have reached a break-even level whereby rental income would equal their operating expenses.

3. By exempting any units in respect of which the first occupancy permit was issued after January 1, 1975, if they were not covered under the above programs, until such time as operating income equaled operating expenses. In other words, don't control projects that are losing money. When they get to break even, well and good, bring them under the effect of the control program.

When I'm finished this presentation I'll be happy to address with particularity any questions that you may have, whether or not they're addressed in this paper, that relate to the ARP program. I believe I am conversant with the program, I'm conversant in all aspects, I have built them I have syndicated them, we manage them and I am, by profession, a lawyer, so I have one bad thing and a lot of good things going for me.

I'd like to address the issue of new construction. Rent control clearly limits supply, by the private sector, of new housing. In such a marketplace lenders do not know what rental levels are attainable in the marketplace and are, therefore, reluctant to make loan commitments based upon guesswork. Because controls are for a limited period of time, and I'm talking about exempting new construction for a period of time, lenders are reluctant to make loan commitments because of the uncertainty as to whether a project might or might not reach economic viability within the stipulated time period. And perhaps particularly true of today's marketplace, where there are so many alternate investments offering such high yields, and considering the high risks which are inherent in residential real estate, investing in any government controlled industry becomes less attractive.

Unfortunately the Minister has not addresses the supply side of the housing issue yet. If this is proposed to be provided through The Manitoba Housing and Renewal Corporation, considering the huge operating costs, construction costs and interest rates applicable today, one can well imagine the huge deficits in capital requirements which will be placed upon the government.

The exemption of new construction itself is contradictory because it starts in motion a two-price system. The effect of this is well demonstrated by what's happened in New York City. Eventually the older buildings, the lower-priced ones, become second-class buildings and unattractive to hold as investment property. New money, if any, will go into whatever exempt units are made available, and the result is an overall lowering of the standards in the controlled buildings with the usual accompanying deterioration of the physical premises. Once controls are in place,

they are impossible to remove and they become a permanent factor. The two-price system necessarily evolves in this fashion unless the controlled units have some kind of built-in protection to ensure their continuing attractiveness to investor-owners.

When new units are built which are exempt of controls, they will presumably receive rents substantially higher than those in units which are controlled. However, with the peculiarities of the Winnipeg market, there is no possible justification for allowing new units to be free of control, while regulating units which have been built since 1974. As identified earlier, those units have not yet themselves reached economic viability, and if the economics applying to those units and to new construction are the same, by what rationale would it be equitable to exempt one group and to control the other.

By exempting units built since 1974 you could also exempt new construction until it similarly reached a break even positon. Bringing all such units under control when they have reached a level of economic viability - again, that's simply break-even - would, we believe, adequately address the issue of both new construction and of those Category B units which are still losing money.

I would now like to address specifically a few sections of the Act, Sections 21(2), 22(1), 27(1) and 27(3). These deal with items to be considered by the rent regulation officer and the panel.

Apparently the regulations will use a formula substantially, presumably, the same as existed under The Rent Stabilization Act. In substance this would mean that 1982 increases would be determined by the percentage of the 1981 increases over the 1980 expenses. In other words, you go back two years and then you go back one year and you take the difference and you say arbitrarily, that's the percentage that you're allowed in 1982. I perceive that because the legislation indicates this by using the words, "the increases in actual" - and I underline the word "actual" - "expenses." That indicates a historical occurrence. So assuming that is the case, we have a formula which is totally arbitrary. You could have unusually high expenses or unusually low expenses in 1981, and as related to the 1980 expenses, you could in fact have a situation where rentals would decrease in 1982 because your '81 expenses were less than your 1980 expenses, through good management, and yet you may have whopping large increases in 1982. It's an arbitrary type of system and will have some inequity both from a tenant and from an owner's perspective. It is too arbitrary. It bears no relationship to the present. I'll continue from my paper.

In the first place, rent regulation ought to involve an attempt to match current income and current expenses rather than adopting an arbitrary formula which bears no relationship whatever to the present. For example, if through good management or good fortune, expenses in 1981 were less than expenses in 1980, but expenses in 1982 because of the large property tax increases that we've experienced this year, interest costs, etc., were unusually high, the formula would dictate a decrease in rent when in fact a large increase is required.

A formula such as that which is proposed often involves the owner in a situation of "catch-up" - that's "catch-up" rather than "ketchup." This was one of the chief complaints about the old legislation. If it is intended that the same kind of formula will apply when the regulations are published, then an owner ought to have an option to proceed on the basis of projected expenses and projected incomes. If their projections prove inaccurate, it should be remembered that because the legislation will still be around the next year, rental levels could be adjusted at a subsequent point in time.

All businesses, public utilities, and indeed governments, operate on the basis of matching income and expenses and it's suggested that there is no reason to treat real property on a different basis.

Other factors which ought manditorily to be considered are: (i) The actual or projected expenses which the landlord has incurred or will incur, and that's as distinct from the increase in expenses. In fact, I'd like you to direct your attention to the legislation for a moment if you will. If you look at Section 21(2), which is the section we're talking about, its counterpart is in the other sections, it has a very limited number of things which the rent control officer shall consider. It could have said, "shall consider any matters that anybody wants to put before it" - and in fact it does say that - but what was particularly troublesome was the fact that it addressed, in Subsection (2), "the increases in actual expenses incurred by the landlord" and there were two things about that particular wording that I find troublesome. One, why are they addressing increases in expenses rather than expenses alone. Expenses, the actual losses perhaps that are being generated, are more significant than the increase in expenses. If we're a terrific property manager and we can keep our expenses down, but we're still losing money, that ought not to preclude us from getting our rental increases, yet the formula talks about increases rather than expenses baldly. Secondly, it talks about actual, and I've addressed that issue of actual versus projected already. Again, what's troublesome is why these specific things were left in and the other things were left out.

For a project which is losing money, there may, through efficient management, be minimal or perhaps no increase in expenses but nonetheless the fact that the project is losing money should be sufficient justification for increasing rentals to at least a level required to generate a break-even position.

(ii) If a reasonable rate of return is to be stipulated, and one presumes this will be the case because again, the Premier represented this was one of the things that the program would involve, then this ought to also be in the legislation, that an owner has a right to receive a reasonable return on his investment.

Considering what has happened in the rental market in Winnipeg since 1974, to consider rental increases over only the previous two years and that is addressed in Subsection (b) of 21(2) does not acknowledge the reality of the marketplace.

We suggest that if an owner wishes, a rent regulation officer should be required to consider the following: First, the rental charged to the tenant since January, 1976, or if the tenant has not continually occupied the unit since that period of time, then he should consider the rental charge for the premises for the previous two years or for the length of time during which the tenant has lived in the premises, whichever

is the longer period of time.

Furthermore, the regulations should provide that if a rental increase over this period of time averages 2 percent less than the threshold amount - in 1982 this would be a 7 percent amount - that such an increase will not be considered as excessive and will be allowed. This would take into account the anomaly in the Winnipeg marketplace where rents actually went down between 1975 and 1980. So if a tenant got an 18 percent increase in year six, but had no increases in the first five years, the average increase to that tenant would only be 3 percent per year, and I suggest that the tenant really shouldn't be heard to complain in those circumstances, that the 18 percent bump in year six is too high. Somehow the legislation should adopt the concept of averaged rental because it's directed at a specific market and it has to take into account the anomalies and peculiarities of the market to which it's addressed.

The legislation ought to also take into account situations of hardship. There are situations where a rent rollback might put an owner into foreclosure. Special panels should be appointed to hear these situations and they should be able to consider all factors in determining whether a special exemption for hardship should be allowed. This should be on application ex parte and promptly.

Again, when the regulations are tabled, they will presumably define certain operating expenses. You'll excuse me for talking about regulations that don't exist. I'm giving some ideas out because I don't know if any of these things may or may not be being considered. I've already been over that earlier in this paper, but if you'll indulge me a little further.

Operating expenses ought to take into consideration the following circumstances:

First of all, mortgage rollovers. If a mortgage is renewed at a higher interest rate, the amount of increased in debt service should be allowed to be picked up over two or three years. Now, I understand from comments that the Minister has made that increases in interest expense are not, at the present time, considered to be passed through; they may not be passed through. I'm suggesting that if you take the increase in expense and amortize it over a period of time, the sock to the tenants of a great big increase in one year is minimized. The owner has the certainty that, over a period of time, he will have the right, he will cover his operating costs and it would lend certainty to the marketplace. The argument can be made, well, what if he took a one-year mortgage and it went down the next year? Well, the program is around the next year. You could easily adjust the amount of the amortization; you could easily define an operating expense on that basis, so that it came down in the year where interest came down. Again, try to stay consistent, in my view, with the pass through concept, even if it's modified by passing it through over a period of time.

Recovery of past losses ought to be considered; other legislation allows these things. Where an owner has suffered prior losses, these losses ought to be allowed to be recovered in addition to any basic threshhold amount. If one took, say, a three-year period over which past losses could be amortized, this would also be a reasonable period of time over which the recovery would be received and it could be defined as an operating expense. Operating expenses would include one-third of past losses; a defined expense. Similarly, for mortgage rollovers. An operating expense is equal to one-third of any increased interest expense, rather than 100 percent of any increased interest expense. Those kinds of things work but they lend certainty to a program; uncertainty is what will bring the program into difficulty.

There are some conflicts with The Landlord and Tenant Act and the Minister last night, I was here for last evening's session, addressed this issue. It's the anomoly, again, under the Act of vacated suites and he's stipulated that will be addressed and corrected, so I will skip over that. It's Item No. 7. I don't even think I have to read it into the record. I've been assured that will be attended to.

(Submitted but not read)

7. Conflicts with Landlord and Tenant Act. There are certain effects which I believe are unintended, which result from combined workings of certain provisions of The Landlord and Tenant Act with provisions of The Rent Regulation Act. These effects are to extract a penalty from owners whose suites are voluntarily vacated.

Under the provisions of The Landlord and Tenant Act (and under The Rent Regulation Act) a rent increase cannot take place more than once annually. Moreover, each monthly rental payment must be equal in amount to all the others.

Suppose a tenant signs a lease effective from January 1st, 1982 to December 31st, 1982. We would expect to receive a rental increase on January 1st, 1983. Suppose, however, that the tenant vacates the suite (either voluntarily or involuntarily, but in any case lawfully) in November, 1982 so that it's available for December 1st, 1982 occupancy. Assume that the first lease were at a rate of $300 per month. If we now leased the suite for the next year, being the period from December 1st, 1982 to November 30th, 1983, we cannot charge more than $300 per month for that full period because we are limited to charging $300 per month for the first month (being the month of December, 1982) and under the provisions of The Landlord and Tenant Act, we must charge that same rent for the next 11 months even though that is a period in respect of which we are entitled to an increase. The effect would be to "freeze" rent for 23 months - surely totally unintended.

The same problem appears to arise if there is a sublet or assignment to a new tenant prior to the expiry, and the Act does not address this issue, and it should.

One way around this predicament would be for us to keep the suite vacant intentionally, even though we have a tenant who is prepared to occupy it, until January 1st, 1983. We would then be in a position to take the increase in January, 1983 and for the ensuing 12 months. However, to refuse a willing tenant occupancy, to keep a suite vacant is punitive to all.

I'd like to go on to Item No. 8, Administration. I have concerns, as I believe everyone does, about the administrative time and expense that will be involved in monitoring and reviewing this program. I would hazard a guess that rather than lending certainty by having a prompt review process that uncertainty will be created because of a situation where you have five or six

months of backup. The uncertainty to both owners and tenants in these kinds of circumstances, breaks down relationships between owners and tenants, which otherwise have functioned smoothly. Aside from broadening the exemption base, I really have no recommendations for simplifying the process.

But, last night, we heard a gentleman address the issue of a tenant being faced with an increase and not having the money to pay it, so the tenant would move out; a tenant whose income was marginal enough that he couldn't afford the increase. Well, interestingly enough, there's another side of the coin. The owner, again I address an ARP type of situation where we know the increases applied for will be in the 18 percent or 20 percent range, yet you can't charge more than 9, but that extra 9 or 10 or 11, whatever it is, is required for operating expenses and for debt service. If the Act doesn't function smoothly and allow the decisions to be rendered prior to the time of those things coming into effect, the increases coming into effect, the whole system breaks down. The money can't be used; the mortgages go into default; the utilities don't get paid; the services to the tenants, hopefully, will not decline but it places an unfair burden on all. There are both sides of the coin. It places an unfair burden on the tenant and an unfair burden on the owner if these things can't be delivered in a timely fashion. Quite frankly, I think it's an impossible task the way the legislation is put together administratively.

The procedure whereby amounts collected in excess of the threshhold amount are to be remitted to the Director rather than paid to the owner may break down entirely if the rent review process cannot be completed in adequate time. Again, this has particular application to limited dividend and ARP situations because we are satisfied that almost any reasonable rental increase could be justified. If there is no certainty as to the rent regulation process, there is the likelihood that lenders will refuse to lend into Manitoba or, as noises have been made, to renew mortgages in Manitoba, unless they are satisfied as to what rental levels will, in fact, be allowed.

I point this out as an area of extreme concern rather than a criticism. If prompt and fair decisions are not forthcoming, the whole system may break down.

If two of the fundamental areas which I recommend be changed, I believe the Act will work administratively. These are:

(1) The exemption of limited dividend and ARP Projects; they're all losing money. You know that the increases can be justified and I see no reason for putting these things through a hearing and taking up and clogging up the administration.

(2) If you eliminate the review of owners who limit their increases to the threshhold amount you will probably eliminate 60 percent, a full 60 percent, of the applications you would otherwise hear. As a very minimum, because the 9 percent ceiling is, in terms relative to the cost-of-living increases being granted today, low, you might at least in the first year, while the new system is becoming implemented, in which year you're likely to have your biggest botch-ups, exempt, while still monitoring, increases within the threshhold amount. If you then felt that in the second year you wanted to bring all amounts into review or set a lower threshhold, that's a workable thing. But, at least for the first year, you should exempt anything within the threshhold limit. It's a reasonable limit; it's not 16 percent; it's 9 percent; 9 percent is acceptable. Most people, considering that their incomes are going up by that amount, are able to afford that kind of an increase. It's not excessive.

I wish to go on record to indicate I believe the concept set forth in the Act will not prove to be administratively workable as currently drafted and will lead to a deterioration of landlord-tenant relationships.

Staggered leases, I would like to deal with that situation. No, in fact, I'm not going to address that. I know that issue is being considered. I think all I want to point out is that if you have a situation where leases come up evenly through the year; for example, if you had 120 leases and they came up 10 each month and you had a 9 percent increase in rental for that year, the increase in the income level would only be 4.5 percent, not 9 percent. So, by increasing rentals 9 percent, you may only receive a total increase in income of 4.5 percent which might not be enough to cover your expenses.

There are provisions in the Act for equalization and I guess those provisions will become much more adopted than had previously been considered. There appear to be mechanisms under the Act where that situation can be addressed but I would like you to address that issue as it's set forth in Item No. 9 of this submission. I really don't want to waste the time of the committee on that technical aspect.

In this submission I have dealt with what I believe are the significant legislative concerns which your Committee ought to consider. We know that there are many other technical concerns, and it is my understanding that these items have already been addressed by those drafting the legislation and the regulations, or alternatively, are the subject matter of submissions by others to your Committee.

Simply put, the uncertainty over what the regulations might contain and the fact that there are no rights built into the Act, is the fundamental and overriding concern. If the Act started with the fundamental concept that an owner is entitled to pass through costs, and to make a reasonable return on investment, and the Act then set about to determine what the return should be, and how to define what investment was, then the Act might prove to be totally workable. However, at the present time it appears to be a piecemeal approach; the legislation doesn't recognize the reality of the marketplace upon which it is being placed.

Hopefully, your committee will be able to sit back and recognize the shortcomings of the legislation. One hopes that bad legislation doesn't result because of a desire to simply "end the discussion."

Thank you very much.

MR. CHAIRMAN: Thank you, Mr. Nozick. Mr. Minister, Mr. Kostyra.

HON. E. KOSTYRA: Thank you, Mr. Chairman. I'd like to thank Mr. Nozick for his rather extensive brief. There's just one area I'd like to discuss with you, Mr. Nozick, many of the other areas you have brought to our attention previously and have been under consideration and I thank you for that.

The one area that I wanted to get some comment from you was on new construction. You had suggested, I believe, that the outline, the concerns between setting up two different markets, with respect to rental housing, in the City, but you didn't suggest a period of time for exemption on new construction in definitive terms as it's 4 or 3 or 5 years or whatever - or 15 years, as has been suggested by some - but you suggested that they be exempt as long as they were in a loss position. So are you, therefore, suggesting that the exemption period would be in essence variable depending on the debt equity or debt situation and operating loss of particular properties, so that it could conceivably be one year, it could conceivably be 15 years?

MR. M. NOZICK: That's right. I think you could handle both. I think you could stipulate a period of time. I would suggest that in Winnipeg, 7 years or 8 years is a reasonable period; at least, using the last 2 years, rather than the last 7 years as a basis for determining where the rental market might go. So, if you used a 7-year period of time, you could say, it would be 7 years or until it breaks even, whichever is less. You then have it covered both ways. It can't go beyond 7, but at least a person would then have an opportunity to make an assessment as to whether they wanted to take the risk that they could get to that position in 7 years. But they would, I believe, make the conclusion that they probably could within 7 or 8 years.

HON. E. KOSTYRA: Within 7 or 8 years? Thank you.

MR. CHAIRMAN: Anyone else? Mr. Filmon.

MR. G. FILMON: Mr. Chairman, I'm a little confused at that response because I don't understand how you can make a firm position on break even unless you have an assumed debt equity ratio or an assumed rate of return on investment, and unless that's in there, there's no point in having that break even because break even depends entirely on what type of financing you have in place. When somebody chooses to have a 90 percent debt situation and somebody else chooses to have a 40 percent debt situation, unless you're going to have an allowable rate of return on the equity, then obviously you can't make that kind of break-even analysis across the board. So there would have to be some consideration or recommendations on that.

MR. M. NOZICK: That's quite true. Obviously, the statement that I made can't be taken baldly all by itself. However, the concept that I think I had in the back of my mind and that was inherent in the answer that I gave was that the test for rent regulation or rent control ought to be that it ought not to be punitive. In other words, if a person had 60 percent equity, it would be their decision as to whether they wanted to have that kind of equity in a deal that generated a low return. If they had 90 percent financing and 10 percent equity, then they might be looking at different returns and different risks. The point is, they should not be placed in a position where they are losing money because of their investment. As long as they are not having to put money into a project, then I think that should be the basic test for the period of time during which they should be exempt from the effective controls.

I understand the question, Mr. Filmon, I just have a different perception perhaps than you.

MR. G. FILMON: Well, I'm suggesting to you that if somebody currently has a 60 percent equity situation in a building, they may not have a choice as to whether or not they wanted to take a portion of that equity and put it into an alternative investment. Given the prospect of this type of control, I doubt that anybody is going to allow them to roll that over into a 90 percent mortgage situation. So they won't be in a position to make that choice. They're fixed in their position of debt equity ratio as it stands right now as far as I'm concerned.

MR. M. NOZICK: I may have misunderstood the question. I thought that you were referring to new construction when a person had a choice as to whether he wanted to put equity into a situation or not. If you're referring to existing situations where there are existing debt equity ratios, I quite agree, there are different criteria that have to be applied.

In fact, one of the very large difficulties that I think the legislation has to address is the way negative cash flows, if I can define that term by saying it's losing money, you don't have enough money to pay what you have to pay. It doesn't take into account depreciation or other types of things. Where you have a negative cash flow it can arise basically in two ways. One, because the project from its inception has never gotten to the point that it's broken even; it's never reached economic viability. Therefore, it always has and continues to lose money.

The other ways - there are about two or three ways. One, is when a person bought into a project on speculation and bought it to a negative cash flow, that's a different situation. That's not necessarily a question of economic viability in the same regard because that was a risk that was taken when the project was purchased. Another way, is where a project has been remortgaged so that there's no equity in effect in the project. It's been mortgaged up or overmortgaged and now you've taken on increased debt service at increased interest cost, but there's no money in the project. So, that's another way that negative cash flows can arise.

I think these are different kinds of circumstances that have to be treated differently. I was addressing my remarks to new projects including those built since 1974 which have not ever reached, ever, economic viability and in addressing the issue of new construction, I'm talking about where a person has a choice to put his money into that or not.

MR. G. FILMON: Well, in view of the fact that Mr. Nozick did address his comments to new projects including those that have been built since 1974 that's where the pre-existing situation comes in. That's why I made the reference to the fact that you have to establish debt equity ratios and an assumed rate of return on investment and all of those things if you're going to use break even as the deciding factor for how long you're going to allow the construction to be outside of controls and then, if so, if you're going to take it back to that construction that you say has never

broken even since '74, then you've also got to have some standard method of evaluating that, which includes debt equity ratios and assumed rate of return on investment.

So, it's very complex and your points are well taken, but given the framework under which it's going to be applied, I think it's almost impossible to get into that kind of situation.

MR. CHAIRMAN: Anyone else wish to ask a question? Thank you very much, Mr. Nozick.

MR. M. NOZICK: You're welcome.

MR. CHAIRMAN: The next presentation is by the Manitoba Landlords Association. Mr. Graeme Haig.

MR. G. HAIG: Mr. Chairman, my name is Graeme Haig and I'm here on behalf of the Manitoba Landlords Association Inc.

I would like, firstly, having had the opportunity of listening to the majority of the comments that Mr. Nozick has made, to associate the Association and myself with much of what was presented by him to you.

MR. CHAIRMAN: One minute, Mr. Haig. Do you have a brief for us?

MR. G. HAIG: It requires some retyping, Mr. Chairman. We have a copy, but you'll be receiving a revised copy subsequently.

MR. CHAIRMAN: Thank you very much. Proceed.

MR. G. HAIG: Mr. Chairman, Members of the Legislature: The Manitoba Landlords Association is an organization of some 900 members representative of owners of rental accommodation through the Province of Manitoba.

The Association is strongly opposed in principle to rent control. It represents the imposition of control upon the investment return of a small, economically and politically weak group within the province at a time when, if these controls are to be imposed, they ought to be imposed upon the whole of the economic structure. At the same time, rent controls discourage investment in the creation of new rental accommodation from private sources at a time when it is thoroughly needed and they result in the demolition of rental accommodation which would otherwise remain available for public use as soon as that accommodation becomes uneconomic.

For the tenant, rent controls produce illusory benefits. They give the appearance of lower cost accommodation while at the same time ensuring that the amount of accommodation available at any time is continuously diminished. The tenants are encouraged by rent control to seek accommodation and to occupy accommodation which is, in fact, in many cases often actually beyond their economic means and at a future time, when the rent regulation system fails or when the amount of privately owned rental accommodation has been diminished to the point where a significant shortage has occurred, then those persons who appear now to benefit from such regulations will be without accommodation or will find accommodation beyond their means.

Having, Mr. Chairman, thus stated the position of the Association and in broad terms, the opposition to the Bill which is before you, may we now review in some detail, the provisions of the Bill which, in our view, are objectionable or which require alteration or amendment?

The first matter of concern to our Association is, of course, the establishment of the Rent Regulation Bureau. This means to us, the creation of a whole new bureaucracy for the purpose of rent regulation, in addition to the office of the Rentalsman which is already providing an extensive service to the tenant community at the expense of the citizens of the province as a whole. Is it necessary? The question must be asked, where is the community benefit?

Examining the Bill, Paragraph 5(2) provides that the Director or a person on his behalf shall have access during the reasonable hours to documents, files, correspondence, accounts and records relevant to the residential premises which are the subject of an application. This paragraph, Mr. Chairman, represents a very serious and extensive interference in the private rights and affairs of some of the citizens of this province, namely, the landlords. If the Director, for the purposes of this Act, can obtain access to the records of private citizens in the province because he wishes to or feels that it is necessary, then of course, the private records of all citizens are equally subject to disclosure or review by government officials without colour of right or without justification. We must ask, where are we headed.

The subsequent paragraphs of this Bill, Paragraphs 5, Subsection 3 and 6, simply provide a means whereby the Director can exercise his so-called right of access to documents and records by Court Order if the landlord be unwilling to comply with Section 5(2). We would beseech the Legislature to examine carefully the ramification of these sections which so broadly extend the powers of bureaucratic office.

In Paragraph 8(2), Mr. Chairman, there is provision for the Co-ordinator of Appeals to appoint one, three or five persons as members of a Rent Appeal Panel. Having regard to the subsequent sections of the Bill which eliminate or greatly restrict the right of appeal of the parties from the findings of the panel, we would strongly urge that no panel be empanelled consisting of less than three persons. No single panelist should have the right or the responsibility to adjudicate a loan on such matters, particularly where the qualifications of such panel members are at the time of consideration of this Bill, unknown to us. It is upon this basis, Mr. Chairman, that we object to Paragraph 10, Subsection 1, where the decision of a panel-presiding member can become the decision of the panel where no majority decision has been achieved. This would be most unfortunate.

In Paragraph 10(2), the right of a party to appeal to be accompanied by advisors, is restricted in this section by the words and I quote "in presenting his case." The right of a party to have advice and assistance, Mr. Chairman, should not be limited for the purposes of this Act merely to the presentation of the case and we would suggest the deletion of those offending words. They add nothing to the section.

Paragraph 10(3), this we suggest should be amended to read, "where a party to an appeal or proceeding before a panel fails" - then, we suggest the addition of the words "after due notice" - "to attend a hearing in respect thereof, the panel may proceed to hold the hearing and decide the matter." We have suggested the addition of the words "after due notice" since there is no indication that as presently necessary.

We are concerned, Mr. Chairman, with Paragraph 10(6), that the order of a panel is a final, binding and forcible order and not subject to review. Again, not knowing at this time, the qualifications for membership on the panel appointed under Section 8, we are at greater concern that the decisions of such panels, where perverse or unreasonable, cannot be reviewed on an appeal basis and strongly suggest that the decisions of every such panel should be subject to at least one review process at the election of either of the parties.

In Part II, Section 16, there is a provision which restricts the frequency of increase in rentals by a landlord. It is difficult, Mr. Chairman, to find justification in this restriction, particularly, where premises may have been vacated during the 12-month period in which the restriction applies. We would suggest that this section, if necessary, be applicable only where the premises continue to be rented without interruption to the same tenant.

In Paragraph 17(1), we are concerned that the minimum notice to a tenant is set at three months, but that the maximum length of time during which notice may be given by a landlord does not extend more than four months before the date in which the increase is to be effective. It seems clear that the four-month limitation ought to be extended to at least six months in order that the landlord will have reasonable time within which to determine and notify the nature and extent of any such increase. I might say parenthetically, Mr. Chairman, that the Minister had indicated that he was prepared to reconsider the time restriction in that section.

Paragraph 17(4) requires the landlord to give notice to new tenants as to the date upon which the rent then payable for the premises came into effect and also, the rent payable for the premises immediately prior to the date upon which that rent came into effect; in other words, the current rate and the date of its commencement and the rent rates which preceded the current rate, and having given such notice, must also provide the Director with a copy within 14 days.

This, Mr. Chairman, is a further unnecessary burden imposed upon the landlord without compensation; without any real justification for the provision of such information does not serve the interest of the tenant nor of the landlord but only possibly the interests of the Residential Rent Regulation Bureau.

Sections 19(1), (2) and (3) are, in our view, Mr. Chairman, most unfair. The landlords in this province and the tenants have operated under a legislative restriction contained in The Landlord and Tenant Act which requires them to submit to mediation or arbitration. And this, the landlords have done, as have the tenants, in a number of instances where the consequence of mediation or arbitration or rent increase has been approved, it is now proposed to set aside the operation of that mediation or arbitration and the award of such process, notwithstanding that they were accomplished under an existing Statute and said to impose further restrictions. Clearly, these sections ought not to be enacted.

Paragraph 19(4) provides for the refund of excess rent, notwithstanding that such rents may have been approved by that process of mediation or arbitration. And such refund, of course, is to be upon the terms determined by the rent regulation officer with no provision for any input from the landlord as to the circumstances which prevail with respect to the rental unit. If that section is to survive and we would hope that it would not, having regard to our recommendations to the earlier sections, then clearly some input ought to be permitted, possibly from both landlord and tenant.

In Section 20, Subsection 1, Mr. Chairman, there's provision for a tenant to make objection to any rent increase, notwithstanding that the increase may be below the threshhold established under this Act for rent increases. I might say interlineate, Mr. Chairman, that the Association really questions the wisdom and desirability, the Legislature having established a threshhold by regulation annually, to encourage objection to increases that are below that threshhold. But arguing for the moment that any increase ought to be the subject of an objection, if it feels this is necessary on the tenant's part, then we feel that we would not limit the right of the tenant to object, would feel that any objection by a tenant in those circumstances should be initiated only upon reasonable grounds and not capriciously.

We are, as Mr. Nozick indicated, concerned that in many, many instances, tenants will have been conditioned to object whether or not there are reasonable grounds for doing so and landlords are at the present time, and after the enactment of this Bill, already greatly burdened with the responsibility of complying with legislative requirements. For this reason, the Association suggests that the last half of this paragraph might be amended to read "that the tenant may, if he has reasonable grounds for so doing, object to the increase by serving an objection," etc.

In Paragaph 21(2), Mr. Chairman, matters for consideration by rent regulation officer dealing with an application or objection under the Act are set out in part. We are particularly concerned with Paragraphs (a)(ii) which reads, "the increases in the actual expenses incurred by the landlord as defined in the regulations and determined as prescribed in the regulations." In essence, this provides that the ground rules for giving consideration to any application for an increase in rent may be changed at any time and that no persons, landlords or tenants, can with any certainty determine what matters are being taken into consideration by the rent regulation officer, except by reference to regulations which frankly, Mr. Chairman, are not readily accessible in most instances to either group and particularly, the tenants. Similarly, while Subparagrphs (a)(c) and (d) of this Section are mandatory for the current rent regulation officer, Paragraph (b) which deals with past rentals, is permissive and does not require the rent regulation officer to take into consideration rental costs of the accommodation in preceding years.

It is at this point I would like, on the Association's behalf, particularly to associate ourselves with the

remarks made by Mr. Nozick concerning the matter and difficulty of expense and the problems relating to flow-through of expense. In the final analysis, Mr. Chairman, the composition of the financing of a rental unit is singularly unimportant. In the final analysis, the important thing is what is the net return on the premises after all of the expenses have in fact been paid and what is a reasonable return. Whether a substantial or a small part of that gross return is required to be paid to a mortgage institution or not. The mix between equity and financing ought not be critical in any determination under this Act.

Paragraph 21(3) and a number of similar paragraphs elsewhere, provide that in dealing with an application or objection, in respect of rent payable for residential premises in a building or complex in which there are other residential premises, the rent regulation officer may, in his absolute discretion - and those are always frightening words, Mr. Chairman - and without receiving further submissions, applications or objections, join in the proceedings on the application or objection, the matter of rents payable for all or any of the residential premises in the same building or complex of buildings, and in the event that the rent regulation officer shall exercise the discretion so granted to him, then he adds to the application, all of the tenants of those premises. They then become parties and the rent regulation officer may, in his absolute discretion, make a recommendation which applies uniformly or severally to the rents payable for all or any of the residential premises of the building or complex, as the case may be.

Mr. Chairman, in simple terms, on the basis of a single objection by a single tenant in a very substantial rental complex, the rent regulation officer may, entirely at his own discretion and without reference to anyone or anything, join every other tenant of such a property in the applicaton and may, notwithstanding that no objections have in fact been received from other tenants, adjust the rentals throughout the whole of the premises. Transparently this creates a very onerous burden upon the landlord and creates an unnecessary and I think, too frequent, an opportunity for irresponsible complaints by tenants who simply do not have reasonable grounds for making objection to rent increases or their changes. We know from experience under the previous legislation that in fact does occur, Mr. Chairman.

Careful examination of this particular paragraph will disclose, in our view, that an undue amount of power has been placed in the hands of the rent regulation officer and the means whereby landlords and possibly tenants, may be intimidated in the event that they should make application for a variation of rent in a unit in an apartment complex. The possibility that the whole of the rentals in the complex would become the subject of review may very well determine a legitimate request for the review of a single unit.

The section is, in the opinion of the Association, totally objectionable, since no submissions are required to be received by the rent regulation officer from any party involved before taking this arbitrary action. In summary, the power proposed to be given to the rent regulation officer is, in our view, unnecessary.

Paragraph 23(1) again, requires the landlord to provide written material with respect to any application or objection as may be required in the regulations, whereby the rent regulation officer within a period of time to be fixed by him for the presentation of that material. We would respectully suggest that the period of time to be fixed by the rent regulation officer must be described as a "reasonable period of time," Mr. Chairman, and think that the paragraph should be so amended.

Just before I go on, Mr. Chairman, the concern we have is that, basically, this Statute deals with people who are, as an administrative function dealing with people who will be representing themselves, in the majority of cases, tenants and small landlords. And as occurs from time to time in the Act, there are very rigid time specifications and restrictions and procedural barriers which, I think, to the layman may create serious problems in the administration of the role of the rent regulation officer and of this bureau.

Again in paragraph 24(1), we find the rent regulation officer given an inordinate amount of power to determine the manner in which an applicaiton or objection may be dealt. In this paragraph, the officer is not required to hold a hearing of any kind with respect to the matter, but may simply make his adjudication on the basis of such material as he has before him. Surely this section ought appropriately provide that in the event that an applicant shall request, or a landlord, then a hearing would in fact be held.

Mr. Chairman, section 25(1) and (2) provide for a provision to appeal the recommendation of a rent regulation officer. Subsection (2) of that section, however, imposes one of the strict time regulations within which the appeal must be undertaken to which I referred. It provides that if the party serving the Notice of Appeal was unable to serve it within the 14-day time period limit for any good or sufficient reason, then the appeal may proceed, but goes on to provide, if the panel is not so satisfied, it may reject the late Notice of Appeal and that no further or other appeal of the recommendation of the rent regulation officer can be proceeded with or allowed. Clearly, Mr. Chairman, such rigid time restrictions imposed upon tenants and landlords in an administrative proceeding is unreasonable. We would strongly suggest that this paragraph be amended to provide that service must be effected within 14 days and if it is not, then on application to the Director, the time for service can be extended for an additional period. But clearly, the right to appeal should not be lost on such narrow grounds.

In Paragraph 27, and I'm open to correction, but it would appear, Mr. Chairman, that there's reference to an "appeal de novo" when this is, in fact, an appeal which is to be held by way of "trial de novo" and that's a minor technical correction.

We have previously made observation about the ability of the rent regulation officer arbitrarily to extend the application of an application for increase or objection to the whole or selected parts of a residential complex and in like manner we would object to the provisions of Section 27(2) which extend the application of an appeal in the same fashion to all of the units or part of the units in an apartment or rental complex.

Mr. Chairman, Part III of the bill endeavours to deal with some difficult and complicated matters relating to the rehabilitation or repair of rental premises. Section 33(1) indicates that where a landlord proposes to

repair, renovate or refurbish a building in which are situate residential premises, he is required to apply for approval of the repair, renovation or refurbishing to the Co-ordinator of Appeals at least one month before commencing the repairs and is required under this section to provide "full details of the plans therefore and such other material and information as may be required under the regulations." Once again we find the regulations being utilized to fill a significant gap in the legislative draftsmanship of this section, but of greater concern is the fact that many of the renovations and repairs done to existing premises are not done in accordance with the specific detailed plans and specifications. If it is the intention, Mr. Chairman, of this section that the applying landlord shall provide to the Co-ordinator of Appeals complete information relating to the proposed repairs and renovations, then this section is meaningful and reasonably acceptable. The language, in our opinion, ought to be revised. Additionally, some recognition of the fact that municipal authorities have the right to require by-law compliance in residential rental accommodation, and in many instances do so, without any regard whatsoever to the concerns of the province. The landlord is caught between conflicting authorities and some arrangement, formal or informal, for the resolution of problems arising in that way, is clearly required.

Paragraph 33(7) provides that where the rehabilitation of all or part of a building has been completed, the panel shall grant an exemption under Clause 2(2)(b) with respect to the building, or the part thereof renovated, for a period to be determined by the panel but not, in any event, to exceed four years. Again, without going into great detail to the problems involved in the financing of apartment units or rental residential units, as Mr. Nozick did, we are, in the Association, clearly of the view that the time frame allowed is much too short. We question whether it's adequate and reasonable, having regard of the cost of renovation and repairs which are being made from time to time and which are required to be made from time to time. Also, if the recovery of capital cost and the carrying cost of renovations is to be made within four years, then the rental increase necessary for that purpose may well prove to be burdensome for tenants who are anxious to enjoy the benefits of that rehabilitation but unable to carry the burden of the cost.

One of the concerns of the Association, Mr. Chairman, respecting the bill, is the apparent intention of the government to establish a province-wide rent role and to require landlords to report on a continuing basis to the province respecting the services provided in accommodation and the rental charge therefore. The information required to be produced is, in the opinion of the Association, questionable in value and will be obtained at a great cost to the public of Manitoba and to the landlords, without corresponding benefit either to the citizens or to the tenants or to the landlords.

Lastly, Mr. Chairman, and members, let us once again state our objection to the extensive scope of the areas under which regulations may be made. On examination of Section 38(1) discloses that the Lieutenant-Governor-in-Council may make regulations much broader than are reasonably required to give effect to the purposes of the bill; that is, to say, rent regulation. And most reprehensible of all, Section 38(2) provides that those regulations may be made retroactive to any day before the day upon which the Act comes into force, provided that it is a regulation enacted before the expiration of 12 months after the Act comes into force. In fact, if I read that language correctly, Mr. Chairman, this permits the regulation to be applied back to, at least, the July 15, 1970, the date upon which the Legislature of Manitoba was established by The Manitoba Act, and clearly I think that's an undue extension of the powers of the Board and of the Legislature.

Mr. Chairman, gentlemen, the Association remains convinced that rent regulation does not serve the people of the Province of Manitoba. If, in the view of the government of the day, it is essential that it be imposed and it appears that this is the case then, because it imposes economic sanctions on a very narrow sector of the community, it should be imposed with the greatest amount of reasonableness and fairness that this Legislature can muster. We beseech that you review this bill carefully and giving to the rent regulation officers only such powers and authority as are absolutely necessary for the accomplishment of their task.

Thank you, Mr. Chairman.

MR. CHAIRMAN: Thank you, Mr. Haig. Mr. Kostyra.

HON. E. KOSTYRA: Thank you, Mr. Chairman, first of all, I'd like to thank Mr. Haig and the Manitoba Landlords Association for their presentation to the Committee this morning and also thank them for the ongoing dialogue we've had over the past six months on the issues related to this bill. I believe it was the President of the Manitoba Landlords Association who said to me one time that he seemed to be spending more time with me than with his wife; I don't know if that's true but we have spent considerable time discussing many of the issues that are contained in this brief. There is one section, Mr. Haig, on Page 3, the first full paragraph dealing with Section 10(2) of the Act. I wonder how you feel that the present wording of the Act is restricting the right of parties to a hearing.

MR. G. HAIG: It's an approach that possibly the Attorney-General and I and Mr. Corrin will have some insight into. We believe that when a legislative stricture is imposed it's narrowly read. The section says that he may have advisors in the presentation of his case. I think that that's an unnecessarily restrictive provision as to what use he may have or what availability for advisors he may have.

HON. E. KOSTYRA: I'm wondering in what way would it restrict him, like who . . .

MR. G. HAIG: Because it simply says that he may have the advisors in the presentation of his case; he may required them in preparation of his case, he may require them for a number of other things related to this Act. But we shouldn't confine him in that way.

MR. CHAIRMAN: Anyone else? Thank you very much, Mr. Haig.

MR. G. HAIG: Thank you, Mr. Chairman, gentlemen.

MR. CHAIRMAN: Oh, sorry Mr. Haig would you come back for a moment, Mr. Corrin is a little slow on the uptake.

Mr. Corrin.

MR. B. CORRIN: The Opposition enjoyed that Mr. Chairperson. Mr. Haig I have a bit of concern about some remarks made on Page 6 of your brief with respect to a first hearing, rather than a second hearing, it's with respect to paragraph 24 of the bill. You made note in your presentation that the rent regulation officer in the initial stages would not be required to have an inquiry or hearing with respect to the objection or appeal before him or her. It's my understanding that you're suggesting now that it would be, from your Association's point of view, beneficial to have, at that level, a hearing process, as well as at the panel level. So there would be a two-tier level of hearings.

MR. G. HAIG: Mr. Chairman, if either of the parties should request it. The difficulty in having a matter resolved by rent regulation officer, as I understand the present proposal, is that neither of the parties really is fully informed and aware of the position or case of the objector or the appellant appealing to the rent regulation officer. If the rent regulation officer merely receives material from each of the parties and then proceeds to adjudicate and make a decision on the matter there really is no way, for example, that a tenant, in making application for review, can know what sort of a case he's required to meet in order to establish the justification for his appeal. We feel that a hearing ought to be an option available to the parties.

MR. B. CORRIN: I suppose, to be absolutely candid, Mr. Haig, one of our concerns is that there seems to be a bit of a shift here in the position of your Association insofar as initially we were advised, through Mr. Silverman and other Executive Officers, that they found the former Rent Stabilization two-tier approach to be too bureaucratic, simply too onerous, from the standpoint of the landlord. We were advised that there was a general consensus among members of the Association that tenants were wont to abuse that opportunity and extend the hearing process for an indefinite and intolerable length of time. I suppose it was felt that one hearing was sufficient in order to effect cost efficiencies and time efficiencies. Are you saying that, even though there may be greater cost to both parties and a greater length of time consumed in the adjudication of a case, that the Association would now accept the two-tier system?

MR. G. HAIG: I think that the Association's view, Mr. Chairman, is that to have given the authority to the rent regulation officer to adjudicate and decide upon the matter, without any opportunity for a hearing, is going rather further than they had felt was appropriate. That, if either of the parties to the matter feel that it is necessary and appropriate that a hearing should be held, that option should be available to them.

MR. B. CORRIN: My only comment is that this particular position seems to reflect a change from the position taken during the consultative process and I just issue the caveat - well I suppose I want it to be known that there has been a change in position in this respect - that you do not feel at all threatened or inhibited by the prospect of a two-tier system any more.

MR. G. HAIG: Well, the recommendation has to be made in the context of the other remarks. If, for example, we stated that where an application by a tenant for an appeal against a rent below the threshold or above the threshold, it could be made, but where any objection is taken to a rent increase, the tenant is required to state the reasonable grounds for subjection so to do. In any instance where you're dealing with an objection by a tenant, it's important that we know what it is that we're dealing with and the only way, really, in many instances that a valid objection can be dealt with, is by having all of the information of either of the parties in the hands of the other so that the rent regulation officer can make a proper and complete adjudication.

In many instances, in our view, that's possible only through a hearing and we think the option ought to be retained, at least to have either of the parties request that a hearing be held. It does represent a change in postion, Mr. Corrin, from the originally enunciated view basically because we expressed that view before we saw the bill as it has now been presented. I believe that we're now looking at what is proposed to be the actual mechanism and we are concerned that the rent regulation officer can act in that way and merely on the material submitted.

MR. B. CORRIN: I just want to make one point clear in my own mind. You're not suggesting that there should be any restriction with respect to the right of a tenant who appeals an under guideline increase? That tenant should not have a right to hearings then? You're not suggesting they should be precluded from having the same right to have two hearings?

MR. G. HAIG: Basically, the position of the Association is that if you establish a threshold and say that's reasonable, then any tenant who wants to argue that it's not reasonable should be required to present the reasons for so stating and that should be the condition of any appeal that he might make, he or she.

MR. B. CORRIN: Well, are you suggesting the tenant should have to prove his or her case prior to obtaining the right to an appeal, even in the absence of sufficient material? You said it was necessary to state a case. On the one hand, you're saying you can't make a proper case without having access to all the material and knowing the case you have to fight. It seems to me you're sort of saying that the tenant should have to prove, to some certain extent, that he or she has a reasonable case even in the absence of that supportive material.

MR. G. HAIG: Not required to prove, not required to prove anything. We quite understand that this is an adversary process between the landlord and the tenant as to the question whether the increase is, in fact, reasonable or not. But I think that there should be at least a threshold for the tenant to cross in objecting

to a rent increase in that he must state some reasonable grounds for his objection, rather than simply, I don't like it. If there is a reasonable ground for objecting to a rent increase, the tenant in his Notice of Objection should state what that is or that he believes it to be the case and that is what opens the door for him or carries him over the threshold.

MR. CHAIRMAN: Mr. Corrin, would you kindly address your remarks through the Chair so we can get it on record properly?

MR. B. CORRIN: I'm just wondering, through you, Mr. Chairperson, Mr. Haig how the tenant would be able to provide that information in the absence of any supportive documentation?

MR. G. HAIG: Mr. Chairman, that is one of the things of course that we have concerned ourselves with, but where you have set the threshold, by regulation, and said that a rent increase in these amounts are reasonable and fair, then for a tenant to come along and say they're not reasonable and fair, there ought to be some proper reason for so stating on the tenants part and he must know, or needs to know, or have an opinion, or some facts concerning something which would say that a rent increase below the threshold, notwithstanding the regulations enacted by the Legislature and by the Bureau, is unfair and unreasonable. We say that if you're going to permit that kind of objection you should require the tenant that he indicate the reasons why he feels that increase, below the threshold, is an objectionable increase.

The alternative is, in many cases, and we have discussed this with the Minister and his assistant, that there are a great many tenants who are quite prepared to enter into this exercise almost on a recreational basis. It's something to do. There's no suggestion by the Landlords' Association that tenants with a valid objection shouldn't be given every opportunity to exercise it under The Landlord and Tenant Act or before the Rentalsman or before this Bureau if it comes into being.

But I think that the landlords, in the circumstances, are entitled to be protected against capricious objections that are not well-founded, no reasonable grounds for them. That's all we are suggesting here, Mr. Chairman.

MR. CHAIRMAN: Thank you, Mr. Haig. Any other questions? Again, our thanks.

Mr. Sid Silverman. Mr. Silverman, if you wish, you may sit down.

MR. S. SILVERMAN: Thank you. As long as you're not going to charge me for sitting down.

MR. CHAIRMAN: Do you wish to be charged? Then we'll charge you.

MR. S. SILVERMAN: I'm a rich landlord, I may be able to pay a couple of dollars.

MR. CHAIRMAN: Kindly proceed with your brief.

MR. S. SILVERMAN: It depends if I'll have a profit next month. No tip.

MR. R. PENNER: If you go on past noon hour, the rates go up 9 percent.

MR. CHAIRMAN: Would you kindly proceed.

MR. S. SILVERMAN: Mr. Chairman, members of the Committee and ladies and gentlemen, of course you've heard my name has been called Sidney Silverman. My nick name is Lord Silverman.

MR. CHAIRMAN: Now would you kindly sit down before the microphone so we can have you on tape.

MR. S. SILVERMAN: All I said that my name is Sidney Silverman and my nick name is Lord Silverman.

Firstly, Mr. Chairman, I would like to congratulate the Committee who has changed the name from Law Amendment Committee to the Committee for Statutory Regulations and Orders regarding The Rent Regulation Act. I'm quite happy to see that.

I also would like to recommend to this Committee that while they're making certain changes they should change the name of The Landlord and Tenant Act which I've requested since 1970, 12 years ago. At the last appearance, the Law Amendment Committee recommended to me that I should come up with a name for the change. I here recommend that from now on The Landlord and Tenant Act should be replaced by saying, Residential Tenant Protection Act. I think that would be very proper because that's actually what the Act is all about and since 1970 I've kept on requesting, many instances where The Landlord and Tenant Act is not the proper name for it because, in most cases, it's a one-sided Act.

When I'm talking about landlords and tenants, I can't start the presentation in reference to Bill 2 before I make a few comments about tenants.

Firstly, this is actually what happened lately. A fellow who has changed the light bulb in the washroom and he stood up on the basin and when he came down, he took the basin with him. Now he's suing the landlord for getting wet.

Now, we have another landlord who has been faced with a different problem. This tenant came and rented accommodation and he made out a condition report; he used a magnifying glass. When he vacated the premises he gave the landlord a present, a dark pair of glasses so he wouldn't see the type of damages he has made.

The third one is a very familiar thing that happens practically every day, some tenants are very destructive. In this particular case the tenant has made a wild party. They broke the partitions, the doors and made a hole in the floor and he fell through from the main floor suite into the basement suite and I want to report to you, he's still there. He hasn't moved up from the basement.

I'm here to interpret rent controls as I see them and I make certain recommendations to this committee. Bill No. 2, which is before you, you have an additional word, and the word should be that we should call Bill 2, "Robin Hood Bill 2." That gives us prestige. The meaning of it is to rob the landlord and give it to the tenant. I hope that you agree with me that actually is

what the bill is all about.

One of the regulations pertaining to Bill 2 is that the Provincial Government has established a 9 percent threshhold. I can assure you, I have been in the building trade, I've never used the word "threshhold." The translation actually of a threshhold is a doorsill at the bottom of the door frame and what actually it's used for is to wipe your feet on it. So, they've given us something to wipe your feet on it, but that's all. That's as far as Bill 2 goes.

Speaking of 9 percent, what is it actually going to do for the landlord? What is the 9 percent going to do? It will not cover the increases in the utilities and the mortgage payments. With the regulations in their present form, the government will make the landlords suffer, and I mean suffer, as if they don't suffer now. I can assure you that quite a number of landlords are suffering now. Of course, the landlords can appeal, but this will be expensive and one way or another the landlord will have to pay.

But, ladies and gentlemen, don't worry, they have provided rent regulations officers and a Director. Should you not be satisfied with the decision of the officer, you have a right to appeal and the appeal will go before a panel which, in most cases, will be a panel of 3. Now why should there be a panel of 3? Two will sit inside the room and the third panelist will come out and escort the landlord with violin music. It'll be a sad story to get them inside.

Now, as if that were not enough, the landlords will have to inform the Rent Regulation Bureau of each increse which he gives to the tenant. If the increase is above 9 percent, he will have to file an application for permission to increase above 9 percent and provide documentation to back up his application. They will tell the landlord that he will have to tighten his belt and suffer a little more in order to provide low-rental accommodation for the tenant. Only tenants have the right to determine how much they should pay. They will be assisted by an officer and the landlord's rights have been taken away from him.

The officer will have many powers and he can tell the landlord that the increase is not justified and he may reduce the increase, even if it is less than 9 percent.

This summer, the tenants will take their holidays using the landlords' money, while the landlords will be at home trying to figure out how to pay the bills, because there won't be sufficient money because of rent controls. So what! So another few landlords will go bankrupt. Only 238 landlords declared bankruptcy last year. So, what's the big deal? Who cares about the landlord? The most important thing to the government is tenants.

The government is forming a Central Registry. Every landlord in Manitoba who increases his rent from 1 percent to 9 percent will have to report to the Bureau, well, I would call it KGB, with a statement of the increase for the last few years. Big brother is watching. Be careful. Should they find a discrepancy, they may call the landlord in for an explanation. The landlord will probably receive a registration number. We'll carry numbers; I'm number 20 or 100 or 1,000. The landlords will have to carry a pager in case the officer is going to call his number, so he can reply immediately that the officer shouldn't have to write him a letter. Number so-and-so, come on in, your tenant is opposing your rent increase.

The landlord will become a servant of the tenant. When giving an increase to a tenant, he must inform the tenant, no matter how small the increase, that he has a right to object to that increase, as if he were admitting that the increase was not justified. Then, the landlord will have to go before the Bureau and justify the increase, no matter how small. If this happens to be an apartment, the landlord will have to justify the rents of all the tenants.

Should the landlord fail to comply with the regulations of the Robin Hood Bill, rob the landlord and give it to the tenant, he may face a fine of $100 up to $5,000. Should he not be able to pay the fine, as not all landlords are rich - because there are, of course, quite a number of poor landlords - he may have to serve a jail term. I suggest that the government may have to build a special penitentiary for landlords. They will also have to provide special uniforms, white and blue ones, for the Jewish landlords and even kosher food, and what I would like to suggest when they're going to buy the uniforms or the kosher food, they should buy it wholesale. We can't afford it.

Bill 2 also gives the rent regulation officer permission to apply to a judge for a Search Warrant to break into the landlord's home or office to obtain the records and files. This might be called a legal break and enter because he has a judgment. The landlord who pays the taxes and is the backbone of the community is treated like a criminal. Just imagine that one criminal is sitting before you. I'm already considering myself as being a criminal. I don't know whether I will be able to comply with all the regulations. We have already encountered a problem where a landlord was trying to serve a tenant with a notice of an increase and the tenant would not answer the door. The landlord left the notice in the mailbox, the tenant denied receiving it and refused to pay the increase and went to the Rentalsman who, of course, to no surprise the rentalsman sided with the tenant. The landlord was faced with a six month extension at the old rate because the tenant lied.

Now, the government also recommends that the landlord should discuss the increase with the tenants. Now, how should he discuss it? We had a discussion on that and we came to the conclusion that the only way to discuss with the tenant is to see him on a Friday night, deliver him a case of beer and a bottle of Scotch and discuss the increase. But we also feel that just to deliver it plainly, I don't think it would be fair, so we suggest to some of the landlords to take a silver tray and put the case of beer and the bottle of Scotch, take it over to the tenant and discuss the little increase that they may give him.

So, God help us, and give us strength to overcome the difficulties under the present rent control regulations. In closing I would recommend that the entire bill be scrapped and as a result of that I would like to thank you for your patience of listening to my Brief.

MR. CHAIRMAN: Thank you, Mr. Silverman, are there any questions? Once more, thank you.

MR. S. SILVERMAN: All I'm missing is one particular figure, if Sidney Green he would have had

some questions.

MR. CHAIRMAN: He's in the other Committee. We have two Committees sitting this morning.

Mr. Walter Kucharczyk.

MR. W. KUCHARCZYK: Mr. Chairman, Gentlemen of the Committee. I do not speak on behalf of any organized group, however, since in the past of my arriving to Canada in the middle of nowhere, people from nowhere as well, took our cause - and by our I mean I'm an ex-serviceman of Eighth British Army Second Polish Corps - at a time when we were treated, shall I say, not in a very nice way, $45 a month salary for the labourer. And all of a sudden some people came across, suggested to Legislative Assembly, to House of Commons, officers, even to United Nations and the things improved. I took upon myself to express my own personal view on your particular Act.

I do suggest that, and I will try to justify, that you are facing a very serious martter of the quality of human life and you cannot afford to jump to conclusions just because of a few statements in most eloquent English language or question of profits. Sometimes you have to forget about the profits, you're happy if you break even, or even dip into the pocket maybe for a year yet. Since the Province of Manitoba has the most noble part in the history of the Dominion of Canada, to my knowledge, up to now no better ever that position of the province was stressed by the Honourable Minister of Finance in his Budget Speech, 1982, which is only two paragraphs which I like to quote because it will help me to convince you and I expect I will be successful that you will freeze the rates as they are, you will pass retroactive legislation to roll back in some of the cases.

On Page 24 of the Manitoba Budget Address of 1982 by the Honourable Vic Schroeder, Minister of Finance he said: "Manitoba has no Heritage Fund but we do have a substantial heritage - and real wealth - in the imaginative and farsighted public investments undertaken primarily by the governments of Premiers, Campbell, Roblin and Schreyer. Our telephone system, our schools and universities, our health facilities, the Winnipeg Floodway, our trunk highways and other provincial roads to markets, Autopac, rural electrification and, of course, our entire hydro-electric system has been and will continue to be of almost incalcuable importance to the productive capability of our economy. If we were to add up the value of these assets, it seems certain they would be found to be worth a great deal more than any formal Heritage Fund using almost any reasonable assumptions. Most important," and I underline that, Mr. Chairman, through you Mr. Minister and his advisory staff in his department, "most important, they assure our own economy permanent and growing strength in terms of both physical and human capital."

Now furthermore, the First Minister, the Honourable Mr. Pawley, closing the debate on the Budget Speech he also mention Messrs. Bracken, Roblin and also quoted the Minister of Finance. Why am I stressing that point? Manitoba led in previously mentioned fields in Canada - there's no Medicare mentioned here, I don't know why maybe because that negotiations are going, that's just my guess with medical profession. Nevertheless, this province has been a revolutionary province in some undertakings even though sometimes the legislations weren't very welcome by the official Opposition, public at large, etc. Very often, since the government has to represent all the people of the province, has to take unfortunately unpleasant steps that some minority might not like. And as I believe in democracy, neither majority has a right to discriminate minority and vice versa.

Now, why did I stress that point about the discrimination? Because who really depends today on landlords' power that government gave them to deal with ability to reside in the area. It's a captive market. You cannot very well go with a climate here in Canada in February and spread a tent and then go to work after to satisfy the necessities. Single men perhaps might one way or another with friend of his or hers, single woman, jointly rent a room. How about families when they can't afford to pay what's required according to the value of real estate on the market.

I think it's your duty, Mr. Minister, to look into the situation as it exists economically particularly from point of view of unemployment today. You can't afford to pass the laws giving the power to people to kick somebody out just because it is an act of God that they are not employed today any longer and you don't have to go far. You were in the House when the announcements were made before Christmas, say, for example, Sherritt Gordon, ManFor, Inco, Hudson Bay Mining and Smelting. Now when those people are on unemployment insurance where are you going to get the money to pay exorbitant rent? Is the priority the rent to be satisfied and to heck with bread and butter and milk, etc? I appeal to you to give the consideration, not strictly from point of view of calculator, but you should have also the compassion.

Now, don't have a fear politically and I'm glad there is a gentleman here from the official Opposition - I guess correct English, Loyal Opposition of Her Majesty, whatever - they were in the House at the time, 1974, when retroactively it was discussed the control of the price of the crude oil. Now it's a small, of course, lobby, it's a small group; it's a small industry here in Manitoba. The press didn't pick that up to inform the public to the extent that some who were interested in it had a fair knowledge. Mr. Schreyer's administration came to conclusion to practise an old saying, "Whoever has a rake always rake towards himself, but not away." Now, they divided the crude oil in two basic groups: one, an old oil, that is to say, anything found prior to April 1, 1974, classified as an old oil; anything that would be found after that date have had a different taxation method applied on the so-called new oil, new just because it was found after April 1, 1974.

Now then, where is the connection with your present issue? The connection is this. The tax was retroactive with the control of the Province of Manitoba as to the MPR which stands for Maximum Permissible Rate. So that is to say, the Province of Manitoba, you gentlemen, control the production of number of the barrels per each well per day in the Province of Manitoba. Now then, you have a company. The Government of Canada controls the prices. That's a well-known fact. The crude oil prices are set by advice of National Energy Board approved by the Government of Canada. So you already have an example of the control.

Furthermore, you have to bear in mind, including the builders here, that the crude oil is a part of their business as well because they cannot use asphalt shingles without crude oil, that's a by-product. There's some in excess of 900 by-products from crude oil that the public uses every day and again, the subsequent price is controlled by the Government of Canada. Now then, agriculture is controlled to a great degree by both you and also the Dominion of Canada regulations, because the petrochemicals that are necessary in fertilizers are based upon the price of crude oil.

So I say to you, what in the name of God is wrong for you to have more time given to give more research on the subject matter than you are trying to put the legislation right now? You're having to juggle rules and regulation which I will not go into it because I'm not capable to. I never studied the law and each lawyer has a different interpretation of one statement or another. Now, for instance, Mr. Corrin will say one thing, but I assume Mr. Haig will look from a different point of view. Therefore, on the compassionate grounds, forget about the economical near-collapse. I say to you, give as much undivided attention on the subject matter as you can. Now, don't be discouraged again with various statements that were made here in writing that it will be detrimental to development, new homes, etc., new blocks, whatever.

I've been told over a week ago by an American authority that per capita, Canadians have more investments in Florida, Arizona and Texas, in building and development than Americans have here per capita - and those are experts in developing condominiums with all the facilities, shopping centres, you-name-it. Well, there is a matter of profit. I'm not suggesting to put the law to freeze the profit to remain here in Canada. I simply say, if the gentleman in a business have difficulties with profit, then again, repeating myself, they should think over putting Canada first and then profit second because without those people, they wouldn't have no profit and it's a captive market.

Now, if the controls are so awful that they stop exploration, development, building there, various enterprises - I will quote to you couple of figures here from the Annual Report of 1981 by the Imperial Oil Company, which is a public document, and that perhaps will enforce in you the feeling that controls are not that bad. Revenues for 1981, $8.185 billion. Now that's just about four times roughly the Budget of this province. Was it the controls make them broke? No. That's their own figure. I give you only one more figure that's self-explanatory. Taxes and royalties, $2.712 billion, Imperial Oil. Now that just about the total Budget of this province. And you say to me again that the controls will be detrimental to development? Then I say to you, you do better research then, on the life of Dominion of Canada in relation to the Province of Manitoba including Alberta.

In conclusion, some call me, of course, Marxist. That's obvious I guess. I want to quote to you only one little sentence - and it's not Marxism either - from a prayer of St. Francis of Assissi, "For it is in giving that we receive."

On that note, thank you for opportunity to have me, Sir, before you. Thank you.

MR. CHAIRMAN: Thank you Mr. Kucharczyk. Any questions? Thank you again.

Mr. Ron Klassen. Do you have a brief, Mr. Klassen?

MR. R. KLASSEN: I have not a written brief.

MR. CHAIRMAN: Thank you very much. Proceed.

MR. R. KLASSEN: I'm appearing as a staff lawyer of Legal Aid because we feel that it is part of our role to express a position from the point of view of the tenant with respect to this legislation. I will make a few general comments and then I will go through the Act with a number of suggestions for changes that I would like to bring to this Committee's attention.

First of all, I would like to say that we approve of the legislation. We feel that it is a good piece of legislation. There's a general need for this protection given the current market conditions. We also are in agreement with the idea that a certain figure be set as the basis point and that applications above that have to be applied for by the landlords, applications below that have to be objected to by the tenants. It seems like a fair and a workable arrangement and one that really can't be done away with unless you bring the basic limit down to a ridiculously low figure like 4 or 5 percent below which no landlord would even dream of ever having his rent anyway.

We also are in support of the notion that the Director, as established in the legislation, can act on his own volition. One of the things that we feel are very valuable in the legislation as it stands is the concept of a Central Registry and, partly because there has been some opposition stated to it, we'd like to re-affirm the value of such a registry in the context of legislation of this kind.

We feel that such a program is absolutely essential. It's a sine qua non of any enforcement proceedings. For example, in a recent issue of the Sunday Sun from Toronto, it was indicated that one of the problems with the Ontario legislation was that there was no Central Registry; no way of monitoring rent increases and, therefore, no way of enforcing the legislation. An awful lot of illegal rents were being charged with no way of checking it out. I'm assuming that the information when it comes will, of course, be put into a computer and that computer will pop out any kinds of problems that are with rents being charged in the province without much difficulty at that point.

Going to the legislation itself, then, I would like to begin with the Definition section. The term "tenant" is defined in the legislation and we are suggesting that it be broadened. That is, that the definition that is there, remain there, but that there be added to it words to the effect of "and includes any person or agency paying the rent to the landlord on behalf of the tenant or paying an allowance to a tenant all, or part, of which is considered to be an allowance for rent."

Our primary object for such a proposed amendment would be to put the Department of Community Services in a similar position as they are with respect to maintenance. In other words, if a person is a welfare recipient, Welfare pays the rent directly to the landlord. The money that is paid to the landlord and the increases that the landlord would be asking for would come out of the public purse and this would be, I

would submit, one very effective way of reducing the extra costs or the unnecessary costs of Welfare with respect to this kind of thing. I believe that was Mr. Filmon's concern yesterday.

Also, I think the alternative is that the Welfare worker will prod the recipient on to bringing the objection himself and it's really, I think, a fairly complex procedure and if the welfare recipient is not fluent in English or is not accustomed to the idea of preparing and filing documents - and I suspect that very few of them are - with their general distrust of bureaucracies, I would expect that most of their objections would not be very effectively handled. Since the welfare system is directly affected by it, I would think that they should be permitted to be treated as a tenant with respect to this legislation. Now, there's not going to be a difficulty with respect to providing notices because, as I am informed, the landlords generally, if not invariably, know that a person is a welfare recipient right from the beginning of the arrangement.

That, then, would be one suggestion that we would make for a change to provide for this kind of thing. It would have a benefit, in a more general sense, in that it would provide for controls of the increases in comparatively older housing and in this housing there tends to be a fairly low fixed cost in that the housing tends to be older, more paid for, and a higher proportion of the money that is being collected goes into profits and, therefore, may be more susceptible to effective objections.

A further suggestion with respect to the Definition section is with respect to the definition of the word "party." We are proposing that perhaps a Roman numeral IV be added and that Roman numeral IV say words to the effect of "any tenants' association which includes at least one tenant of residential premises at the time to which the application, etc. etc.," the definition of the tenant then goes on. The concern that we have here is that there is no provision that any tenants' association can be treated as a party at any point; it's just not provided for in the legislation. There are a few tenants' associations and, if there should be more of them, I would think that it would be more convenient for all concerned that any documentation that has to be sent out during the proceedings be sent to the Association directly. It is because of that and to assist the tenants in dealing with their matters collectively which would, again, be a very useful thing in a case of where there's been an expansion of proceedings, that we are suggesting that a tenants' association, where there is at least one member who is affected or who fits the definition of a tenant, that tenants' association be listed as a party.

We're also suggesting that there be a new provision where in the Act it would be immaterial although it could come very early on, and that would be a section which would allow a tenant to designate a person, other than himself, or a group of persons. In this case again, a tenants' association or just simply a person whom he designates to do the task for him. This would be very useful, for instance, if an elderly person wants a friend or a relative to do the work for him, that person then could be designated to the Director, as well as to the landlord, as the person acting in the place of the tenant or in the case, again, of where a tenants' association wishes to bring the objections, to bring the appeals, that they can do so as a class action and thereby, if the tenants are permitted to designate someone other than themselves, again, it would probably facilitate and speed up the process and make the whole thing work better and more in line of what the legislation has intended.

Proceeding to Section 3, subsection 4, the duties and responsibilities of the Director as established in the Act are outlined. We're sorry to see that there's no educational mandate written into those subsections. As you are all aware that rights that are in the Statute are not really active rights just because of that; they must be exercised. Now, to a significant extent, the Director can act for tenants and do many things for them, however, there are many situations where the active participation of tenants will be essential to the effective involvement or the effective protection of their rights. It is my understanding that under The Rent Stabilization Act, which was a very similar Act, that very few of the tenants proceeded to object to the increases that were being brought forward by the landlord if they were not above the guidelines, either because they were aware or because they did not feel that there was any point to it. We're suggesting that people who are tenants must be informed. There must be a fairly systematic effort to inform them and, as well, a certain amount of assistance must be available to them, especially if the paper hearing that the rent review officer is expected to have is going to be retained, then there has to be some assistance in preparing the documentation. The average person, the average tenant, does not have experience, does not have typing facilities available, does not have duplicating facilities available to him and will require both education and assistance.

There is, of course, the question of who will do the advising and the assisting. It may be that if the Director does so, that he would lose his position of objectivity. I leave that up to your discretion to make that decision. There could be advocacy offices. I believe that one of the gentlemen yesterday was indicating that when rent controls had been set up in British Columbia they had an office which was dealing with problems of people; basically, they set up an advocacy office there. There's a possibility of doing it through Legal Aid. That, of course, would have to be mandated to Legal Aid then and the appropriate instructions sent in that direction.

In any case, we're urging the committee that a decision to this effect must be made; that there must be a formal push toward full education and a certain amount of advocacy assistance to the people who stand to benefit from this Act. It could be in the form of a rent clinic or in the form of a hotline or whatever other form would be required. Certainly, we would expect there to be a certain amount of publication much like the Consumers Bureau and the Rentalsman's office have done in the past.

Proceeding on to Section 17, subsection 4, a tenant is permitted under Section 17 to object when he receives a notice of increase. The landlord must apply where he wishes to have an increase over the guidelines.

Section 17, subsection 4 provides that certain information must be given to a new tenant who comes into a previously vacant unit. However, the interesting

thing is that he can't do anything with that information at all. He is not entitled to object; he is not entitled to take part in any proceedings at any point. Basically what he does is he gets the information and maybe tell himself that he'll wait until the next time around. We're suggesting, therefore, that it be amended with words to the effect that, "and upon the receipt of the information provided for in Section 17(4), the tenant shall be entitled to object to the rent as if he had received a notice of increase under Section 17(2) or to participate in any proceedings already under way with respect to that unit." I would think that the matter, if it had been dealt with already in terms of amalgamation of process or an expanded procedure, that would be, in one sense, a final determination and therefore could not be re-opened. This would refer only to those situations where a landlord had not had any determination with respect to this premise; the vacancy occurred at a time when he was unable to raise the rent, he raises the rent and then the new tenant comes in, that new tenant should be entitled to object. We're probably dealing with, proportionately, a small group of people here, or small number of situations, however, it could conceivably lead to inequitable costs for two tenants within similar or comparable housing and would appear to be a gap in the scheme that, I would submit, could well be closed with no detrimental effects.

There follows, after the section I've just referred to, the procedure before the rental regulation officer and I know that one of the gentlemen, earlier today, suggested that they weren't entirely happy with the procedure as set out. From the point of view of the tenants we have some of the same concerns. We believe that there should be a hearing or at least the option of a jearing at the first level.

As I indicated earlier, a lot of tenants are not in a position to prepare sophisticated documentation; they are not accustomed to filing papers. The procedure, as it's set up, is terrific for lawyers. If I were acting for a tenant I would be perfectly happy with this system; I know how to file documents. However, a lot of the people who are tenants don't; they have no experience with it and really, in many cases, what they want to do is they want to come and appear before a rent regulation officer and say their piece. They can say it maybe; they probably cannot put it on paper. I think with that consideration in mind, it may be advisable for the sake of the tenants, and if the landlords feel the same way, then, perhaps for their sake as well, to make it at least possible for people to come and give oral presentations to the rent regulation officer and have some form of hearing, even if it be somewhat limited or if it be based upon the request of one of the parties and perhaps, to some extent, the discretion of the rent regulation officer, but something to that effect, we would suggest, would be a welcome addition to the Act.

We also feel that the appeal period as provided - and again I note with interest that the landlords have made some of the same comments - that it is a somewhat draconian period, and we're suggesting that it perhaps be extended to a period of one month and normally that the appeal period be allowed within one month, rather than a period of two weeks because, if he doesn't get in within two weeks, he has to show good reason why he didn't. If one considers the turnover time that a person who wishes to come to Legal Aid for assistance or advise would require, the two-week period becomes an extremely short period indeed and I would suggest that a lot of tenants will be unable to adequately avail themselves of the appeal procedure.

One must also note, in this regard, that part of the appeal period time will be taken up by the transit of the information from the rent regulation officer to the tenant in the mail. If it takes four or five days for it to get there, which it could in certain circumstances, the effective appeal period is reduced to about nine or ten days and I would submit that is too short.

Moving on further to Section 28(1), I note that it states there that the Director may order, and this is a situation where the matters have not been determined prior to the commencement or inception of the rental period for which the increase shall apply. My first comment on that is that I suggest there will be a fair number of those situations. I noted when I read the Act that it was clearly the intention of the drafters that the matters be dealt with fully before the rental period which was being discussed, start. However, there are certain periods of time which are flexible. The rent regulation officer, for instance, can allow further time for filing documents; there can be addition of further parties which would require more time, and so on. There are periods of time which are not set out and which may extend the procedure beyond the time considered. We would suggest, therefore, that for those situations where Section 28(1) does come into effect, that the Director shall, perhaps having the discretion to choose not to, but as a normal course he should order that the monies be paid to himself. We are also suggesting that it would be appropriate that interest be paid on those monies.

MR. CHAIRMAN: Mr. Klassen, I'm sorry to interrupt but the hour is 12:30. Can you tell us how much more you have, how long it would take? The Committee will be meeting again at 8 p.m. tonight.

MR. R. KLASSEN: I think I could finish in approximately 10 minutes.

MR. CHAIRMAN: Is that okay with the Committee? I am informed that a number of Committee members have appointments. I wonder if you could come back at 8 p.m. Mr. Klassen?

MR. R. KLASSEN: Okay, I shall return.

MR. CHAIRMAN: Thank you very much. To the Committee members, I am of the information that there is a consensus that we will hear all of the briefs this evening, even if takes a little bit longer than 10 o'clock. We are better than halfway through, in fact, closer to two-thirds through the number of briefs so I wish to inform everyone that we will meet at 8 o'clock sharp and carry on.

The Committee is adjourned for now.