

LAW AMENDMENTS COMMITTEE  
8:00 o'clock, Monday, June 10, 1974

Chairman: Mr. D. James Walding.

MR. CHAIRMAN: Order please. The Committee will come to order. Bills before the Committee for consideration this evening are as follows:

No. 71 - An Act to amend The Consumer Protection Act.

No. 73 - The Buildings and Mobile Homes Act.

No. 84 - The Statute Law Amendment Act.

No. 86 - An Act to amend The Highway Traffic Act.

No. 87 - An Act to amend the Animal Husbandry Act.

No. 90 - The Human Rights Act.

If there are any members of the public wishing to make representation to the Committee, would you come up to the microphone and give your name and the bill you wish to speak to?

MR. HADDAD: Sherrold Haddad, the Manitoba Motor Dealers Association, and we wish to speak on Bill 71.

MR. CHAIRMAN: Thank you.

MR. TERNETTE: Nick Ternette and I wish to speak on Bill 90, The Human Rights Act.

MR. CHAIRMAN: Thank you.

MR. KENT: My name is Douglas Kent and I'm the Secretary of the Canadian Life Insurance Association and I wish to speak to Bill 71.

MR. CHAIRMAN: Thank you.

DR. PENNER: I'm Dr. Don Penner. I wish to speak on behalf of Bill 86, representing the Manitoba Medical Association.

MR. CHAIRMAN: Thank you.

MR. ROBERTON: Brian Robertson. I would like to speak on Bill 86 representing the general motorcycle public of Manitoba.

MR. CHAIRMAN: Thank you.

MR. GRAY: Robert Gray. I wish to speak on Bill 86.

MR. CHAIRMAN: What was the last name please?

MR. GRAY: Gray.

MR. CHAIRMAN: Gray?

MR. GRAY: Yes.

MR. THOMPSON: Ralph Thompson. I'd like to speak on Bill 73, on behalf of the Manitoba Construction Council.

MR. CHAIRMAN: That was Mr. Thompson?

MR. THOMPSON: Thompson.

MR. CHAIRMAN: Thank you. Anyone else present who wishes to address the committee this evening?

MR. ANHANG: Mr. Chairman, Abe Anhang, wishing to speak on Bill 71.

MR. CHAIRMAN: Would you spell your last name, please?

MR. ANHANG: A-N-H-A-N-G.

MR. CHAIRMAN: Thank you.

MR. BRAY: My name is Bray, B-R-A-Y. I'm here to speak to Bill 71.

BILL 71

MR. CHAIRMAN: Thank you. If there is no one else wishing to make presentation to the committee this evening, Mr. Haddad, would you come forward please?

Order please. I've just been advised that there is one person from Toronto who has come down to address the Committee and would like to get away. Is it the wish of the Committee to hear Mr. Bray first? Mr. Bray, would you come forward please?

MR. BRAY: Thank you, Mr. Chairman and members of the committee. Let me introduce myself as Bray. My first name is Carne (?).

MR. CHAIRMAN: You have copies of your brief, Mr. Bray?

MR. BRAY: I'm sorry, Sir, I'll be speaking from notes.

MR. CHAIRMAN: Very good. Proceed please.

MR. BRAY: I'm the Executive Vice-President of the Federated Council of Sales Finance Companies. As qualifications for speaking to you I guess I'd generally be known by some

(MR. BRAY cont'd) . . . people as an economist. I'd prefer it that I was known as a student of business. That's because in these times an economist means too much to some people and too little to others, so my major qualification is that I'm here as Executive Vice-President of the Federated Council of Sales Finance Companies.

That organization is the national trade association of sales finance companies doing business in Canada. It has 23 members. Of the 23 companies, 15 of them are national companies doing business in the province of Manitoba and eight of them would be regional companies, generally outside the province of Manitoba. Of the 15 national companies, it is estimated that we would have outstanding at any point in time, invested in Manitoba businesses, something on the order of 200 to 300 million dollars. Because debts are retired, this involves a rolling over of our debt portfolio occasioning something on the order of half a billion dollars or more, to be invested and reinvested annually in businesses in the province. We do sincerely appreciate the opportunity to address you and we understand the pressure of time and, perhaps more urgently, your pressure, your need to respond to consumer concerns. Therefore, to save time, I recommend that Section 4 of Bill 71 in its entirety be deleted from the bill, and that Section 5 paragraph 1, represented as 25.1(1) entitled Notification of Assignment, be deleted from the bill. If you need more than my conclusions, allow me to give you the reasons for these conclusions.

With respect to Section 4, I respectfully submit that this section belongs in the Insurance Act. This is not to say that some of the points contained within this section are irrelevant or impractical, but rather, if they are desired, perhaps they should be attached to the Insurance Act as opposed to the Consumer Protection Act. Our concern here is that problems of insurance and the difficulties of the insurance industry, of which I am not completely familiar, should perhaps not be split between jurisdictions but should be held in the office of the Superintendent of Insurance when he is used to and knowledgeable of the problems of insurance.

I suggest that there's evidence for misunderstanding in the drafting of the bill to confirm that consideration should be given to the suggestion. For instance, Sir, going to Section 22.1 (1) subsection (c), there's reference made there that the insurer should not pay, directly or indirectly, to the credit grantor or his assignees remuneration in any form or manner whatsoever in excess of five percent of the premium charged to the debtor. On January 2 of this year, the Superintendent of Insurance for Manitoba uttered guidelines to the insurance industry of Canada doing business in Manitoba. Section 9 of those guidelines reads in full: "The premium collection fee provided by the Insurance Act may be paid to the creditor by the insurer if such function is fully carried out by the creditor at his expense. In addition to the premium collection expense provided for above, the contract may provide that the insurer may reimburse the creditor for such administration expenses provided such expenses are reasonable in relation to the services provided and are not calculated as a percentage of or otherwise related to the premium for the insurance."

Now, we're faced with a situation where inconsistent suggestions are being proposed to you in the sense that the Superintendent of Insurance has attended to the problem with the utterance of these guidelines on January 2, and then a different proposal is being made via the amendment to The Consumer Protection Act.

May I refer you to Section 22.1(3). "Where a debtor" - and I'm reading now from Bill 71 - "Where a debtor is not required by law to obtain insurance" - I want to draw to your attention here that it does not say what kind of insurance so I guess we should read this to be any kind of insurance - "Where a debtor is not required by law to obtain insurance in connection with an agreement between him and a credit grantor." Let's examine that for the moment. May I ask, Mr. Chairman, is there a law in Manitoba that requires insurance between a credit grantor and a debtor under any circumstances? Perhaps there is a law which says if you're to drive a motor vehicle you have to be covered by insurance, but that doesn't pertain to the law to obtain insurance in connection with an agreement between him and the credit grantor.

And reading on: ". . . and to which this Act applies, the credit grantor shall not require the debtor to obtain, or in any way suggest or imply that the debtor is required to obtain, insurance, in connection with the agreement unless no premium or charge, or additional finance charges are charged to the debtor in respect of the insurance."

You'll notice that it does not indicate to whom the charge should be paid, so that as the wording now stands if a person is going to put a mortgage, let us say, on a mobile home, it's entirely consistent with this credit granting function that he would require property damage or

(MR. BRAY cont'd) . . . fiscal damage insurance on that property, since under Section 56 of the Act, the Consumer Protection Act, he can only take as security for the indebtedness the article being purchased under the conditional sale contract. That's reasonable, then, that prudent credit granting and protection of the security would require that the credit grantor require insurance, whether issued by himself or by a third party, but these contingencies of the third party are not contained within the bill within this section, rather it's if the credit grantor shall require insurance.

I refer you, please, to Section 22.1(7): If a credit grantor should require insurance, then it follows that Section 22.1(7) would apply. That would be that if he makes a specific charge for the insurance the person could be "found guilty of contravening or failing to comply with any provision of this section", it which case it goes on with: "the judge or magistrate before whom he is tried shall," and there is no discretion in the word "shall", "shall . . . order the person to pay to each debtor in respect of whom the offence relates the whole of any premium or other charge collected from the debtor" it doesn't say by whom - "in respect of the insurance." It doesn't say by what kind of insurance.

I suggest to you, Mr. Chairman, that the word "each" in the fourth line be removed, and substituted therefor would be the word "the". And the words "in respect of whom the offence relates" - those words should be deleted, such as to cause the whole of the section to read: Where a person is found guilty of contravening or failing to comply with any provision of this section, the judge or magistrate before whom he is tried shall, in addition to imposing a penalty as provided in Section 94, order the person to pay the debtor the whole of any premium or other charge collected from the debtor in respect of the insurance. And by making that change, I suggest to you that any allusion to class action under the rather innocent title of Order for Restitution, if you wish to have class action in Manitoba I suggest that you make a class action law, but to sneak it in, I suggest, in the bottom line of this section perhaps describes an unfamiliarity with the topic at hand, namely insurance. Perhaps these reasons, as I've given you, suggest that the recommendation I have made that Section 4 be deleted from the bill and treated, after study, as an amendment to the Insurance Act, would be much better than splitting the jurisdictions between the Insurance Superintendent and the Bureau of Consumer Protection.

If I may go to 25.1(1). In reference thereto I would like to describe to you a typical sales finance operation. Now this is important, gentlemen, I submit to you, because as I stand before you, as a person by the name of Bray, I have not really got long ears, I am not a donkey, and as a representative of finance companies I am not a devil.

MR. BILTON: You've got long hair, though.

MR. BRAY: Yes, I covered them up. I suggest to you that sales financing is not understood, and as briefly and as concisely as possible I want to go through what it means.

First of all, I represent finance companies. There are two kinds of finance companies: those that lend cash to consumers, and those that render a financial service to dealers who extend credit. Those that lend cash to consumers are called consumer loan companies; those that service dealers who extend credit to customers are called sales finance companies. The organization I represent is composed of the major sales finance companies in Canada. In Australia or Britain they would be called merchant banks or hire purchase companies; in the United States they're called industrial banks and acceptance companies; in Canada they're called sales finance companies, not just the generic term "finance company".

Retailers of many types of goods typically sell goods on credit because customers want to buy goods on credit. Most, if not all, retailers would be perfectly happy if everybody paid cash for the goods they want. The only exception I can think of to this is car rental agencies where for a day's rental you should not expect the company to hand over the keys to the car and say, "I'll see you when you return", because the return might be a little bit too fast to catch. Everybody else would be perfectly happy to do business on cash. But because people want credit, over the years it has developed that most consumer businesses grant credit to customers to satisfy customer needs. I'm not trying to tell you that this phenomena is either good or bad. There's no value judgment in this, in my description. I only wish to say that it's a fact. Therefore, here's how the company fits into this - the sales finance company fits into this.

Suppose a man and a wife have selected, let's say a mobile home or a car or any consumer durable good; they have first satisfied themselves that that particular stove or mobile

(MR. BRAY cont'd) . . . home or automobile or recreational vehicle has the features that they want and that the price that they have to pay is satisfactory compared to what they can get elsewhere. But then the credit wrinkle comes in. They not only want the mobile home, or the stove, or the household appliances, or the recreational vehicles, they start to discuss terms with the dealer. They'll usually find that the dealer requires two things, a down payment and an execution of a Conditional Sale contract. The down payment is itself a deterrent to the easy use of credit. That person has got to have demonstrated that he can save, that he has saved, that he has put aside the appeals to him of mass advertising to spend on this and that, and there's an amount of money that he has accumulated that he's willing to put down as a first payment on the purchase he wants to make. I represent, in this respect, that sales financing is without the impulse purchase notion that one might attach to, say, credit card sales.

Now about the Conditional Sales Agreement. As I said, the dealer would be perfectly happy to accept cash, but instead of that he's asked to accept in lieu of cash a promise to pay, a Conditional Sale Contract which, simply put, states that the purchaser agrees to pay payments of a stipulated size, on stipulated dates, for a stipulated number of months in the future. In lieu of cash, the retailer is asked to accept this personal promise to pay. Before he grants the credit, the trust to the customer, he'll want some information, particularly as to how he might expect the customer to perform under that promise to pay. He asks for credit information which can then be used to check the individual's credit worthiness. It's not done on a blanket basis; it's done on an individual basis.

Assuming that the down payment and the credit rating requirements of the dealer are met and that an agreement for the purchase of the goods on credit is reached, then the dealer can do one of three things: (1) He may elect to hold the Conditional Sale Contract, receive the agreed upon payments, and earn for his business the finance charge represented in the credit contract. No one says he has to sell it but dealers have high inventory costs. They may not have the financial depth to hold all their own Accounts Receivable. Particularly smaller businesses are not in the position of the large national chains to do that. So financial institutions are growing to serve those needs. He can take a second alternative. He can pledge those contracts or that contract to his bank and accept a loan, which satisfies his need for ready cash, in which case he will incur himself a credit charge and he will earn for himself and his business the difference between the finance charge expressed in the Conditional Sale Contract and the finance charge he has incurred at his bank.

Let me stop at this second alternative for a moment and examine 25.1(1). In this respect, when he pledges the contract for a loan at his bank, it should be recognized that he will receive such as a gift, premium, or benefit of any kind whatsoever, inasmuch as he will earn the difference between the two finance charges, the one at the bank that he pays, the one in the Conditional Sale Contract that he is being paid. But how do you put that, as this section would require, with respect to the dollar value? It cannot be pre-computed how long this loan at the bank may run, and if the dealer happens to a windfall he will indeed shorten the term of that loan. You can't determine in advance how much this is in dollars.

Now let's go to No. 3. The third alternative is that the dealer would sell to a sales finance company or to a bank, and perhaps to a credit union. In the Province of Quebec, if not in Manitoba, credit unions are very much in the field of discounting Conditional Sale Contracts even on large industrial and commercial equipment.

MR. CHAIRMAN: Order please.

MR. BRAY: When this occurs there will be what is known as a dealer reserve set up. The sales finance company will in recognition of the work done and the risk being taken by the dealer hold in reserve a portion of the finance charge earned and paid by the consumer, such as to have those funds available for the dealer as the contracts retire. What has the dealer done to deserve this reserve?

1. He has made out a Conditional Sale Contract in conformity with the Consumer Protection Act of this province, no mean feat in itself, gentlemen - inasmuch as the penalties for non compliance are rather severe, he's put himself on the line with respect to that Consumer Protection Act. Few people in this province I would estimate know that Consumer Protection Act. Few people know it well enough to execute a contract and yet this is the position of the dealer.

2. The dealer warrants the merchantability of the goods being sold - and further, that the person is bona fide that makes the application for the credit, because he has to warrant to the sales finance company that that is a good contract.

(MR. BRAY cont'd)

3. He investigates by asking questions of the consumer those points of the consumer's area of concern, income, employment, prospects, other obligations, such as to allow a detailed credit investigation to be made on that individual. He collects information of the order of the life insurance salesman taking an application or a medical history. Now don't get me wrong, we're not involved in medical histories with credit insurance, but it's still detailed in its point form and the dealer does it.

4. The term "recourse contract" may be known to some of you. In the Province of Manitoba, it is estimated that 99 percent of the sales finance contracts are done on recourse. What does this mean? It means that after the assignment of the contract has been made to the sales finance company, should anything go wrong with the payment schedule, should the consumer default, the finance company has the option of triggering that recourse agreement such as to require the dealer to repurchase the contract. This is an important social and economic fact, inasmuch above all other things it prevents the indiscriminate credit granting and overloading because the dealer knows off the top at the start should that contract foul it comes home to his nest. From the dealer's point of view however, it means that he is willing to put his financial resources behind the credit judgment in that contract. He stands at risk throughout the term of that contract and that is the fourth major consideration for the dealer to obtain remuneration. In Section 25.1(1), any gift, premium or benefit of any kind whatsoever does not differentiate with the sharpness of a dull ax between a gift and an earning - besides which, what has happened? The consumer has learned after the fact, a fact which has become known as a s . . . or a kick back - not as an earning but as a kick back. Those that would depend upon these kinds of propaganda terms must at first admit to their own misunderstanding, inadequacy or culpability of misrepresenting the facts.

Further, he's learned after the fact, not before the fact, when he can use such information. Most consumers are going to ignore the fact that the finance charge has been in part and mostly earned by the sales finance company; and in part, to a minor extent, earned by the dealer. Let me justify those words. The finance rate by Conditional Sales Purchasing Companies, sales finance companies, at this time would be worth in the order of 15 percent. No, it is not all one rate; yes, it does vary. There is such a thing as collusion, we do not practise it. There are various rates, but they're in the order of 15 percent, depending on the character of the individual; the strength of the dealership to support the contracts; the quality of the goods being purchased, such as used cars versus new cars; the term of the contract, such as a short term or a long term mobile home. Fifteen percent. So with a \$4,000 initial balance, you can look at something on the order of \$850 being earned on the investment of those funds over a 36-month contract for a new car purchase, for instance. How much does the dealer get? Out of \$850, he's made out the contract; he stands behind the merchandability of the goods and a bona fide contract; he warrants to the sales finance company that it is a bona fide contract; (3) he takes credit information upon which that check can be made; and (4) he guarantees the contract. Now what does he do? He gets about 10 to 15 percent of the finance charge. We're talking of \$100, \$120 per new car unit. On a dealer's turnover of new and used cars, one large company last year calculated that the per unit cost or revenue to the dealership was \$88 on a three-year deal. Now gentlemen I want to give you - if anything, the dealer reserve is not sufficiently high to cover his risks. It only takes a few contracts to wipe out the totality of his dealer reserve that he's accumulated over several hundred. When he has to repurchase that contract he has to make sure that the goods are then once more marketable. He has to repair them. He has to pay another salesman commission on the matter - or if he doesn't accept the vehicle back, he's got to undertake the costs and the risks of suing on the contract to obtain the funds he's advanced. It only takes a few such contracts to wipe out the total of his dealer reserve.

But there's another point - the dealer is not being asked to tell this himself. If it's such thing as squeezy kick-back, he's not being asked to admit to this and disclose to this himself, but rather it will be a financial institution, a third party removed financial institution that will be asked by this section to be as a tattle-tale in school; to go behind the dealer's back and to tell the consumer the amount that the dealer's going to make out of it. No obligation in this section that the dealer should also or that the assignee will also advise the customer what the dealer did to earn those moneys. But on top, it's after the fact, what's the dealer going to do about it, or the customer going to do about? What has he got in his hand that's going to help him? Is he going to renege on his contract on the strength of this? No, I venture that the

(MR. BRAY cont'd) . . . majority of the consumers will say that's the finance charge; how the finance company earns it is its own business. What it does with it is its own business. If it elects to go mass media advertising and put a lot of people in the field and spend it on salaries, that's the sales finance company's own business; but if it should elect the more economical route of employing the dealer and employing the dealer by keeping him in the contract as a guarantor - if they elect to go the less expensive route and thereby permit the lower finance charges to consumers, what happens then? Then, by this, we will be required to go behind the dealer's back to disclose the amount the dealer earned in the situation.

And what happens further? Let's say that some of the consumers are caught by surprise by this requirement, to the extent that they vow to themselves that next time they shall go to a cash credit grantor and get their money that way first and bargain with cash with the dealer. If this is the turn of events, is the customer better off? First of all, at current rates you're not going to get that much of a break for consumers by going to a cash credit grantor. If all rates on a new car transaction are in the order of 14 to 15 percent, how much cheaper can you get it? And if it's one or two points cheaper over a three-year contract, tell me what it is in dollars - why, damn little. But on top, under Section 56 we are required as sales finance companies, and the dealers are required as credit grantors in the initial instance, to take no security other than the article being purchased for the evidence of the debt. But if he goes to a cash credit grantor, what happens? Is there any limitation on the security that can be taken with respect to that credit granting transaction? So, not only is there that much - or little advantage, rather - in rate, if any, but on top of this the consumer is required to pledge a great deal more security. Is this doing them a favor?

But more. I refer you to Section 67 of The Consumer Protection Act, which says that during the term of the contract the assignee will be responsible for the value of the goods. This is a contingent condition that was brought in after Mr. Basford changed the Bills Exchange Act to rule out the holder and two-course doctrine in Canada. Now in an amendment to the Consumer Protection Act of Manitoba, you hinge on that Bills Exchange Act amendment, such as, assignees provide the greatest protection to consumer credit grantors of any credit grantor going. What is the sum and substance then, should some consumers, some citizens of Manitoba be chased to cash credit grantors? (1) Small advantage of rate, if any. (2) They will be required in many instances to put up excessive security. (3) The holder in due course doctrine shall for all intents and purposes be reinstated, notwithstanding Section 67 of your Consumer Protection Act. I suggest, Mr. Chairman, gentlemen, that this is not a desirable amendment; that it should be deleted; that you have not asked us as sales finance companies to treat our customers well, namely the dealers; you have not recognized the advantages being awarded those who do business by a conditional sale contract. Customers are not going to be better off on balance - and you have given your weight, should this be passed, to a nefarious situation in which people will be advised of something after the fact that they can't use. Why not go before the fact? Would you advise that dealers then should be required to issue and disclose to the customer in the Conditional Sales Contract the amount of dealer reserve they're going to get? Let the dealer do it before the fact. But wait. Let's not stop there, gentlemen. How about the mark-up on the goods? Should not the dealers also advise of the wholesale price of those goods so that the customer has that bargaining point too? And what about commission salesmen? Should they not be required to put out the amount of dollars and cents that they are going to earn should this deal be consummated? Let the consumer have that information too as bargaining points.

Now what about, also free delivery and installation of such things, refrigerators and stoves and freezers? Why not have this be disclosed to the consumer in advance of entering the contract too. Give him all the bargaining points he wants. Why pick on the credit aspect exclusively after the fact nefariously? Thank you.

MR. CHAIRMAN: Mr. Bray, there may be some questions. Would you remain at the microphone, please? I should point out, you can answer or not answer just as you choose. Mr. Turnbull.

MR. TURNBULL: Thank you, Mr. Chairman. I am sure that Mr. Bray, having made many trips to Winnipeg, will find my questions easy to answer.

Mr. Bray, you did mention with reference to Section 25(1), that disclosure should be made before the fact - and you seemed to think that that would be better than as we have drafted it, after the fact. But how in fact can the dealer disclose the fact that he may have signed the

(MR. TURNBULL cont'd) . . . credit arrangement, when at the time he makes the sale he may not know that he will assign it.

MR. BRAY: There is a similar situation with respect to even the way it's done now - and I'd like to have my recommendation put in perspective. I suggest that the arrangement between the dealer and the financing agency is their business, and is without public interest and public use. So I don't want you to misconstrue my words and say I'm recommending that. I'm saying, if you're going to do anything along these lines to disclose the business relationship, then do it in its entirety.

Now with respect to the prior knowledge. Sales finance companies operate on two bases to assist dealers - and keep in mind any revenue they obtain in this respect may not be sufficient to cover them for losses. Those reserves are held by the finance company as an insurance that the dealer will be able to repurchase the contract, and the whole of this credit balance may very well be wiped out in a relatively short period of time on misadventures.

But there is another way. Generally speaking, there is an arrangement which is referred to in the industry as a "volume bonus". The volume bonus says that if a certain volume of business is transferred to the sales finance company during the course of the year, as the volume increases in recognition of economies of scale, then there will be a bonus provided for the dealer. This is only known at the end of the year. It is not known on the way in, and is a practical limitation on the application of 25.1(1). Now, I suggest to you that perhaps you didn't expect such full disclosure with respect to volume bonuses and dealer reserves. We're not ashamed of the way we do business. We can't do it even "after the fact" except with substantial delay, until at year-end, before we are able to give the dollar figure. We had contemplated the possibility of asking you to consider that we would - if this section goes into law - that we would advise the amount of the dealer reserve and issue to the customer the schedule upon which volume bonuses may be made available - not knowing in advance what level of volume the dealer would reach, therefore not knowing how much in dollars he would obtain.

MR. TURNBULL: But you do think that "before the fact" is practicable. You've just explained how it could be done.

MR. BRAY: Yes. I believe it's just as practical to do it before the fact with respect to option No. 3, the assignment of the Conditional Sales Contract to a sales finance company as it is in option No. 2 of the dealer where he assigns this to a bank and earns a differential rate. In other words, Sir, both are impractical.

MR. TURNBULL: I see. Then although you find it impractical, you also find it nefarious that the purchaser of a commodity know that the dealer that he's buying that commodity from is making an arrangement with a finance company. Why do you find that knowledge to the consumer so nefarious?

MR. BRAY: How the finance company allocates its income and invests in production of business, whether it be in salaries or in advertising, sales promotion or whatever, that's the business of sales financing. It is not of public interest. It's a matter of a business arrangement between the dealer and the finance companies.

MR. TURNBULL: So you don't think that the consumer then should know that in fact he won't be dealing with dealer A, he will have his credit arrangement with finance company B. You really believe that the consumer should not know that, he's not entitled to know it, and it's none of his business.

MR. BRAY: Not entitled to . . . Now I think you've changed the question, if I understand correctly. There is no question there that the finance company will advise the customer that the paper has been assigned, that it's been purchased by the sales finance company and that the payments will forthwith be made to the finance company. That is done. That is required - that is done.

MR. TURNBULL: But you don't find that nefarious.

MR. BRAY: No, because the finance company has got to obtain the funds or receive the payments.

MR. TURNBULL: You don't find that nefarious then because that is the present practice. What is nefarious then - the disclosure of the gift, the benefit, the amount of money?

MR. BRAY: It isn't a gift.

MR. TURNBULL: Well whatever.

MR. BRAY: It's an earnings. It's a remuneration. It's a compensation for work done

(MR. BRAY cont'd) . . . and risk being taken. It is not a gift. It is not a premium. It is a benefit, and by the breadth of that word it involves the whole thing. But there's not proper recognition of the reason for the benefit, it is not separated out. And where I too as a sales finance company go direct to the consumer with mass media advertising, I could spend three times as much for the same market effect - and yet I would not be required to disclose how much my advertising costs are; nor am I required to disclose how much my money costs are; nor am I required to disclose how much I pay my president as a sales finance company president.

MR. TURNBULL: Is it nefarious, Mr. Bray, that the consumer know that finance company is paying a certain amount of money to the dealer for that credit agreement?

A MEMBER: Where do you get the word "nefarious"?

MR. TURNBULL: From Mr. Bray.

MR. CHAIRMAN: Order please. Order please.

MR. TURNBULL: I am really curious as to why he would use that word, and I'm trying to get from him what it is that he finds nefarious about the principle of disclosing that kind of information to a consumer.

MR. BRAY: I think I've made myself perfectly clear in my answers. I even referred to a tattle tale episode of a public school student to his teacher.

MR. CHAIRMAN: Thank you. Mr. Green.

MR. TURNBULL: I'm sorry, I'm not finished, Mr. Chairman. With regard to 22(1), Mr. Bray, the stipulations in that section require that the Superintendent of Insurance satisfy himself. Now despite that co-ordination set out in this section, you still feel it should not be here but in the Insurance Act.

MR. BRAY: Well I gave several reasons why I believe there has been an insufficient understanding of the insurance operation, even to the point that . . .

MR. TURNBULL: I'm speaking here in general of the whole section, not Section 22.1 (1)(c) which . . .

MR. BRAY: The whole of the section? We do not object to contracts, the master contracts being submitted to the Superintendent of Insurance for approval, or the other items. I've brought out the inconsistency between the writing in this section as I see it here.

MR. TURNBULL: In (c).

MR. BRAY: Particularly in (c) - and the inconsistency between that and the guidelines uttered by Mr. Swain in the early part of January this year.

MR. TURNBULL: (c) we will alter, I think - you know, along the lines that would be satisfactory I believe to the intent of your presentation. But still I do not see why you feel that this whole Section 22.1 should be in the Insurance Act.

MR. BRAY: No, it wasn't the whole of Section 22.1, it was the whole of Section 4 of Bill 71. Because it's a matter which pertains to insurance, which is being very properly handled by the Superintendent of Insurance in his office.

MR. TURNBULL: Okay. Thanks, Mr. Chairman.

MR. BRAY: The speed with which he acted upon the guidelines to utter them - Mr. Chairman, for the benefit of the Committee the guidelines came out under date of November 30 in the Province of Ontario - you have never seen anything sweep the country so quickly. At this time, six of the ten provinces have put them into effect, including Manitoba, on January 2 of this year. Two other provinces, notably Nova Scotia and Quebec, are expected to install the guidelines within a matter of weeks. That leaves eight out of ten. I believe that that's something of a record for concerted action.

MR. CHAIRMAN: Thank you. Mr. Green.

MR. GREEN: First of all, I want to make sure that I'm properly understanding one of the contentious points. I take it that what you are complaining about is, that if a vendor sells an article to a purchaser for let us say \$2,000 and then is going to sell the paper for 1,800, that what the Act says is, that the purchaser should know that when this paper is being purchased by a finance company the vendor is only going to get 1,800, and that is what you are objecting to. First of all, am I correct in that is what the Act is requiring and that is what you are objecting to?

MR. BRAY: No, I don't believe you are correct, Sir.

MR. GREEN: All right. Just tell me where I'm wrong.

MR. BRAY: In the sense that the finance company will exercise a rate something on the



(MR. BRAY cont'd) . . . order of 12 percent and the contract, using our typical example, will be in the order of 15 percent. So there is a three-point spread. The finance company will earn the 15, or will accept the 15 as it receives the payments from the consumer, whereas in fact there will be more money than is paid initially for the contract accruing to the dealer as these three percent portions pile up and this is in recognition of the service done. Another way of putting it, is that there is a wholesale price for the commodity credit, as there is for the car or snowmobile or whatever, there's a wholesale price and there's a retail price. Since he goes to the effort of producing the contract, taking the risk and examining the credit worthiness of the individual, he's entitled to compensation - even as he maintains a place of business and realizes a mark-up on the goods in the first instance, he's entitled to that.

MR. GREEN: So the hypothesis that I presented is not covered by the Act then. It's not intended to be there. The Act would not deal with the situation that I hypothesized on.

MR. BRAY: This is where the finance company is paying less than?

MR. GREEN: I'll give it to you again, because apparently you understood me as little as I understood you. If a vendor sells an article to a purchaser for \$2,000, he is going to sell the paper for 1,800 at whatever rate it is, at the same interest rate. Does the Act require the vendor to tell the purchaser that the paper is being sold for \$1,800.00? That's the first question that I asked you.

MR. BRAY: I don't believe so. As I understand that . . .

MR. GREEN: So you do not think that the Act requires the vendor of the item to disclose to the purchaser that the contract is being sold to a purchaser who is going to pay less for the item than the face value thereof. That's not provided for in the Act. --(Interjection)-- Well I just want to see whether this gentleman says that that is provided for in the Act, because he appears to have a good understanding of the Act too.

MR. BRAY: Thank you, John. 25.1(3) would refer, I guess, to that kind of a situation where there's a discount of the amount, but that only fits where there is zero cost of borrowing or no cost of borrowing is included. I wasn't making any reference to that particular . . .

MR. GREEN: You were not dealing with that section.

MR. BRAY: No, I was dealing exclusively and only with Section 25.1(1), wherein the situation is that the dealer will receive something extra than, that there's a gift or benefit involved.

MR. GREEN: All right. So then the section that I have referred to you, you have no representation to make with regard to that.

MR. BRAY: No I do not, Sir.

MR. GREEN: Thank you very much.

MR. BRAY: I'm glad I now understand your question. It took a long while. I'm dull.

MR. GREEN: I'm glad I understand you.

MR. CHAIRMAN: Mr. Spivak.

MR. SPIVAK: What you're saying is, it's a 2,000 to 2,000 without any discount.

MR. GREEN: I understand that he's got a \$2,000 contract and he sells it to the finance company for 1,800.00.

MR. SPIVAK: No. But what happens in this case is that it's the \$2,000 contract goes to the finance company for \$2,000, of which there is a percentage which is set up for the reserve for all the services that are provided.

MR. BRAY: The full 2,000 would be paid. It's a matter that the extra 200 would be paid back to the dealer, and under the first paragraph the assignee would have to disclose the amount of 200.

MR. GREEN: Isn't this intended to merely indicate to the purchaser that if he paid in cash that the vendor would be happy to take a smaller amount, that the . . .

MR. BRAY: There is nothing implied in that.

MR. SPIVAK: The vendor gets 2,000.

MR. GREEN: The vendor is getting - in the example that you are indicating, the vendor is participating in some of the earning from the financing contract.

MR. BRAY: Yes.

MR. GREEN: Now, isn't the section intended to indicate to the purchaser that the cost of borrowing involves something which he could probably have reduced from the purchase price if he paid in cash.

MR. BRAY: I don't believe so.

MR. GREEN: Well, if the vendor was to disclose that he is making an additional \$200 by virtue of the financing arrangement, then would it not indicate to a purchaser who is entering into such an arrangement that if he paid in cash he would save that \$200.00.

MR. BRAY: Why would he? Why would the merchant forego the \$200 under any circumstances? He has a price for the goods. It's \$2,000.00. He wants cash. In lieu of cash he accepts a Conditional Sales Contract. Therefore he makes a finance charge on top of the \$2,000, which would be in the order - we'll say over a 36-month contract, \$4,000 - it would be in the order of \$850.00. Now it's a matter that they're not going to do anything with the 2,000. That doesn't nudge.

MR. GREEN: There is no change in the amount that . . .

MR. BRAY: Right. All that nudges is, where will that \$850 be arrayed?

MR. GREEN: Who is sharing the proceeds of the financing?

MR. BRAY: That's right. So that the finance company costs, our money costs, our dealer costs, our promotion costs, our employee costs, our advertising costs - part of those costs our dealer reserve is the most economical device by which he can obtain business.

MR. CHAIRMAN: Are there any further questions? Mr. Spivak.

MR. SPIVAK: Well with respect to - the Minister of Consumer Affairs has mentioned that 21.1(c) is to be changed, and I think I have some idea of what they're going to do there. I think I'll leave that until we have some announcement. But dealing with 22.1(3) --(Interjection)-- You're going to change that as well. Well it's dealing with the question of being able to imply that a debtor is required to obtain insurance, is that correct? Otherwise I'll ask questions directly. --(Interjection)-- Well the point that he made, and there's no point in going over it if you're prepared to accept the position that in 21.1(3) where it says, or in any way suggest . . .

MR. TURNBULL: 22.1(3) you mean.

MR. SPIVAK: 22.1(3), I'm sorry, "or in any way suggest or imply that the debtor is required to obtain insurance" - if that's what you're going to be changing as a result of the position that he placed, then that's fine.

MR. CHAIRMAN: Would you come forward and use the microphone, Mr. McKenzie, please.

MR. MCKENZIE: Mr. Chairman, I've just one or two brief questions to ask the honourable gentleman in his comments and I wonder if he understands under the insurance laws of this province, the public insurance, this government insurance, that they operate outside the jurisdiction of the Superintendent of Insurance of this province which the other insurance companies have to abide by?

MR. BRAY: No, I was not aware of that.

MR. MCKENZIE: Do you also understand that there's a new bill on our desks whereby the government will go into, and I'll list the various insurances: accident, aircraft, boiler, fire, guarantee, inland, livestock, marine, plate glass, property glass, property damage, public liability, theft and weather, without the benefit of the Superintendent of Insurance office.

MR. BRAY: No, I did not know, Sir. But may I in response to the question, Mr. Chairman . . .

MR. CHAIRMAN: Order please. Mr. Paulley.

MR. PAULLEY: On a point of order; that is not what is presumed to be done or is contemplated, and I would suggest that we only deal with the Act we have before us. Whether or not the delegation is knowledgeable what's on the grist mill is inconsequential as far as I'm concerned.

MR. BRAY: Mr. Chairman, I respect the point being made, the points being made. We did try to find out the intent of the bill and studied the News Service of the Manitoba Government release, dated May 30, 1974; we did try to find out what was involved. I understand that explanatory notes have been deleted, and perhaps that left us a little bit in the void, so we used whatever sources we might. I'd like to read to you the paragraph on the top of Page 2. "The Superintendents of Insurance of the Provinces of Canada pointed out" --(Interjection)-- No, this is the Provinces of Canada - "pointed out . . .

MR. PAULLEY: Page 2 of what, Mr. Chairman?

MR. BRAY: This is Page 2 of the release dated May 30, 1974, of the Manitoba Government, entitled News Service.

A MEMBER: That has nothing to do with the Act before us.

MR. BRAY: Except it's an explanatory note with respect to, Consumer Bill would cover mobile homes. It speaks to Bill 71, Sir.

MR. CHAIRMAN: Continue, Mr. Bray.

MR. BRAY: Thank you. I'll read this paragraph, it's brief. "The Superintendents of Insurance of the Provinces of Canada pointed out in a 1973 report that frequently the premiums being charged for credit, health, and accident insurance were considered in excess of premiums for similar insurance available to individual insurance buyers. The higher premiums enabled the insurance companies to pay substantial rebates to the seller who prepared the conditional sales contract, also some companies have inadequate provision for premium rebates to insured buyers when they prepay their conditional sales contracts."

Sir, with respect, in trying to find foundation for this report which pointed out the excesses, there is not any foundation for an explicit remark with respect to premiums being charged on a group basis being in excess of those that would be charged to individual insurance buyers. And further, any reference or allusion thereto that could be construed as implying that such is the case, refers to loan transactions only and not with respect to conditional sales contracts, as is referred to in the two other sentences contained within that paragraph.

MR. CHAIRMAN: Mr. Paulley.

MR. PAULLEY: Again, Mr. Chairman, it's not contained within this Act. I think, Mr. Chairman, in accordance with the general rules of procedure the delegation should deal with the contents of this Act. If my friend from Toronto, I believe that's where he's from . . .

MR. BRAY: Yes, Sir, thank you.

MR. PAULLEY: . . . desires to make representation on The Insurance Act, then he should await in our great city - and I trust he would enjoy himself here - he should await until such time as that bill is given second reading, and is before this committee.

MR. CHAIRMAN: Mr. Spivak.

MR. SPIVAK: Well, Mr. Chairman, as it happens I think this is contained within this Act, contained within the section.

MR. PAULLEY: Where?

MR. SPIVAK: Well if the Honourable Minister of Labour will allow me just to continue. First, reference is made to the fact that their terms, conditions, and costs of the policy have been approved by the Superintendent of Insurance of Manitoba. Then there's reference to the fact of the premiums being limited to five percent with expenses, that's how it now stands. The point that has to be mentioned, Mr. Chairman, is that the Auto Insurance Corporation does not operate, is not under the supervision of the Superintendent of Insurance, and it may very well be, Mr. Speaker, that with respect to financing that's required for or, excuse me, insurance that's required in connection with certain contracts, as an example in fire, that Autopac may very well, if the Act does proceed, provided it will not come under the Superintendent of Insurance - and it may, but at the present time it does not - and therefore the Honourable Member from Roblin's point that these various conditions for insurance may very well become part of Autopac, would lead the question to be raised in this committee at least, and the question to be asked . . .

A MEMBER: On this bill?

MR. SPIVAK: Yes, on this bill, the question to be raised on this bill as to whether Autopac now must be included under the Superintendent of Insurance of Manitoba to be able to qualify as an insurer for a credit grantor in the transactions that we've talked about, are intended to be covered by this.

MR. PAULLEY: But, Mr. Chairman, with all due respect to the Leader of the Opposition, the point that I am raising, I believe, is a valid one. At the present time it is not contained within this Act. If during the process of the other bill that is before the Assembly, it is deemed advisable to bring the new provisions, or the extension if I may use that terminology, under the Autopac and the insurance under the Superintendent of Insurance, then at that particular time we can consider, but under the bill that we have before us this evening it is not within the ambit of this particular bill. And I say in all due respect to the Leader of the Opposition, to the delegation from Toronto, that that is the time after the passing for second reading of the bill introduced by my colleague responsible for Autopac, we should consider as to whether or not these news ventures - to use that term very broadly - will or will not be under the general supervision of the Superintendent of Insurance in the Province of Manitoba. I say, Mr. Chairman, they are not contained within this Act.

MR. CHAIRMAN: Mr. Turnbull.

MR. TURNBULL: Mr. Chairman, on that point of order, I would very much like to hear

(MR. TURNBULL cont'd) . . . the representations that are to be made - Mr. Bray has made his point on this; I think he understands that 22.1(3) in fact excludes certain categories, certainly insurance companies . . .

MR. BRAY: Would it exclude . . .

MR. TURNBULL: Well it says "where a debtor is not required by law to obtain".

MR. BRAY: I'm concerned about a mobile home contract which will come in under The Consumer Protection Act now, where it will be required by the credit grantor that insurance be obtained, such as referred to in this release.

MR. TURNBULL: But I think the Leader of the Opposition - I don't see him at the moment - I think his point is that certain considerations should be now entertained to go in Bill 71, valid points, and I would prefer to hear the representation from other members, other people that have come here. I think we can carry on our debates later.

MR. BRAY: Mr. Chairman, for clarity. I am speaking not about a motorized vehicle.

MR. TURNBULL: That's right.

MR. BRAY: That's clear, is it?

MR. TURNBULL: Yes.

MR. CHAIRMAN: Mr. Graham.

MR. GRAHAM: Mr. Chairman, on the point of order, I think it's very apparent to members of this committee that either the government has been putting out false information in their Information Service, and whether it's false or not so applies to any bill that comes before this committee. And the information that was released by the witness here, Mr. Bray, indicates that there is certain inconsistencies at least between the reports that came out from the government News Service and the clauses that are in this bill and under consideration at the present time. So I would hope that either the News Service be informed of it and publish a correct form of information, or I would suggest that maybe that information service cease to exist if they're continuing to publish incorrect information.

MR. CHAIRMAN: Order please. Are there any further questions of Mr. Bray.

MR. PAULLEY: No.

MR. CHAIRMAN: Questions on Bill 71.

MR. McKENZIE: On the same point of order, Mr. Chairman, I can refer . . .

MR. CHAIRMAN: There was no point of order, Mr. McKenzie.

MR. McKENZIE: Well may I raise a point of order, Mr. Chairman.

MR. CHAIRMAN: Mr. McKenzie to a point of order.

MR. McKENZIE: . . . on the inconsistency of the information service where a certain meeting was supposed to be held by the Minister of Industry and Commerce, and a meeting was never held and . . .

MR. PAULLEY: That's not a point of order, Mr. Chairman.

MR. CHAIRMAN: Order please, that was not a point of order. Mr. Pawley.

MR. PAWLEY: Mr. Chairman, I don't see at all where the point of order is germane to the bill that we're dealing with, and I think that either we should ask any further questions of Mr. Bray or proceed on to the next submission.

MR. CHAIRMAN: Are there any further questions to Mr. Bray. Hearing none, thank you, Mr. Bray.

Mr. Haddad, please.

MR. HADDAD: Mr. Chairman, my name is Sherrold Haddad. I am the President of the Manitoba Motor Dealers Association, and our association represents approximately 65 percent of the franchise automobile dealers in this province, and these dealers sell about 75 percent of all the motor vehicles sold in the province.

Just as a point I would like to remind you that motor vehicle sales in this country account for about one-sixth of all the retail trade in Canada, and this is not including the many after-market outlets that supply tires, rebuilt parts, glass, mechanical and body repairs. This is far more than any single category in our country, including food, and it's obvious that the automobile industry is a very dynamic part of our country.

Now we feel it is necessary to appear here to discuss Bill 71 as certain aspects of it - and please don't take offence at my language - are completely unacceptable if not detrimental to our industry. We don't wish to lay specific blame on any individuals but perhaps "A Personal Point of View" that was expressed by Douglas Fisher, who was a former Member of Parliament, and I've forgotten whether he was a Conservative or a Liberal . . .

MR. BILTON: He wasn't a Conservative.

MR. HADDAD: I see. But in any event --(Interjection)-- Yes, there are, Mr. Spivak, should I give them out? Mr. Chairman, I do have copies of the brief. If you gentlemen thought you had been in speed-up in the last little while, you should have seen my secretary this afternoon preparing these, and you'll excuse, please, any mistakes that she might have made.

A MEMBER: Not you.

MR. HADDAD: Not me. No I don't make mistakes, that's why I employ people, Mr. Paulley. Okay.

Douglas Fisher states, and I'm sure that a lot of the members here today would have read this with great interest, "While government as a bureaucracy, and business as a corporate community, have grown and expanded, the parliamentary system has, comparatively speaking, remained very much as it has been for generations. Few businessmen are either in parliament" - with the exception of Mr. Banman - "or linked closely to it through individual MPs or parties. Parliament insists on its right to priority on information, and objects strongly to the idea that there should be informal and private exchanges of confidences and information between government officials and the private sector. Now the fantastic growth of technology has been reflected in both the business community and the bureaucracy of government. In recent years there has been more appreciation in executive suites of how deeply intertwined the public and private sectors are, and will continue to be, but this only deepens the dissatisfaction that there are so few clear channels or means for ready exchange and action."

Looking at Bill 71, is a perfect example of lack of communication between government bureaucracy, government and the business sector. Now when this bill was first presented to the Legislature very little explanation was given. When the Minister closed the debate, very little additional light was thrown on this bill. Some explanation of the intent of the bill was given in the "News Release" May 30th, 1974. The net result is that the business community is very apprehensive as to the intent of this government in proposing to pass some sections of this bill - the some sections is not on your sheet. --(Interjection)-- Okay that's all right, Mr. Green, we both have our points of view. Thank goodness.

MR. GREEN: Who started it?

MR. CHAIRMAN: Order please.

MR. HADDAD: Okay. Gentlemen I am going to pass along because Mr. Bray did cover some sections and I don't want to belabour them.

Now in 22(1), if the purpose of 22(1) is to force the automobile dealers out of the credit insurance business we would suggest respectfully that the legislation be written that way. --(Interjection)-- In times of rising costs that have been unparalleled in our history, it is ludicrous to suggest that anyone can operate or provide any type of service on a five percent margin. It is interesting to note that the three levels of government in this country have a hard time planning their objectives, and they're using approximately 44 percent of the gross national product.

A MEMBER: Hear. Hear.

MR. CHAIRMAN: Order please.

MR. HADDAD: It is obvious that the person, or persons, who suggested this legislation are looking at it as a one-way street - that is to say, that the amount of reserve that is set up for the automobile, appliance, or heavy equipment dealer is all incoming. And I think all you gentlemen know that there's a whole bunch of costs involved; Mr. Bray just covered a few of them. The situation that exists between most dealers and their finance sources is relatively involved and goes beyond the mere scope of providing retail financing to their customers.

Now the finance institution provides low-cost financing to enable us to stock thousands and thousands of dollars worth of automobiles in inventory so that our customers can rapidly choose whatever they like. This is low-cost money that they put out. The major dealers must provide a full time employee, and sometimes two, in order to properly service those people wanting credit. Our businesses are open for selling on the basis of approximately 13 hours a day, and we have to have somebody there at all times to look after these people.

A MEMBER: Including Sunday.

MR. HADDAD: I hope not, Sir. As a matter of fact we couldn't get the Attorney-General, I should say the former Attorney-General, to even pass on that. We sent him a number of letters.

(MR. HADDAD cont'd)

The dealership must guarantee to the finance company the proper performance of the contract by his customer. If the customer fails to pay, the dealer is obligated to reimburse the finance company for the net payout on the account. Now there are people within your department, Mr. Turnbull, who are well aware that losses on repossessions can easily average six to seven hundred dollars. I made a presentation here a number of years ago, I think when The Consumer Protection Act was coming in, and at that time one of the honourable members suggested that we made just a potfull of money by repossessing cars and reselling them. I offered to sell them all at our payout figures; we'd be very happy to get rid of the problem. Now these losses must be absorbed by us. Under our present consumer protection legislation we have no recourse to the customer. We take the loss, and that is it. Now business dictates that such exposure, and in the case again of larger dealers this exposure exceeds a million dollars very easily in terms of contingent liabilities. They have to be protected with an adequate reserve fund.

At the present time we prepare a bill of sale and it's in three sections, one for our records, one for the customer, and one to be attached to the finance copy. The conditional sales contract, if it is financed, is completed in four copies showing in detail the total transaction, the amount financed, the cost of borrowing in dollars and cents, and the cost of borrowing as a percent. We must then complete a safety certificate, or if the automobile is unsafe a non-safe certificate, which must be certified by a mechanic. We then complete in triplicate tax forms and the sale of vehicles required to be registered under The Highway Traffic Act. Besides these items we must discuss transferring of plates and insurance, terms of contracts, warranties, etc.

A MEMBER: All for nothing.

MR. HADDAD: Well we hope not. We've managed to stay in business, but in any event, besides these - pardon me, I'm off the point here. My point here is it is an onerous task now to sell an automobile. Each year sees us with more and more restrictions and paperwork. The sections referred to in the Act would be an actuarial nightmare. As a matter of fact quite frankly, Mr. Turnbull, we could not comply with the Act because we don't know - there are various rates to be considered where we are trying to ascertain the amount of risk and therefore the rate the customer should pay. And there is also the fact that a sliding scale exists in terms of reserve, and therefore the ultimate reserve cannot be computed until the end of our fiscal year and that is still a gross figure only. In addition there is no reserve credited to our account until the contract is matured for over three months. If the contract is paid out, we get nothing.

We do not feel that we are really giving you any information today, and we feel that you have this information, and we're wondering quite frankly if we're not approaching 1984 ten years too soon.

We further consider that this type of legislation will prompt other bureaucratic legislation about the fact that we should probably post the wholesale prices of our cars, and our parts, and that all retailers should do the same at all levels.

A MEMBER: The government will probably take it over.

MR. HADDAD: I hope they take it over in a bad year. --(Interjection)-- Hear, hear. Gentlemen, the automobile industry . . .

MR. CHAIRMAN: Order please. Order please. Excuse me, Mr. Haddad. May I ask all members of the Committee to please refrain from these interjections and let Mr. Haddad proceed with his presentation. Proceed please.

MR. HADDAD: The automobile industry - and I think you will agree - I don't know of a more maligned industry. We are everybody's favourite kicking boy, and you know we're getting a little bit sick and tired of it, and it's about time, and I feel quite strongly about this, that business stood up and said something. Now our industry, and the automobile dealers, have traditionally been the backbone of the free enterprise system, and with all of the free enterprise system faults, it has managed to bring the North American community the highest standards of living and probably the lowest levels of unemployment in the history of man.

Now in conclusion, there has not been in our memory a more insidious - I didn't use nefarious now - insidious piece of legislation than what this government is proposing. We cannot impress upon you how strongly we feel about this matter and we trust that good judgment will prevail, and that these clauses will be withdrawn: 25.1(1), 25.1(2) and 25.1(3). We find

(MR. HADDAD cont'd) . . . . it very difficult normally in reading any piece of legislation, even though we don't agree with it we can sit back and say, yes we understand why the government is taking this approach, it's reasonably obvious that there have been some abuses in a certain sector, and we might not like the interjection but we can appreciate it -- We have been at an absolute loss to understand where you're going with this piece of legislation. The customer - and we can . . .

MR. CHAIRMAN: Order please.

MR. TURNBULL: Twenty-five or the whole bill?

MR. HADDAD: No, just the ones that I mentioned, Mr. Turnbull. The customer really and truly is interested in only one thing, how much does it cost me? We tell him how much it costs him in dollars; we tell him how much it costs him in percent. As a matter of fact GMAC, a very well known and highly reputable sales finance company, can finance customers today at lower rates than the bank, and still give the dealer a portion of the reserve. Now nobody criticizes the bank at 13 1/2 or 14 percent if they pay their president \$200,000 a year, because the bank is doing what they want to do with their money. We find that an interjection into a private transaction between two business people is abhorrent. We really feel quite, quite strongly about that particular fact and we don't, as I say, know where you're going.

I'd like to thank you for your patience and kind attention. I've probably lost a few friends or acquaintances on this presentation, but in any event I had to get out my thinking, and we trust that we've given you some small insight into the traditions - and it's very traditional - and the practices in our industry. Thank you.

MR. CHAIRMAN: Thank you. Are there any questions of Mr. Haddad? Mr. McKenzie would you come forward to a microphone, please.

MR. McKENZIE: I just have one brief question. I wonder if the honourable member giving his brief can guess what the salary is going to be of the president of the treasury branches?

MR. CHAIRMAN: Question is out of order, Mr. McKenzie.

MR. HADDAD: Maybe Mr. McKenzie has applied for the job. I don't know.

MR. CHAIRMAN: If there are no further questions? Thank you, Mr. Haddad.

. . . . . continued on next page

MR. CHAIRMAN: Mr. Ternette please. Bill 90.

BILL NO. 90

MR. TERNETTE: Mr. Chairman, members of the Committee, let me begin by congratulating the Honourable Attorney-General, Howard Pawley, in his attempts to overhaul the mothballs in which the Human Rights Commission has found itself, and to add some teeth to it.

The Commission has become a laughing stock in the past year since its defeat in the court re the McGavin Toastmaster case where it became obvious that the Commission was both judge and jury. The inability of the Commission to function at all became more and more obvious, and this sense of frustration piled on and on and led indirectly to the firing of the Executive Director, Trevor Berry, as well as the resignation of several staff members who saw the futility of the Commission. Of course this ineffectiveness could not continue as a drainage of taxpayers' money, and the NDP Convention clearly raised the issue of ineffectiveness of the Commission on the floor, and the Honourable Howard Pawley stood up and explained that he definitely would be introducing legislation to put teeth into the Commission. This has been ably done.

Let me remind you of the resolution of the Human Rights Commission that was passed at the 1973 NDP Convention. It states,

"WHEREAS it is vital to our society that human rights be fully protected; and

WHEREAS the Manitoba Human Rights Act does not in its present state provide adequate protection to human rights;

BE IT RESOLVED that The Human Rights Act be amended to incorporate the following concerns:

(a) That the Human Rights Commission be made as independent of the Government as possible, including being given the authority to independently issue orders under the Act; that separate boards of inquiry be appointed to hold public hearings when necessary;

(b) That discrimination be prevented as well on the basis of marital status, age, political affiliation, and physical appearance, or characteristics;

(c) That discrimination on the basis of sex be prevented in all categories;

(d) That discrimination be prevented in the professional organization and in the sale or ownership of property in addition to those areas already covered;

(e) That agencies and businesses holding government contracts be required to establish affirmative action programs which could identify goals and guidelines to carry out the intent of The Human Rights Act, and that they implement those as a condition of that contract;

(f) That the penalties under the Act be increased; and

(g) BE IT FURTHER RESOLVED that we strongly urge that the Commission be provided with the financial and staff resources to enable it to carry out its mandate, including an expanded public education program.

We clearly see that although several points, as demanded, are still left out of the amended Human Rights Act, progressive steps have been taken to strengthen the Act. We clearly see the separation of being both judge and jury, hopefully allowing more indepth investigation to be carried out so as to enable the board of adjudicators to properly judge the case. Unfortunately it does not go far enough in making the Human Rights Commission more independent of the government, or as the Honourable Leader of the Opposition suggests, making the Commission responsible to the Legislature as a whole.

One can however be glad of the insertion of non-discrimination because of age, marital status and political beliefs. These three areas broaden out the horizons of the work of the Commission and should allow the Commission to investigate cases that have often been referred to the Commission which they could not touch as it was not included in their mandate.

Discrimination because of age has become a substantial factor in our lives, where the old people are looked on as second-class citizens, having been useful to society once but are now useless and therefore excess baggage to be carried by the taxpayer. It is fundamentally important that these beliefs be challenged by all those who are old in effectively demonstrating that old people are wise, knowledgeable and creative, and have something to offer to society as a whole.

Marital status has also led to great difficulties of women who have been single and then gotten married and found themselves dismissed from their jobs because of their status. Businesses usually are reticent in hiring married women, or keeping women who are getting married, because they are afraid that the women will have children and their loyalties are not to



(MR. TERNETTE cont'd) . . . . the company in the first place but to their husbands. These beliefs have to be challenged, and complaints should be laid by those being so discriminated against so as to clearly indicate that one's ability should not, and cannot, be judged by one's marital status.

The most important legislative amendment to me personally is the one concerned with political beliefs, because this one is so difficult to prove directly. But so many people suffer from such discrimination indirectly that they hide their political affiliation because they are afraid of letting anyone know where their political beliefs are; otherwise they may be fired. With this amendment it will be heartening to see people being able to lead open lives, to talk openly about their politics, without recrimination in their work.

All of these changes are admirable and yet they are still a long way from ensuring that discrimination will stop. As the saying goes, one can stop discrimination but you can't legislate prejudice; and this is the key to the problem. An extensive public education campaign is necessary to be carried out by the Human Rights Commission if it is to succeed in becoming effective, because only through the elimination of prejudice is discrimination going to disappear so that no longer will we need legislation or commissions to protect our rights.

Now in order to put more teeth into the Human Rights Act, let me recommend the following changes in Bill 90:

On Page 4, Section 4 (1) in "Discrimination prohibited in occupancy of commercial unit or housing accommodation", I recommend that in addition to "(b) discriminate against any person with respect to any term or condition of occupancy of any commercial unit or housing accommodation, because of race, nationality, religion, colour, sex, age, ethnic or national origin, or source of income of that person", political beliefs as well as physical appearance, that political beliefs and physical appearance be included in that particular section.

There's a slight discrepancy between Section 4 (1) and Section 5 in "Discrimination prohibited in the purchase of property," in the sense that "because of race, nationality, religion, colour, sex, age, marital status, ethnic or national origin of that person." However source of income is not listed. It's listed in terms of buying commercial property, but it's not listed in terms of purchase of regular property. So I would recommend that source of income be included in that section as well as political beliefs and physical appearance. And physical appearance, I mean that some people can be very ugly looking, and some people can, and have, discriminated against people who are ugly looking in giving them places to live.

Further on on point 6, "Discrimination prohibited in employment." Again in this case I would add - we have political beliefs in this particular case, we would add physical appearance in this particular section because of race, nationality, religion, colour, sex, age, marital status, ethnic or national origin, and physical appearance, or political beliefs, of that person, and I would recommend a further section which would be point (d) on Section . . . which would include the NDP's original aspect, which that agencies and businesses holding government contacts be required to establish affirmative action programs which could identify goals and guidelines to carry out the intent of the Human Rights Act and that they implement those as a condition of that contract. And that would be point (d) under section 6 (1).

Further on under government employment, the bottom of page, 6 (5) Employment Agencies, again under the discrimination aspect, political beliefs and physical appearance should be added.

Now we come to the Part II the Administration aspects of the Act, and under this case I recommend that Section 10 (3) under Members, that the members of the Commission shall be appointed by a committee of the Legislature, would be my recommendation. Under Responsibility, 11, that the Commission should be responsible to the Legislature as a whole for the administration of this Act would be my recommendation.

Under Function, point 13, I would recommend again that the first statement put forward the principle that every person is free and equal in dignity and rights without regard to race, creed, religion, sex, colour, nationality, age, marital status, ancestry, or place of origin, including political beliefs as well as the physical appearance be included.

Then under the last section that I recommend, in order to tighten up this Act, and again I would like to comment that until we have eliminated prejudices, and until we have gotten it, we need legislation. I personally do not believe in any form of legislation to protect rights, but in this society as long as we have people who are going to discriminate and going to get away with it, we must have an Act to protect those rights. Hopefully some day we will have the kind

(MR. TERNETTE cont'd) . . . . of society in which we will be able to have no legislation and everybody will be sweet.

Under "Offences and Penalties", 33 (1), I feel that the amounts for a person or a group that is to be fined are very minimal, because it so often happens that in many cases of where a person cheats on his income tax or anything else, if he gets the minimum fine he will continue on cheating. I feel that the fines that are given will allow people to say: "Well I'm going to pay so much on the dollars and I will continue to discriminate." And even if they go to court two or three times in two or three years, that's \$300.00. It is not a strong enough fine in order to state very clearly to those persons: "If you're going to discriminate you've got to pay for it." And so my recommendation is that under Section (d) of an individual to a fine of not less than \$500.00 and not more than \$2,000; and on an (e) point, of a corporation, trade union, employers' organization, employment agency or occupational association, to a fine of not less than \$2,000 and not more than \$10,000 would be my recommendation in stiffening those fines in order to make the Human Rights Act more effective.

I thank you very much for being allowed to speak, and hopefully you will take my suggestions into consideration.

MR. CHAIRMAN: Thank you Mr. Ternette. Are there any questions? Mr. Bilton,

MR. BILTON: Yes, Mr. Chairman. I wonder if I could ask Mr. Ternette - what your occupation is?

MR. TERNETTE: I'm a Community Development Worker of Neighbourhood Service Centres - and I've been concerned in my whole life substantially of human rights and problems, both in my own political situations which I have been discriminated against because of my own personal political beliefs, as well as other ethnic and oppressed minority groups in which I have been working with. I work with poor people, Indian groups, minority groups, Portugese - all the oppressed minority groups in this society.

MR. BILTON: Who do you think we're working for? But in the meantime . . .

MR. TERNETTE: That's a good question. (Laughter)

MR. BILTON: Mr. Chairman, I hesitate to ask this question, but I would like to ask it with your permission, through you, Sir; who pays your salary?

MR. TERNETTE: I don't know whether that's particularly . . . but I'm quite prepared to. The agency is . . .

MR. CHAIRMAN: You may answer it or not answer it; it's up to you.

MR. TERNETTE: I will answer it. I have nothing to hide. I've never hidden anything. Most people have always said that, you know, us who are Marxists and so, all are behind the screens and everything else. I've been very open; everybody knows what my political beliefs are and who I am. I work for Neighbourhood Services, which is a private social service agency funded by the United Way. If you'd like to know, the United Way pays my salary.

MR. BILTON: Thank you, Mr. Chairman.--(Interjection)--

MR. TERNETTE: No, I do not believe in the United Way and I do not contribute to the United Way, if you'd like to know that.

MR. CHAIRMAN: Order please. Mr. Spivak.

MR. SPIVAK: I wonder, if I may, because I had the opportunity of talking to Mr. Ternette just before he came in for his presentation - and I'd like to pose this question; I think it's fairly important in relation to this Act. The question of political beliefs or discrimination for political beliefs has been mentioned and you've indicated you wanted it included in other sections that were not suggested to be included by the Attorney-General. But I think you've admitted that the determination of whether one has been discriminated on political beliefs would be a very difficult thing. Nevertheless, if a complaint was made, at least the Commission would investigate it, and that would have some effect - and it may very well uncover a situation.

Now within this Act - and you've had opportunity to read it - there is a distinction between the investigation by the Commission and an investigation by a board of adjudication or a board of inquiry. Now I wonder whether - recognizing the problems that you've just indicated with respect to the issue of political beliefs - whether you would be prepared to consider that the undertakings by the Commission in its investigation entirely - which would go maybe from a stage just of investigation by an officer, then ultimately by the commission itself - should be in camera, while a board of adjudication inquiry, which would be the next stage, should be essentially an open court or a public hearing. Do you see the distinction between the two?

MR. TERNETTE: I have to admit that I haven't given as great a thought on that particular matter, except that on principle I don't believe anything should be in camera. Basically I believe everything should be in the open. There may be certain aspects of investigations that would have to be taken in camera on certain points, because, as I admit, political beliefs is a very difficult one to prove. Substantially people will use arguments that are not based on, you know, that they are being discriminated; they will pull somebody off a job if they find out that somebody belongs to a certain political party, but they will use something else as the reason for it. But I'm not sure. I really honestly have to admit that I can't give you a straight answer on that. But all I'm saying is, it is important that people are given the opportunity to lay complaints which they were not able to do before. I once laid at least three complaints to the Human Rights Commission on several aspects where I thought I was personally being discriminated on, and I felt that I had justification laying it, and the Human Rights Commission answered back to me that because political beliefs is not in their mandate they could not even attempt to even look into the case. I think there are substantially a lot of other people who are involved in union organizing, in various other political activities, both from the left and from the right, that are involved in situations where they get fired for political reasons but those reasons do not come out clear and they have no basis on which they can lay a complaint on. And it's important that they at least be given the opportunity to lay that complaint so that an investigator can find out certain causes and may be able to prove some point, that there is some political implications, and then take a case to court. I mean, that happened with me and, you know, I don't want to go back to my own case, but in fact because I did lay a complaint to the Police Commission, we did have an investigation on my particular case and certain facts did come out which were important at that time. This opportunity as given to me through the police action to be taken, has now been given to many other people who have complaints due to political reasons, and those people ought to be given the opportunity to lay complaints. I'm not saying that they're all justified, and don't in any way misinterpret me. I couldn't guarantee that everybody who says that they are being discriminated because of political beliefs are in fact being discriminated because of political beliefs, but at least they've got to be given a chance to be investigated on that basis. So if there is some truth to that matter, that person can be shown that that person is discriminating on the basis of political beliefs and be given a heavy fine so that he does not do that with other people coming into his firm, business or whatever else.

MR. CHAIRMAN: Mr. McKenzie.

MR. McKENZIE: Well, Mr. Ternette, I congratulate you coming here before the Committee tonight and bringing us the benefit of your wisdom. Some of it I find very interesting, and I support the concept basically where you suggest that some level on the human rights legislation, that the committee should be dealt with by not only the Lieutenant-Governor-in-Council but the Opposition as well, and concepts along line.

MR. TERNETTE: Yes. May I answer you? The reason why I say I may be different from other people - the reason as I was saying I don't believe human rights is the prerogative of either the NDP, I don't believe it's the prerogative of just the Conservatives, I don't think it's the prerogative of the Liberals - it's the prerogative of all, everybody, all of us who are citizens of this country, to guarantee everybody else that we have those rights that we deserve. And that's why I believe in that.

MR. McKENZIE: I support that, and I thank you for bringing that point to the Committee - and the other one, the Committee of the Whole. But you were likely here in your chair when we were dealing with the consumer matter a moment ago - would you feel it's fair that some place in the legislation that we should treat the female sex equally with the male sex in the credit granting agencies?

MR. TERNETTE: Yes, absolutely. I do not believe in any sex discrimination in whatever field.

MR. McKENZIE: Well, would you agree that that should be included in this?

MR. TERNETTE: Yes, I'm sorry. I didn't follow it exactly. I'm not as informed about that particular thing, but if that's not included in the Consumer Act, I would definitely say that should be included.

MR. McKENZIE: Thank you.

MR. CHAIRMAN: Thank you. Mr. Sherman.

MR. SHERMAN: Thank you, Mr. Chairman. Mr. Ternette, you began your remarks by saying that you were strongly in support of this legislation and of the Attorney-General's action,

(MR. SHERMAN cont'd) . . . . because you felt that for the first time that the Human Rights Commission would have some teeth with which to act and enforce its orders. You then went on though to make several suggestions, propose several amendments, which to my mind would give the Human Rights Commission and this legislation some teeth. And without those suggestions and amendments you've made, I find it difficult to understand your opening proposition that the Commission now has some teeth to it.

MR. TERNETTE: Let me again point out, let us look at the progress of the situation, and I'm not trying to modify anything. I'm saying what the Commission is at the present time is an ineffective organization. We have had many staff people quit because they have found it unable to deal with anything effectively. Several staff people have quit because they have found that they have been able to do nothing, really absolutely nothing. Now for the first time we see some legislation that puts a little more teeth - and again, you know I'm not happy with it, I'm clearly indicating that as far as I'm concerned it's a step towards the right direction, but obviously it's a long way from being where it ought to be. All I'm saying is, for once maybe in my lifetime I'm giving the Government some credit instead of attacking them all the time, and suggesting that they have moved a step forward instead of a step backward. Because in most cases in this government right now we seem to be winding up moving a step backward instead of a step forward.

A MEMBER: I'll tell you, I appreciate that.

MR. GREEN: We had better find out what he means by forward and backward.

MR. SHERMAN: I'm not going to examine those two definitions, Mr. Chairman, nor am I going to examine your inclination, Mr. Turnette, to give the Government some credit in this area. But I would like to ask one other question, and that is based on your dual opening proposition, that the legislation now makes it impossible for the Commission to operate as both judge and jury - and I don't read the legislation quite that way. I'm not clear on what you mean by rendering that impossible. It seems to me that unless a dispute or unless a question or an inquiry went to the Board of Adjudication, the Commission would still be functioning as a judge and jury. If the complaint goes to the Board of Adjudication, it then is no longer functioning as judge and jury, but if it can be settled by the Commission, the Commission it seems to me is functioning as judge and jury. Not that I have any particular objection to that, but you seem to have some objection to it.

MR. TERNETTE: Well, the only reason I have objections is the way the courts have ruled on this, particularly a couple of cases where in fact the Commission has been ruled - that in fact it has been doing a duality although it should not. And my impression - I may be wrong, and Mr. Pawley can probably explain it better than I can - is that this adjudication was to separate to some extent the difference of being a judge and jury, so that in fact the kind of qualms that arose in a court case where a legitimate discrimination was thrown out, not because of discrimination but because of a technicality of the legislation, that that be avoided.

MR. SHERMAN: Okay. I see, I see. You're saying that if the Commission cannot settle a complaint and it goes to adjudication, then there no longer is a duality of judge and jury as was in the . . . but where the Commission is ruling on a question, it still really is the judge and jury.

MR. TERNETTE: If it's acceptable to both sides, then I wouldn't hesitate to argue with that point.

MR. SHERMAN: Okay. Thank you.

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

MR. PAWLEY: I would ask Mr. Ternette, if he has a copy of his brief, to leave it with us.

MR. TERNETTE: Part of the brief.

MR. PAWLEY: I was somewhat intrigued by reference to physical appearance. I just wonder what basically you had in mind there by suggesting the inclusion . . .

MR. TERNETTE: It was basically part of the NDP resolution at the convention, if you'll remember, and people were complaining that there are people who look ugly. I mean, it's something like protecting the ugly. We have the Gay Movement, we have all kinds of movements, but we now have people who have legitimately - I've heard of cases in my work that because of their physical appearance, like, you know, boils and ugly looks and faces have been told, no, they can't. Especially secretaries, for example. I mean, we not only have sexual discrimination there, but substantially a lot of businesses will look for women who are

(MR. TERNETTE cont'd) . . . . attractive, not if it is an efficient secretary who can type 60 words a minute but is physically ugly looking. Should she be discriminated against in favour of a good looking woman? This is the key question, in the sense of it should be judged on capability, not on your appearance. And yet at this time we still have a lot of discrimination based on the kind of appearance that you have. --(Interjection)--I don't think I'm that ugly.

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

MR. TERNETTE: Thank you.

MR. CHAIRMAN: Mr. Kent, please.

BILL NO. 71

MR. KENT: Thank you, Mr. Chairman. As I explained at the start, I'm the Secretary of the Canadian Life Insurance Association representing 130 life insurance companies. We had a couple of remarks to make with respect to Bill No. 71. I have spoken to the Director of the Bureau and have been assured that the points we wish to raise have been taken care of. I thank you for allowing me to speak.

MR. CHAIRMAN: Thank you, Mr. Kent. Dr. Penner, please.

BILL NO. 86

DR. PENNER: Mr. Chairman, gentlemen. I am here to speak in favour of Section 186.4 of Bill 86, an amendment to the Highway Traffic Act, which would make it mandatory to wear helmets while operating or riding a motorcycle.

I am Chairman of the Manitoba Medical Association Committee, which is concerned with medical emergency services. Among other things, this Committee is responsible to study accidents, recommend on their preventions and the treatment of injuries which are sustained in accidents. An examination of the studies on the value of helmets to reduce severity of injuries and death leads us to the inescapable conclusion that helmets do indeed reduce the severity of injuries and death.

Conversely, we believe there is no good evidence to show that the use of properly constructed helmets, and I stress properly constructed helmets - helmets which are not properly constructed which reduce vision, which are not strong enough and which impair hearing are not the kind of helmet which we would sponsor - that we do not suggest that helmets which are properly constructed will result in increased injuries or indeed in death. There have been suggestions made that the use of helmets has resulted in the increase of certain types of injuries, and this indeed may be true, but the alternative is that if you are protected against a lethal injury to your head and sustained another type of injury which was compatible with life or recovery, then perhaps it's not a bad trade-off.

We recognize that the use of helmets will not prevent all injuries or deaths, but if they prevent only a few injuries or indeed a few deaths, then I think they're justified. In my role as pathologist, the doctor who examines the unfortunate victims of fatal accidents to determine the extent of injuries and the cause of death, as part of this examination I can never escape the asking of myself in each motorcycle death in which a helmet has not been used, "Would the use of a helmet have resulted in a prevention of this tragedy?" And in some cases, I could not escape the conclusion that they indeed would have.

We recognize that many people hold different viewpoints, and that people resist certain restrictions of their freedom of choice of lifestyle. However, gentlemen, I suggest that if you consider it your responsibility to reduce the epidemic of injuries and deaths on our highways, then this section of the Criminal Code should be passed at this session. If we in any small way reduce the number of severe injuries or prevent a single death, then it has been worthwhile. Thank you.

MR. CHAIRMAN: Thank you. Are there any questions? Mr. Spivak.

MR. SPIVAK: Dr. Penner, this is not meant as a facetious question, but in order to make a point I have to put this to you. Do you believe, or is it the Manitoba Medical Association's position that cigarette smoking can cause lung cancer?

DR. PENNER: Indeed I hold a very strong viewpoint on that. Indeed it does.

MR. SPIVAK: Do you believe there should be legislation banning cigarettes?

DR. PENNER: I personally would like that idealistic state to be achieved. It's like banning alcohol; I don't think it's achievable and therefore I wouldn't vote for it, but I certainly think it's very important that every effort be made to convince people that they ought not to

(DR. PENNER cont'd) . . . . smoke. It is not in the interest of their health.

MR. SPIVAK: But on the basis of the medical evidence, is it not in the interest of society that cigarette smoking be banned?

DR. PENNER: Yes.

MR. CHAIRMAN: Mr. Pawley.

MR. PAWLEY: I would like if Mr. Penner could provide us with any information as to whether or not in other jurisdictions in Canada - I understand that most other jurisdictions, provinces, in Canada have banned, or have required, passed legislation requiring the wearing of helmets. Is that correct?

DR. PENNER: I cannot speak for every province. I'm sorry, I don't know. I know that there are some, and of course you people are aware that they are mandatory in a number of the states south of the border, and in Europe in certain states. I can't give you the status in Canada.

MR. PAWLEY: You have access, or do you have before you any statistical material indicating the effectiveness of compulsory helmet wearing?

DR. PENNER: Yes I have a considerable amount of information on this. I thought that the hour being late, and I'm sure that you gentlemen have been subjected to a lot of statistical data in the past, that I would not provide the details of respect . . .

MR. PAWLEY: I don't know, maybe the Committee would appreciate some information along that line if you have it in your presence, Dr. Penner.

DR. PENNER: Very briefly. A number of studies have indicated that depending on a number of circumstances the amount of injuries and reduction in deaths can amount to as high as 37, 38 or 40 percent in those who wear helmets on the over-all versus those who don't. Now it is not an absolute - there is no helmet constructed that will prevent all fatalities or serious injuries, but we think that it provides sufficient protection and reduces injuries sufficiently to justify its use.

MR. PAWLEY: Could you give me the source of those statistics?

DR. PENNER: Yes I could leave you with a number of reprints which I have right here, Sir. I could leave you with them.

MR. CHAIRMAN: Mr. Marion.

MR. MARION: Dr. Penner, is there any clinical evidence, scientific clinical evidence that would substantiate the case that you hold that helmets can prevent deaths?

DR. PENNER: Yes Sir. Yes Sir.

MR. MARION: And these are scientifically proven.

DR. PENNER: I think so, Sir.

MR. MARION: And you have information substantiating this, Dr. Penner?

DR. PENNER: I have, Sir.

MR. MARION: Could you table that evidence with this Committee?

DR. PENNER: I would be pleased to. I would be pleased to.

MR. MARION: Thank you.

MR. CHAIRMAN: Mr. Jorgenson.

MR. JORGENSEN: Dr. Penner, do you not think that one of the cardinal principles in the drafting of any legislation is that the majority of the people to whom this legislation will apply, the vast majority of them, approve of the legislation and are prepared to go along with it?

DR. PENNER: Ideally that is right, Sir, but I think as you walk down the road of trying to bring about changes there's an aspect of education which is essential. I'm not an authority on the evolution of the regulations in our Traffic Act, but I suggest that a number of the regulations which were drafted which produce definite restrictions on our lifestyle and how we behave, and so on, on the highway, were passed against the common will of the majority of drivers. But based upon evidence and education, then these things become acceptable.

MR. JORGENSEN: Do you not think then that the education and acceptance must come first in advance of the principle of the legislation?

DR. PENNER: I think that on the basis of the .08 alcohol legislation, which was enacted not long ago, that the two should march hand in hand. If we wait for one to happen we'll never get the other done.

MR. CHAIRMAN: Mr. Bostrom.

MR. BOSTROM: Mr. Penner, you mentioned that not all helmets are of a type which would be useful in case of accident in preventing injury. Do you have a type of helmet in mind

(MR. BOSTROM cont'd) . . . . which could be acceptable in your view to preventing injury to the head and at the same time avoiding a neck injury, which seems to be so prevalent in these types of accidents?

DR. PENNER: There is unquestionably a number of - there's a great deal of information available upon the type and construction of helmets which will increase the safety and will at the same time not reduce vision, and not impair hearing, and so on. Now, the question of preventing neck injuries; Unquestionably if you get enough force applied to a well protected head you may not get a head injury but you may sustain a neck injury. But then the alternate is that you would have had your head smashed, and so which do you choose?

MR. CHAIRMAN: Mr. Paulley.

MR. PAULLEY: Dr. Penner, in your involvement with accidents, are you conversant with the regulations under the Workmen's Compensation Act and the Workmen's Compensation Board charged with the responsibility of industrial safety? Are you knowledgeable of the requirement of the wearing of certain safety pieces of equipment for employees under the Workmen's Compensation Act in order to prevent injuries that may be, or may not be serious?

DR. PENNER: Yes, Sir. I have, I guess, a working knowledge of some of the devices, the hard hats, certain types of boots, and things like this, and I think they're based on good sound evidence which have proven their worthwhileness, and they are really in the same category if you get thrown to the cement violently against your head, or if you have a brick dropped on your head, the net result is about the same, or can be the same.

MR. PAULLEY: Mr. Chairman, just carrying this further, not dealing precisely with helmets, is it not true that insofar as - let's use that phrase "compulsory wearing of safety equipment," that this also deals with welders that they must wear protective eye equipment, and whether or not the individual concerned may feel that he should, or she should, or should not?

DR. PENNER: Yes indeed. Being human beings we often resent these restrictions when they interfere with the way we think we would like to do things, but for the common good of the individual, and as a doctor, I must support them.

MR. CHAIRMAN: Mr. Graham.

MR. GRAHAM: Thank you, Mr. Chairman. I would like to ask Dr. Penner, is he that familiar with the Workmen's Compensation Act on Safety Equipment? Does it insist that when a worker is not on the job that he wear the safety equipment when he's at home?

DR. PENNER: Obviously the Act does not provide that he do this.

MR. GRAHAM: Well if he's in danger of an accident at work, is he not subject to the same type of accident when he's at home?

DR. PENNER: I suggest that the risk at work is greater than the risk, the same type of accident risk at home, on the whole. I think that is why legislation has been passed to cover one and not the other.

MR. GRAHAM: Thank you.

MR. CHAIRMAN: Order please. Mr. F. Johnston.

MR. F. JOHNSTON: Thank you, Mr. Chairman. Dr. Penner, I think we're all aware that you're very famous for your physical exercise yourself with your bicycle that you - your mode of transportation. Do you feel, yourself, that when on the bicycle that you should have a helmet on for your protection, or would you find it uncomfortable, or would it be uncomfortable enough that it might be of some harm to you on a hot day, or something of that nature?

DR. PENNER: I've discussed this already tonight with a person who will be speaking shortly to you. I suggested to him that if and when evidence becomes available that it is to my safety, and that there is a significant increase in the safety to my being, my well-being, by wearing a helmet while biking, I will wear one, and I will promote their wearing.

MR. F. JOHNSTON: Yes, I think I could agree with your thoughts, Doctor.

DR. PENNER: So far that evidence is not yet here.

MR. F. JOHNSTON: But the point still remains that the accidents on motorcycles in many cases are caused by collisions with automobiles, or something on the road that throws them, which in turn may cause head injury. I think - I'm not going to refer to you - I think the same thing could apply to anybody, boys and girls, or anybody riding a bicycle or that type of mode of transportation, and it would seem to me to be something that we have to be very sure whether it would be to the benefit of safety or not, from the point of view of wearing these helmets.

DR. PENNER: I agree with you, Sir, it is important.

MR. CHAIRMAN: Mr. Minaker.

MR. MINAKER: Yes, Mr. Chairman, through you to Dr. Penner. Earlier one of the gentlemen asked a question with regards to Workmen's Compensation Act, and wouldn't you agree that one of the reasons that safety equipment is mandatory on certain projects is not only that it's to safeguard the individual, but also any other person who happens to be working with an individual such that by failure to wear a helmet that he may result in getting injured, but also he in fact might in turn, because he's operating equipment or machinery with other people in the vicinity, cause an accident to injure someone else?

DR. PENNER: Well both factors operate. A great number of the safety devices are for personal safety directly, and they obviously can have a spin-off on somebody else if the person is in a critical position in terms of operating equipment, and so on. So it can apply to both.

MR. MINAKER: Now, Mr. Chairman, again through you. Then, Dr. Penner, in the instance of wearing a motorcycle helmet most injuries that would be inflicted on anybody would be on the individual himself. Would you not say that it is very unlikely that any injury would be caused to someone else if the individual didn't wear a helmet?

DR. PENNER: That is correct. Generally speaking that is correct. I suppose there's the odd time when the bicycle spilling, the bike spilling, could harm somebody else as part of the accident, but generally speaking the person at risk are the people on the motorbike.

MR. MINAKER: So then in fact what is being suggested is legislation be passed mandatory to try and have someone save his own injury, or his own life, you might say. Even though there are . . .

DR. PENNER: Just as we have done in many other sections in this Traffic Act.

MR. MINAKER: But I think, Mr. Chairman, in most cases in the Traffic Act where it's mandatory for safety reasons to drive according to the speed and so on, that the legislation is there not only to protect the individual but also someone else who could be consequentially affected by breaking this law.

DR. PENNER: Both. This is right.

MR. MINAKER: It boils down to almost similarly that if smoking is dangerous to the individual and can cause death, then if we follow your premise, that smoking should be outlawed in this country. Is that correct?

DR. PENNER: That would be ideal. Yes, if you wouldn't get a worse substitute.

MR. CHAIRMAN: Mr. Brown.

MR. BROWN: Thank you, Mr. Chairman. I would like to ask Dr. Penner whether he thinks that wearing a helmet would give somebody riding a motorcycle a false sense of security, and that he would take chances not ordinarily taken and thereby causing more accidents than you would have by not wearing helmets?

DR. PENNER: I suppose this is always a possibility. I'd like to think that motorcycle drivers are responsible people concerned about their own welfare and the welfare of people on the street and that they are concerned about increasing their safety. You know, they're human beings though and I suppose from time to time all of us may feel that we can take chances because we have certain protective devices. This would be unfortunate if this happened.

MR. CHAIRMAN: Mr. Turnbull.

MR. TURNBULL: Thank you, Mr. Chairman. Dr. Penner, I did not hear if you mentioned this point or not, on whether your presentation represents a consensus of medical opinion in the province or in the country.

DR. PENNER: This is an official presentation on behalf of the Manitoba Medical Association; it is our adopted policy on this, it is a position on this situation.

MR. TURNBULL: Adopted in convention?

DR. PENNER: Well . . .

MR. TURNBULL: What I'm thinking, you see, is to the extent to which it is a consensus amongst the medical people in the province.

DR. PENNER: In this sense it is that recommendations which are brought up by committees which are charged with the responsibility of these things are endorsed by the committee first, then the executive, and then the membership at large at the annual meetings.

MR. TURNBULL: Thank you.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Mr. Chairman, Dr. Penner. Are there many members of the Manitoba Medical Association that go motorcycling, ride motorcycles for fun, enjoyment?



DR. PENNER: I can only identify one easily; I could even name him. I won't. He wears a motor helmet all the time. A helmet.

MR. SHERMAN: But then there is not a great proportion of the profession that's exposed to the . . .

DR. PENNER: We're all driving bikes now, Mr. Sherman.

MR. SHERMAN: It's not a great proportion of the profession that leaves their Chrysler Imperials at home and rides motor . . . and is exposed to the experience of riding motor bikes then?

DR. PENNER: That is right.

MR. SHERMAN: Do you think that there's - maybe this is an unfair question, Mr. Chairman, but I'd like to ask Dr. Penner, do you think that there's any danger that this kind of step, this kind of mandatory regulation with respect to clothing for motorcyclists could lead to another step, and another step, and another step, in that area so that there, you know, the whole activity is controlled by compulsion and mandatory orders and regulations?

DR. PENNER: Well if we as a group of responsible citizens in society recognize certain dangers, and we try to educate, and indeed legislate certain things which are in the interest of the individual, after all I'm not interested in making a group of people, minority or anybody else, wear a helmet just for the sake of wearing a helmet. I'm convinced that it's in their own interests, for their own benefit. I suppose there's always the possibility that, you know, you get the foot in the door and one thing leads to another, and very shortly we have no freedoms left, but I don't view this in that category, Sir. Perhaps I view it as a doctor who has seen the other side and think it's a tragedy every time I see a seriously injured individual, or, worse than that, I meet him in the morgue. This to me is an inordinate tragedy which I just don't want to have happen.

MR. SHERMAN: Well I'm sure of that, and I certainly sympathize with that viewpoint. I just wondered whether you - obviously you've come to the conclusion that this kind of thing can't be, this kind of safety can't be achieved through education. It can only be . . .

DR. PENNER: Not alone, not alone. And we also recognize that passing a law doesn't mean that it will necessarily be used. You know, laws aren't all immediately completely put into effect and, you know, people will violate the law. I don't expect that if this law is passed that everybody will then and forthwith drive with a helmet, but I'm hopeful that it will achieve some good.

MR. SHERMAN: Well are there things that you would like to have seen in this bill, this particular bill, pertaining to highway safety, and vehicular safety generally, rather than just sort of singling out the motorcycle rider?

DR. PENNER: I would dearly have loved to have seen the use of seat belts.

MR. SHERMAN: Made mandatory?

DR. PENNER: Made mandatory.

MR. SHERMAN: What about the use of helmets for drivers?

DR. PENNER: Indeed we may not be too far from that if we insist on using cars which are inordinately unsafe as they are.

A MEMBER: Right.

MR. SHERMAN: What is your view of the kinds of surveys and studies and conclusions that now seem to be in the process of being developed in certain parts of North America, notably California and New York? I understand there is a concerted move under way in New York to repeal the Motorcycle Helmet law there in the State Legislature. What's your view of those kinds of conclusions, surveys? Do you think that they're not adequate, haven't been based on comprehensive studies?

DR. PENNER: Well I'm not aware that this legislation is pending in New York. I'm unfamiliar with the fact that they are reversing their stand, if indeed they are. So I can't express a view on it, not having had a chance to study it.

MR. CHAIRMAN: Mr. Bostrom.

MR. BOSTROM: Thank you, Mr. Speaker. Mr. Penner, as you probably know, this particular section will be coming up for a free vote, and the thing that has me puzzled in terms of my making a personal decision on the basis of this question is that it's not really clear to me, from the different points of view that I've heard, whether deaths as a result of no helmets exceed the deaths as a result of helmets. The reasons given for more deaths as a result of helmets, that I've heard, are those of impaired vision, impaired hearing, discomfort to the

(MR. BOSTROM cont'd) . . . . rider, broken necks from whiplash, and so on, and statistics have been presented to members of the Legislature which give some basis of comparison before and after legislation involving helmets. Now what in your opinion and in view of your looking at the various statistics, what in your opinion is the true case here in terms of before and after? Are these statistics that are presented comparable? Can you say conclusively that there will be fewer deaths as a result of wearing helmets?

DR. PENNER: Well we are convinced, or we wouldn't be here today, that that indeed is the fact, providing properly designed helmets are used. Now it's impossible, as you will recognize, that if one argues that an accident was caused because of a somewhat restricted vision and, you know, these are intangible factors relating to one's alertness and so on, which indeed you can't measure or really determine; particularly if a man is seriously injured, or he's dead, he really can't be a good witness in this. And I recognize that there are areas of difference of opinion, and there are obviously differences of how you evaluate statistical data. This is the way we have come up with it, and we think, obviously, that we have some right to this conclusion. We recognize that some disagree with us.

MR. CHAIRMAN: Are there any further questions? Mr. Graham.

MR. GRAHAM: Doctor, you have expressed your concern about the safety and the use of helmets. Have you as an association made any representation to the manufacturers of helmets to improve the standards of those helmets?

DR. PENNER: No, not specifically. We are aware of certain standards which are promulgated by national safety standards, and that they exist, and that considerable amount of research and so on has been done on this, but we have not personally made representation to companies, Sir.

MR. GRAHAM: Have you made any representation to the National Safety Standards Association?

DR. PENNER: No, not as such.

MR. GRAHAM: Thank you.

MR. CHAIRMAN: If there are no further questions, thank you, Dr. Penner.

DR. PENNER: Thank you.

MR. CHAIRMAN: Mr. Robertson, please.

MR. ROBERTON: Hello. As you all know, or as most of you probably know, my feelings towards the compulsory crash helmet legislation is taboo. I've been a motorcyclist in Winnipeg, in Manitoba, for a matter now of 18 years. I've been involved in accidents, but I must say to you that oftentimes when these accidents occur they're not my fault, they're the fault of people around me. And through riding a motorcycle I've become a very very conscientious, very defensive driver.

Now we met with the NDP caucus. We had the opportunity to talk to you fellows, to the other people, the other parties, I'd like to make this point clear. When the original introduction of this came about in 1966 or '67, it was us, the motorcyclists of the Province of Manitoba, who drew to the attention of the Motor Vehicle Branch of the Government, the Government members, and the Police Department, the fact that there was inadequate driver testing; that if you had an automobile license you could in Manitoba drive a motorcycle. We felt that this should be improved upon. We made presentations, we made a bit of a stink about it, we were heard. Now in Manitoba we have by far probably the best driver testing available anywhere in North America. We do have driver instruction available through the Winnipeg Safety Council, which a lot of my fellow motorcyclists volunteer their time. They set a course up for youngsters, for beginners, for people who want to learn motorcycling. I think this shows that by doing these type of things, we are concerned; we do care. And if you could turn around, and if you could provide us with information that you could provide us with a helmet that didn't restrict or impair hearing, peripheral vision, didn't cause you to perspire, to get itchy, that bees or bugs can get in and irritate you when you're going down a highway and you should be concentrating on your driving, accordingly if you could provide us with a helmet that would protect us at a direct impact, at over and above the speed limit, which isn't so now with the existing standards, we, because we are responsible people, because it does concern us and us only, we'd probably turn around and say, "Well fine, you know, you don't have to compel it because everybody out there would be wearing it." But this isn't so. It just doesn't happen. It's not feasible. You can't make a helmet that doesn't restrict, doesn't restrict your hearing or your vision, that doesn't cause you to perspire, that will protect you at a direct impact at 60 miles an hour, using the

(MR. ROBERTON cont'd) . . . . existing materials, it's got to be eight inches thick. Now this thing we'd have trouble lifting it, let alone holding it on our head.

I've circulated the statistics, the briefs, the material that we had. It's nothing secret. We don't want to keep it until now and bang, hit you with it. I wanted to give it to you to give you ample time to read this and to digest it, and to think it over, and to realize that if you were me as a motorcyclist driving down the street with a crash helmet on - and if you realize that if this was legislated and I had to wear it, I had no choice in the matter at all - and all of a sudden there's an obstruction in front of me; there's a car; bang, I hit it. The whiplash type action occurs. Because I have a helmet on that weighs maybe two, maybe five pounds - my spinal column is not made to absorb this extra weight - so what happens? Oh no, you didn't die from a concussion but you ended up with a broken neck. Poor Brian out there in the cemetery. No thanks.

Now I realize that you people are here because the majority of the people of Manitoba have put you here no matter what party you are from, and you're here to pass laws to benefit people. Now I'm a person and I ask you, how many people from the motorcycle population, dealers included, representatives of clubs, or individuals, are here speaking for this law? I don't see it. I see a pathologist, a doctor, but I don't see motorcycle people, the people who they themselves have got enough common sense about them to realize that if this law is going to benefit us - fine, go ahead, put it in. But you can't convince us; the doctor can't convince us. The doctor says, well if a helmet was made that didn't restrict vision. Fine, show it to me. It's just not possible.

Now, as I say, I'm not going to quote statistics to you. I could go on indefinitely doing it, but there is one I would like to draw to your attention. This is the statistics we have from California where you can ride all year round, where you have more motorcycles in view than anywhere in North America, 72 fatalities per 100,000. Everybody's heard this. New York, which is a climate similar to ours, are restricted maybe four, maybe six months out of a year that you cannot ride, you had a compulsory law in effect since 1967, you end up with 136 fatalities per 100,000. You look, you realize that there's been a slight decrease in fatalities due to head injuries, but there has been over 100 percent increase in fatalities due to broken necks.

Now you can do a lot with statistics. Accordingly the broken neck may have numbered one, an over 100 percent increase can be three. I know it; I'm smart; you're smart; we all know this, so we won't play with statistics, but we will say, take a look at an area like New York where the law is in effect - these guys have been wearing the helmets since 1967 - 136 fatalities, and they have a restriction on the amount of time they drive. Go to California, no law in effect, 72 fatalities per 100,000. What does this say? I think it's obvious in black and white that either the New York drivers are very very bad, and this is why there is such a bigger percentage of fatalities than what there are in California, or there is a likelihood, and we can't wipe this out, we can't say that it doesn't exist, that because New York has a compulsory law, because the poor guy that's going to work, he's a doctor, he's a politician, he's going to work on his motorcycle, he's zooming through traffic, he's obeying the speed limit, and somebody's coming up behind him but he can't hear them because he's got a helmet on. Somebody honks at him; he can't hear them; an accident occurs. He's perspiring; he takes his hand, this hand here, or this hand here, off the handlebar, which is his access to his clutch and reversal; he can gear down to stop. He takes this hand off the front brake - two thirds of your stopping power is with your front brake because the weight is behind your front brake - he's got his hand up here scratching. Bang! Poor doctor, poor politician, accident occurred. Why? Maybe because he was wearing the crash helmet. Not definitely. I can't say definitely, neither can you, but we can say possibly.

Now my own feelings about this, as you know, over the years if you've been with it, I just don't want to see it. I want to retain freedom of choice. Myself, as an individual, I want to retain the freedom of choice, but I get up here and I talk. Now if I wanted to tonight I could have put ads in the newspaper, I could have made it known that this is it; it's a do or die situation. These gentlemen here are going to either go for it or against it, so do you know what you guys do? Come on, get in here all of you, fill up this building as much, as many as you can. But this isn't the answer. You know, if you've been contacted, and I'm sure you have, or you will be contacted by these people, the people in your constituencies that do ride motorcycles they don't want a compulsory law. So there's really no sense in me putting an ad in the paper to bring down hundreds upon hundreds of people to say we're the ones that don't want it, so we haven't taken this step.

(MR. ROBERTSON cont'd)

There were five deaths last year in Winnipeg on bicycles. I'm not a doctor; I don't know what the results of the autopsies were on these, but I do say that if the helmet law was beneficial to me as a motorcyclist numbering approximately 10,000 in the Province of Manitoba, undoubtedly, undoubtedly it would have possibly helped save some of these bicycle riders which number many more than what we do.

Again I feel it is discriminatory, but we haven't played this up this time. But if you see fit to put a law into effect to protect us, what about the snowmobilers? Oh, admittedly, a lot of guys on snowmobiles have crash helmets, and they do wear them, but they don't wear them for protection, they wear them for the comfort and the convenience to keep them away from the cold. You take a look at the guys that come out early in the year on their motorcycles; they've got the crash helmets on. Sure, who wants to freeze their ears? The kid with the long hair, he don't want his hair blowing all over; he wears a crash helmet. The girl, the girl that's going to come riding with me tomorrow night that says yes, on condition that you've got a helmet. I say, "Why? Am I not a good driver?" She says, "No, no, that's not the point, but my hair, my hair gets tangled up and it's a hell of a thing to untangle it." They're not interested in the safety factor. Now there are people out there that are interested in the safety factor. There are the conscientious that say, "I wear a helmet because I think it offers me protection." These are the ones that you see riding on the streets of Winnipeg wearing the crash helmet because they themselves have decided to make this choice.

When I called a meeting in 1970, the last time we were confronted with this legislation, there had been three fatalities - this was in May. We're into June, there has been no fatalities on motorcycles this year. There had been three fatalities, two had been wearing crash helmets. It wasn't the answer. It didn't help these guys out. I can turn around and I can point out one of the fellows who was a customer of mine, who was a very close friend of mine, and who was a president of a local motorcycle club that had an accident in International Falls, Minnesota, wearing a crash helmet. He died. I can point out other cases. It saddens me to see that this happens. It saddens me when anybody's life is terminated from an accident, but I say - Dr. Penner, you ask him about smoking. I ask you about drinking, and we all know what the score is there. That's going to cut down right away on the accidents. It's an impossibility. It's a kind of thing we just can't do. So I do hope that you people are going to think the way that we think.

I'll sum it up by saying that amongst motorcyclists we have a saying, and it's "Live to ride and ride to live." Thank you very much.

MR. CHAIRMAN: Are there any questions? Mr. Pawley.

MR. PAWLEY: Mr. Robertson, I missed the early part of your presentation so I hope I'm not repeating something that you dealt with. I was just wondering if you could, if you had any statistical material that would indicate the pro or con insofar as Canadian jurisdictions are concerned, province to province.

MR. ROBERTSON: Can I ask you a question? Do you know the approximate population of Quebec as a province?

MR. PAWLEY: Well, it's about six, seven million.

MR. ROBERTSON: Okay. This is approximately six times what we are. 122 fatalities per 100,000 with a helmet law in effect. Last year in Manitoba we had seven fatalities without a helmet law in effect. We have a million people in Manitoba so take it from there. No helmet law in effect, a million people in the Province of Manitoba, we had seven fatalities.

MR. PAWLEY: Of course, Mr. Robertson, they're awfully crazy drivers down there even the . . .

MR. ROBERTSON: There is something I'd like to clarify. This was a question that was asked in the NDP caucus. It went like this: Would there be an infiltration of motorcyclists into the Province of Manitoba because we do not have a compulsory crash helmet law? And this is not so. Guys come through--the other day I met a couple of fellows from Vermont wearing crash helmets. They drove through. I took them out to Highway No. 2 to show them how to get west of here. There's a young fellow in from Ontario. There's a fellow in from Quebec, and there will be many more through the course of a year. Some of these people have never rode without a crash helmet; some of them will never ride without a crash helmet; some of them come to the border of Manitoba and they take their helmet off and they throw it on the ground; they break up on a mickey - they have a helluva time, you know. Like wow, this is something that's unreal.

(MR. ROBERTON cont'd) . . . . But they don't stay here. I don't know why - they just keep on moving. Anybody have any further questions?

MR. PAWLEY: Are we the only jurisdiction in Canada yet without compulsory helmets?

MR. ROBERTON: Yes, and I think I can sum this up by saying that we, the people of Manitoba, such as the politicians of Manitoba, are pretty good kind of people. We stand up for our rights; we do our own thing; and this is probably why in the Province of Manitoba, because we've been aware of the fact that the legislation is going to come into being, we stood up for our rights, and we wouldn't be decent people if we didn't stand up for our rights. We stood up for our rights. This is four times you guys have tried to hit us with it. Well not- well yes, you guys as a whole, but I don't want to see any animosities.

MR. CHAIRMAN: Mr. Adam.

MR. ADAM: I just wanted to ask you one question - Mr. Robertson, is it?

MR. ROBERTON: Without an "s". Robertson.

MR. ADAM: I'm not a stock car racing fan or anything of that nature, but I notice that they normally wear helmets when they're in the stock car racing. Would it not be because it affords some protection to them in their . . . ? I know it's not compulsory.

MR. ROBERTON: Yes, they wear them. It is compulsory in racing, automobiles and motorcycles to wear a crash helmet. Now I will explain this to you, that during racing there is much more opportunity for accidents to occur and for the type of accidents to occur where a helmet may benefit the rider, and rather than not afford him any protection whatsoever, they regulate a helmet law, which in turn the drivers themselves go along with. I would like to point out to you that Mr. Pawley had occasion to talk to me and mentioned about the regulation of safety helmets on construction. On construction you receive remuneration; the company wants you to wear a safety helmet for this factor. They don't want to have to pay you wages because you're off work because an accident happened whereas you could have been protected by a helmet, but I am sure that there are people that are involved in accidents on construction that wore helmets and the helmet did not help protect these people from a fatality.

The policemen wear helmets, but mark my words, if you went up and talked to these guys and if it wouldn't jeopardize their job, there's many of these guys would pass the opinion that they hate them, they don't like them, and they wouldn't want to wear them.

Now accordingly, you get into the springtime or the falltime or the wintertime and these guys will pass the opinion that the helmet helps them out the same as a buffalo coat does; it provides them with warmth.

MR. ADAM: I was wondering, another question perhaps - it may be irrelevant, I'm not sure - but presuming a person has an occupation where the employee provides some insurance to and from work, would there be any regulation to your knowledge where some insurance company may insist upon a helmet being worn by someone who uses a motorcycle to and from work? You know, I'm thinking a person who drives with a car to and from work may be covered by insurance by the company.

MR. ROBERTON: I think I can answer this. I am a barber and a men's hair stylist and had occasion to have people come into the shop that sold insurance, and they said to me, "What about you? Would you like insurance? Because in your type of job when you are sick or injured you don't have a wage coming in." And I confronted the insurance salesman with this. I said, "Look, I ride a motorcycle." He said, "That doesn't matter. It doesn't matter if you go skiing. It doesn't matter what you do." So accordingly, I guess the business about an insurance company putting a stipulation that they wouldn't put an insurance on me because I don't wear a crash helmet, I don't think this exists. I have never come across it and I've had occasion to ask an insurance salesman this question.

MR. ADAM: Just one further question, Mr. Chairman. I always associate motorcyclists with leather jackets. Is that a trademark, or is it for some to keep warm, or is it for protection?

MR. ROBERTON: I think from stones or gravel or whatever it is - highway gravel. I have a pair of gauntlets with me. I have a leather jacket with me. The zippers in the jacket serve a purpose on these sleeves to tighten them. The gauntlets prevent bugs from going up my arm, prevent cold from going up my arm. I think the black leather jacket, the stereotyping that comes into being everybody identifies with motorcycles. I don't like it myself. I went out last year and I bought a brown leather jacket. I bought a brand new bike this year but unfortunately my zipper in my brown leather jacket scratched the top of my brand new

(MR. ROBERTON cont'd) . . . . motorcycle, so I've gone back to my black leather jacket. I say that the majority of people that wear the jacket wear it because of the protection it affords from the elements, not so much the protection it affords from falling off a motorcycle. Now admittedly there are cases where if you did have a black leather jacket, a brown leather jacket on, and you did fall off your motorcycle and you did slide along the ground, chances are that you won't scrape your arm, that you'll scrape your jacket. Accordingly, the same thing would come into being with leather pants, with boots. But there's an awful lot, when you come to draw a line, as towards what we should wear and what we shouldn't wear. The answer to your question: for protection from the elements.

MR. CHAIRMAN: Are there any further questions?

MR. ADAM: Yes, just one moment. A chap that's overhauling transmission in my automobile at the present time just bought about a \$5,000 Harley Davidson - it's just a magnificent machine - and there were two or three other fellows there admiring this \$5,200 unit. I asked him if they were opposed to wearing helmets, and they were not, apparently - those people I spoke to.

MR. ROBERTON: Which accordingly, is the whole story. We are not opposed. We are not opposed. I don't come here in opposition to wearing helmets; I come here in opposition to the compulsory aspect. And in conjunction with my Harley Davidson being \$5,000, I had a couple of these and I have a BMW, which is a German motorcycle, and I'm quite happy. Are we finished?

MR. CHAIRMAN: Mr. Sherman?

MR. SHERMAN: Just one question to Mr. Robertson, Mr. Chairman. Mr. Robertson, are you receiving any encouragement from motorcyclists or motorcycle clubs in other jurisdictions in Canada where they have the helmet law and who know of the debate that has been ongoing in this province? Are you receiving any encouragement?

MR. ROBERTON: Yes. As a matter of fact, I have received requests from people to attend meetings with them and possibly to try to help have their laws repealed. I had some people in touch with me from an area in Quebec, Lac St. Jean, which is north of Quebec City. There is a young fellow in now from Chicoutimi who is going up to Gillam to work, who was very impressed with the fact that in Manitoba we have a Government that is discreet enough to allow us freedom of choice.

MR. SHERMAN: Mr. Chairman . . . --(Interjection)--

MR. CHAIRMAN: Order please.

MR. SHERMAN: Mr. Chairman, I wasn't consciously leading up to that kind of an answer, but anyway I'll accept it.

MR. CHAIRMAN: Mr. Paulley.

MR. PAULLEY: Mr. Chairman to Mr. Robertson. May I say, without trying to butter you up, I admire the way in which you've made your presentation, but we're dealing with the question of compulsory wearing of helmets. I don't know if it's analogous or not but, Mr. Robertson, are you not aware, or are you aware that insofar as the young hockey players are concerned, in the Midget and PeeWee leagues - and I'm thinking of my own grandson who is a participant - that before he could go onto the ice in order to play hockey with one of the teams out in Transcona, it was necessary for him to wear a helmet in order to participate in the sport in order to prevent the possibility of injury in hockey?

MR. JORGENSEN: Motorcyclists don't go around beating each other over the head with hockey sticks.

MR. PAULLEY: With all due respect to my friend from Morris, they may not beat themselves over the head but it's a question of prevention of head injuries, and I'm sure that--Well, I was almost going to say my friend from Morris would be protected by the thickness of his skull, but I wouldn't say that, Mr. Chairman, because it might be deemed to be unparliamentary.

But my point, Mr. Robertson, in all seriousness, the objective as I mentioned in hockey is somewhat similar that many have insofar as the wearing of helmets by motorcyclists.

MR. ROBERTON: Yes, but I'm inclined to agree with Mr. Jorgenson on the basis that hockey is no longer to me a sport. My God, I don't even like to turn on television because it's atrocious to put a young kid in a living room to watch professional hockey players that will smack each other in the face with their sticks and their hands, and I can understand why these people wear protective headgear under this condition.

MR. PAULLEY: I'm thinking of my 10-year old grandson, though, Mr. Robertson, not the Bobby Hulls and the . . .

MR. ROBERTON: No, but I think he would be impressed by what he sees on television, would he not?

MR. PAULLEY: Okay.

MR. CHAIRMAN: Mr. Petursson.

MR. PETURSSON: Mr. Chairman, just a short question and away from helmets for a moment. You indicated a little while ago that motorcyclists generally were responsible people. Down our street last summer a year ago, there were half a dozen or seven or eight young fellows that used to congregate, each one with a motor bike, and they tore up and down the street all hours of the night. Do they have any sense of responsibility towards the residents in that area, making noise and keeping people awake at night?

MR. ROBERTON: Definitely not. Definitely not. Now these are the type of motorcyclists, the same with the motorcyclist that comes into the restaurant and the coffee shop, that as he walks in says, "F-you; how the F are you?" in front of little old ladies. This doesn't do anything for the sport of motorcycling. I made it clear to the NDP caucus when we had the opportunity to speak with them, I would hate very much to see this law brought into being because of the idea that it's something we don't want and it's an opportunity to persecute us, to get back at us for this type of action. Now, something like this is why the decibel count has come into being, because of loud exhaust systems. You buy a Harley Davidson now, it comes equipped with an exhaust system which is not mandatory in Canada but has been made mandatory in the State of California because of these kind of -- we call them hot dogs. You know, these kind of guys that go out and they go like this to their throttle. An engine runs and it will idle; you don't have to pull up to an intersection and keep going like this to your throttle - it doesn't help anything. But unfortunately, there are these kind of people around and because of these kind, because of these minority, we are stereotyped.

We don't like to be stereotyped. I am a total abstainer; I have been for a number of years. I don't drink, I don't take drugs, and I don't even smoke cigarettes, but there are some motorcyclists who do drink, who do belong to gangs, who do have wild parties, who do aggravate you at a stop sign. I'm the nicest guy you could ever hope to meet. I get people pulling up alongside of me reaching over and pressing down their buttons and rolling up their windows. Now why does this come about? If you ever have occasion to go and see some of these third-rate movies, you'll understand what it's like. Oh my God, it just nauseates me when I see this kind of thing happen, but unfortunately it's the path I've chosen. As some of you may choose golfing or curling or bowling, this to me is my hobby, sport and pastime.

Again, I don't like to be stereotyped. I sympathize with you. If you can take a licence number down, if you can't get any action from the police, talk to me and I'll have a talk to these kids if that ever happens again.

MR. PAULLEY: I believe you would too, Brian.

MR. CHAIRMAN: Thank you, Mr. Robertson.

MR. ROBERTON: Thank you very much.

MR. CHAIRMAN: Mr. Gray please.

MR. GRAY: Mr. Chairman, well, I speak on Bill 86 Section 46.3(3) on frame modifications. I'm a motorcycle mechanic - I have been for ten years. I was on a committee for the Provincial Government, the Highways Branch, to test altered motorcycles in the summer of 1973, and we made one recommendation that you can't rake the frame of a motorcycle frame by cutting and welding. This recommendation was made because it would be too hard to regulate who did the welding and who did the cutting on it, not because it would alter the safety aspect of the motorcycle.

I have several reasons why I think this should be deleted from the bill. The first one is that there is no proof at all that there was any accident in Manitoba caused by the neck of a frame breaking from welding or cutting and welding. No. 2. Raking a frame does not alter the handling safety and I can come up with engineering reports that will prove this - I have them. Usually if the frame is raked in this manner by cutting and welding, it is usually done professionally. I'm not saying all the time it is but it is usually done professionally. Also, it would be very difficult for a law enforcement officer to tell, by pulling a motorcycle over, to see if it had been altered, because there are so many different makes and so many different models.

MR. CHAIRMAN: Order please. I'm having a little difficulty hearing Mr. Gray. Can we keep the noise level down a little, please, and would you speak more into the microphone, Mr. Gray please?

MR. GRAY: Yes, I will. Well, it would be very difficult for the law officer to determine if the frame was raked by visually looking at it. He'd require a plumb bob and maybe a protractor or something to determine it, and of all - there's different models and different makes of motorcycles - there's about maybe fifty different rake angles. My main point is that, if this law was passed, you would render useless possibly 200-300 motorcycles which are older motorcycles and you can't get frames for them any more. I myself own two of them and a number of my friends do. They function perfectly; there's nothing wrong with them; but the day after this law went into effect I would have to take it off the road and junk it because I couldn't get another frame for it, and I'm urging you people to take into consideration this aspect, that my \$2,000 motorcycle would be worth about \$200 after you bring it into effect.

MR. CHAIRMAN: Mr. Uruski.

MR. URUSKI: Mr. Gray, I gather from your presentation what you're saying is that the majority of times that motorcycle frames are altered, is it because that parts that were required in order to repair frames and the like were not available? Is this why frames would be altered?

MR. GRAY: No. No, it isn't that. They're altered sometimes for handling reasons, sometimes for appearance. But when they're altered by raising the frame, that is when you take the forks and you extend them out this way, I've got engineering reports that can prove that it does not take away from the safety factor of the motorcycle. The only thing that we were worried about when I was on this committee was who would do the welding, who would do the work on it. It would be too hard to regulate.

Also another point that I had, that people alter trucks. They extend frames on trucks. There's no regulations on that. You don't have to have a certificate for your truck because you've got your frame . . . lengthened, or even if you've got a hot rod there's no certificate you have to have for, like, steadying the front axle or modifying any part of the chassis by welding. So I can't see why there should be a law discriminating against motorcycles on this point.

MR. URUSKI: One more question. To your knowledge, are there modifications that can be done to a frame alternate to a position where it would render it as possibly unsafe on the highway? You know, you've been in the industry and you're aware of the types of bikes and alterations that go on. Are there alterations that have been made that you would consider unsafe?

MR. GRAY: Well, the dobage (?), or the section before it, is on the extension; the maximum extension you can do is 32 inches. And you couldn't -- in order to make it unsafe, to have that certain rake would be impossible. Like, you'd have to have a really long front end which you couldn't do it, because it's regulated 32 inches.

MR. URUSKI: So then what you're saying there's adequate provisions now in the Act to . . . ?

MR. GRAY: Yes, there is. The first part of the section.

MR. CHAIRMAN: Any further questions? Hearing none, thank you, Mr. Gray. Mr. Thompson please.

#### BILL 73

MR. THOMPSON: Mr. Chairman, I'm here to speak on the Bill 73. I realize it's late so I'll try and condense it as much as possible. The last time I was here I spoke as a member of the Manitoba Association of Architects. The bill being held over, a meeting was held with the Manitoba Construction Council and a letter has been drafted and sent to Mr. Paulley, and I believe that it's being circulated to the members here. I don't know if it's necessary to read the letter. We generally approve, in principle, the intent of the bill, and the part that we would like to recommend be amended is Section 11(1). This is the one that reads that the Lieutenant-Governor-in-Council "may" appoint. We would like to see this read that he "shall" appoint; that the formation of this board be mandatory, and it is the point of this letter that members of our committee be a party to this board.

The second section is the one -- Section 10. It is recommended that this be amended to read "that required service be by registered mail". The bill states that it's to be ordinary mail. We don't feel this is adequate when you're giving people notice in changes to their



(MR. THOMPSON cont'd) . . . . property. That, really, is the extent of our brief.

MR. CHAIRMAN: Thank you. Are there any questions for Mr. Thompson? Mr. Paulley.

MR. PAULLEY: Well just one to Mr. Thompson, and I may say, Mr. Thompson, I appreciate receiving your letter and recommendations the other day. I might say that as far as the notice by registered mail, there may not be any hang-up on that, Mr. Thompson. The other point or question to Mr. Thompson deals with the matter of the directions insofar as the setting up of the boards and, Sir, would you not agree, Mr. Thompson, whether or not the Lieutenant-Governor "may" or "shall", the effective operation of the intent, the purport of Bill 73, could not be achieved unless there was a board set up? Whether the directive was may or shall, in that case, hold now for one of the major nubs of Bill 73.

MR. THOMPSON: Yes, Sir, I agree that there has to be a board. I think that possibly members of the Construction Council were a little put out that they were not informed that this bill was going ahead and they were afraid that the board might get quorumed in the same manner, that we would not have any say in its formation. And we feel that the code is a tool that we use every day and we'd like to be a party to it, that's all.

MR. PAULLEY: Mr. Chairman, may I then at this particular stage indicate to Mr. Thompson, as I did the other day in respect of another bill - I believe 33 - that there will be consultation with the Council and others concerned before the board is set up and I will be asking for representations or nominees to that board. I want to give to Mr. Thompson and all those that are within hearing of me this evening, that that will be done. I think it's essential and necessary.

MR. THOMPSON: Thank you very much, Sir.

MR. CHAIRMAN: Mr. Spivak.

MR. SPIVAK: This may have been provided in the last presentation and unfortunately I was absent for part of it, but may I ask, was there a request that so far as the application of the Act is concerned that at this time, until the matters are clarified, the City of Winnipeg should be excepted?

MR. THOMPSON: I believe . . . Pardon me?

MR. CHAIRMAN: You mean exempted, Sid, or excepted from the Act?

MR. SPIVAK: It will be excepted.

MR. CHAIRMAN: It's excluded, isn't it? Isn't that the . . .

MR. PAULLEY: It can be by regulation . . .

MR. SPIVAK: No, but was it not the request that the City of Winnipeg be excepted from the application of the Act at the present time. It may very well be that it will be brought in, but at this particular time, is it the feeling generally that the City of Winnipeg should be excepted from the application of this Act?

A MEMBER: No, I don't think there's any representation.

MR. THOMPSON: Pardon me. I think it would have to, because the City have the National Code now with a rather large amendment, and the passage of this Bill with the amendments that go with the National Act would not serve the City of Winnipeg at the present time.

MR. SPIVAK: Well maybe my terminology. Really at this point what I'm talking about is the City of Winnipeg be exempted from this Act at this time, and that's why I said excepted, because obviously at one time there will be uniformity that's going to be required. Is that the feeling of the industry at this particular time?

MR. THOMPSON: Yes.

MR. SPIVAK: Well I'd like to, if I may, go back to -- I realize he was here as a witness on behalf of the architects, but from the representations that have been made to me - and that's why I bring the point up - I think that there was a general feeling that the City of Winnipeg -- it would be important, because of the necessity of certainty with respect to the course of conduct, that the City of Winnipeg be exempted from the application of the Act at the present time until the Government has been put into a position, to have worked on this, and in turn to have brought forward the regulations, and I just want to confirm that that really is the position as far as the architects are concerned at this time.

MR. THOMPSON: Yes, that is.

MR. SPIVAK: Was that conveyed to you or not?

MR. PAULLEY: Well, not precisely, Mr. Chairman, but it's a matter that we can discuss when we're giving detailed consideration to the bill, because there is provision contained in one of the sections of the bill for exception to be made, and I think that would be the proper

(MR. PAULLEY cont'd) . . . . time to consider what the intent would be as to the application of those exceptions.

MR. CHAIRMAN: Thank you. If there are no further questions, thank you, Mr. Thompson. Mr. Anhang please.

#### BILL 71

MR. ANHANG: Mr. Chairman, I appear on behalf of the Canadian Consumer Loans Association this evening. I'm a lawyer from Winnipeg, not Toronto. You know, slick fellows from the East. I'm here this evening, Mr. Chairman, to speak on Bill 71. These are the proposed amendments to the Consumer Protection Act. The remarks that I have, many of them have already been made by the earlier speakers so I don't propose to dwell on those. However, there are two particular sections, Mr. Chairman, that are of particular concern to the CCLA.

They are, first of all, the order for restitution, being Section 22.1(7), and the old chestnut that you have heard about before, 25.1(1). Now, Mr. Chairman, the order for restitution concerns me as a lawyer, because I believe, Mr. Chairman, that the drafter of this particular section was intending to inject some elements of a class action into what is essentially a section dealing with penalties. Now ordinarily, Mr. Chairman, if a man suffers a loss he has his recourse through civil courts, as you all well know. On the other hand, Mr. Chairman, if there's a criminal act, there is recourse, the man is charged and possibly convicted in the criminal courts.

However, what we have here is a very interesting amalgam, a hybrid if you will, of the two remedies. Here we have a suggestion that if a person is found guilty of contravening or failing to comply with a certain provision of this Act, the penalty is not only the payment of a fine and the requirement that he pay the person who was damaged his loss. In this respect, Mr. Chairman, it is similar to a provision of the Criminal Code, which has an order for restitution, but it is dissimilar, I submit, with respect to providing restitution to others as well. And what you're asking the magistrate, who is primarily . . . with the jurisdiction to decide a criminal suit, you're asking him to decide a civil liability, not only on behalf of one wrong party, but on behalf of any number of others.

I therefore concur with the submission of my learned friend from Toronto, the gentleman who spoke first, and would ask that the references to any debtor other than the debtor who is damaged be removed from Section 22.1(7). I think to do otherwise would be to put the magistrate in an impossible situation where he would be required to adjudicate on matters which are normally beyond his expertise.

Now, Mr. Chairman, on Section 25.1(1) - and we only propose to submit our objections to sub.(1) - it's interesting to note, Mr. Chairman, that the heading of this section is very innocently noted as Notification of Assignment. It's a very innocent heading. --(Interjection)-- Sorry. Well, that might be a good word. I think I'll use it - along with nefarious, which I intend to use too. Mr. Bray, Mr. Chairman, used the word "nefarious" about three hours ago. About two hours ago I thought I'd be home. And I suggest to you, Mr. Chairman, that the word nefarious was used but perhaps in the wrong context, and it had the effect of getting a little interest from Mr. Turnbull and I was delighted. But I'm going to suggest to you, Mr. Chairman, that the word nefarious was used in the wrong way but the word nefarious should be used in a certain way here. A few businessmen practicing in the City of Winnipeg, Mr. Chairman, you know, suddenly suggested that there were gifts and premiums, benefits, of such a nature that perhaps they're disguised, the disguised kickbacks if you will. I think that as a businessman in the City of Winnipeg you might feel offended.

I'm wondering, Mr. Chairman, what the rationale behind this subsection really is, whether it isn't some sort of a disguise, if you will. Is it that the fear of disclosure will drive out bad practices? Is this what's intended? Will it really assist the consumer to know that there is a benefit, a gift or a premium passing between the dealer and the finance company? Will it assist him in the long run to know that? Will the assistance, Mr. Chairman, be of any greater benefit to the consumer to weigh off against the tremendous hardships and the extra work that you're going to be imposing on the dealer?

Mr. Chairman, I work in a law office where we have many commercial papers, and I can tell you from my experience that the Conditional Sale Contract, as we once knew it ten years ago, has evolved to the point where it needs a lawyer to explain it. Only this morning I had a call from a gentleman in a small business saying, "What do I do? Am I doing it right?"

(MR. ANHANG cont'd) . . . . Surely, Mr. Chairman, one of the objects of law regulating small and large business should be simplifying trade, and surely, when one is looking at a law that's going to impose additional difficulties, additional complexities, one should ask whether the imposition of the law may be - just may be - not offset by the advantages to the consumer. Maybe they're not offset.

Now what are these gifts, premiums or benefits? Are we talking about such matters that are covered in the Criminal Code of Canada? Are we talking about unlawful payments? Are we talking such items as fraud? If we are, then I submit to you, Mr. Chairman, that this legislation here is superfluous. We already have the law. So what are we really driving at? What are we really driving at? Gifts, premiums or benefits? The two main speakers that spoke on this, Mr. Bray and Mr. Haddad, indicated to you that there were three areas where they felt there were payments - gifts, premiums or benefits, call it what you will - and they told you what they were for. Mr. Haddad said they were the cost of servicing the credit contract. Surely you can realize it costs money to service credit contracts. There's offices, there's girls, there's machines, volume bonuses, the economies of scale. Surely you're not going to suggest that a dealer who sells two cars should be given the same price as a dealer who sells a thousand. Finally, the dealer reserve, which is indeed a reserve for future services.

These all come into play, Mr. Chairman, primarily in the field of what are known as recourse contracts. If a dealer is not careful, that paper that he thought he'd never see again will come back to haunt him, and he then has the alternative of taking back the paper and suing the customer under the same Consumer Protection Act, or picking up the goods and eating the loss. Either way he might be out of pocket.

I'm suggesting to you, Mr. Chairman, that the major objection to Section 25(1) is the suggestion that businessmen in this province are involved in nefarious activities and that such things as gifts or premiums or benefits, which are earned, are somehow inherently bad. I'm suggesting to you that if you have put your mind to the presentations put forward by the two major speakers on the subject, that they have in some measure justified the reason why they have these gifts, premiums or benefits.

Well, we have been talking about recourse paper, and these are the three areas where it costs money to do business. How do we put this into practise? Mr. Turnbull asked the question of Mr. Bray whether or not it could be disclosed prospectively, in one of these conditional sale contracts which are assigned, the amount of the volume bonus or the daily reserve. I'm suggesting to you, Mr. Chairman, that volume bonus can't ordinarily be determined until probably the end of the business cycle if it happens to be a year in that industry, and the closest that you can come to honestly disclosing it, even if you wanted to disclose it 100 percent, would be to show a schedule saying, "if I bought one car this is my cost; if I get 100 cars this will be my discount; if I get 1,000 cars this will be what it is", excepting when will the consumer get that information? And is that full disclosure under the Act as it presently is written? He would get it about a year later if it happens to be a one-year cycle industry.

Now what about the dealer reserve? Do we really know, before the contract runs its full life, the amount that that dealer is going to really net? That's the initial reason for the reserve; it's an uncertainty; and yet this legislation asks us to write it out in black and white, the day that it's written, the uncertainty which the dealer himself does not even know. So how can you ask that of a dealer when he doesn't know himself?

Mr. Chairman, finally on the question of recourse and non-recourse, it could be that in the question of non-recourse, where the dealer is not in a position where he may have to take back the goods or the paper, it may be that in that situation there shouldn't be any gifts, premiums or benefits. In fact, I don't know that there is. Perhaps in that situation the man would be getting something for nothing. It would be an unearned benefit, if you will. And perhaps if a section has to be there, if it has to be there, perhaps that's what it ought to say. I'm not suggesting, Mr. Chairman, that the CCLA's position is that it wants to live with that, or that it wants it, or anything like that; simply that if we have to make a distinction, perhaps that's the best place to make it.

Gentlemen, I just wish to say thank you for bearing with us. It's 11:15, and if there's any questions I'd be pleased to answer them.

MR. CHAIRMAN: Thank you. Are there any questions?

MR. TURNBULL: Mr. Chairman, if I just may ask Mr. Anhang with reference to 22.1(7),

(MR. TURNBULL cont'd) . . . . whether or not he feels that there is stipulation in that section which will prohibit class action, because it does require the naming of each debtor in relationship to the offence that is purported. And does that specificity really get at the problem that he raised?

MR. ANHANG: Well, Mr. Chairman, in reply. It would depend, I submit, on who is named as the plaintiff. If the complaint comes as a result of a single man stepping forward and asking that he be given a remedy and the charge then formulated in that manner, then I'm suggesting that he should be the only man who should be entitled to damages. If, on the other hand, ten people find out or they're advised, then those ten; but there shouldn't be, as there is in the United States and we just read about this Izzen (?) case which went to the Supreme Court of the United States - false action you can get up to ten - it shouldn't be a responsibility to suddenly have the magistrate hear from every person who could possibly have been damaged, because it puts the magistrate into a very difficult position.

MR. TURNBULL: With regard to 25.1(1), you mentioned extra work being put on - I wasn't sure who you were talking about there, the dealer or the finance company. Which?

MR. ANHANG: Well, the practice, as you well know, I am certain, is that the finance company provides the actual physical document that he tells the dealer he will accept. Each dealer doesn't have a separate document, generally speaking. If you're talking about a company that's been doing this for some time, he gets the document from the finance company. In other words, the finance company would put forward what it felt to be compliance and then the dealer would fill it out. Is that the answer to the question?

MR. TURNBULL: I don't think so. I was trying to get at -- you mentioned that someone did extra work, that this Section 25.1(1) would require extra work on the part of the businesses involved, and I was wanting to know whether it was the dealer or the finance company that was going to be involved in the extra work.

MR. ANHANG: I think both. The hardest work, I think, would be on the dealer's side because he has to keep track of the number of, let's say cars if you will, that he's selling. If he gets a volume discount at a hundred, let's say, and he's in car number 98, he may feel differently about disclosure at that point than he would if he were selling car number one out of the hundred.

MR. TURNBULL: Again, as Mr. Bray, you know, I don't accept the difference in principle that we have about these sections. If the earnings are just, then why is there concern by the industry about disclosures to the consumer? Now I want to talk about the principle here, not the details of whether or not he knows what the discount will be because of his volume. But, I mean, what is the difference in principle between us here? You seem to think it's a bad idea just to disclose the information; I seem to think that it's a good idea that the consumer know.

MR. ANHANG: Well I'm sorry if I'm going to be accused of answering a question with a question, but what good would it do the consumer? Let me ask you that. You're putting the dealer and the finance company through a lot of extra work. Is the consumer going to benefit anything from it?

MR. TURNBULL: Well I think the consumer has a right to know. That's the point of principle that I'm . . .

MR. ANHANG: Well he might have the right to know, for example, what Safeway pays for a can of peas that sells for 22 cents.

MR. TURNBULL: Well that would be very interesting to the consumer . . .

MR. ANHANG: Well it might, but are you going to suggest that we do that with every commodity on the market?

MR. TURNBULL: I don't suggest that . . .

MR. ANHANG: Well no, then why are you singling this out? That's really the question. I think it's a fair comment really.

MR. TURNBULL: I want the consumer to know the cost of this transaction.

MR. ANHANG: Well yes, but all I'm saying is . . .

MR. TURNBULL: And you were saying that the consumer will not benefit from that information?

MR. ANHANG: That's right.

MR. TURNBULL: He won't benefit in a tangible way for that transaction.

MR. ANHANG: Would he benefit in any other way? He wouldn't benefit, let's say, from

(MR. ANHANG cont'd) . . . . knowing the cost of the can of beans for which he paid 22 cents and it costs 18 cents.

MR. TURNBULL: Well if he knows the cost of the can of beans at Safeway he may not patronize Safeway the next time he buys a can of beans.

MR. CHAIRMAN: Mr. Banman.

MR. BANMAN: . . . through you to the Chairman. Is it not a fact that at present the dealer has to disclose the exact interest rate to the second decimal of the contract, and that he also has to disclose the total aggregate amount of borrowing? In other words, that the consumer knows exactly what he is buying and exactly what he is going to pay.

MR. ANHANG: Well, if he's complying with the Consumer Protection Act, which this bill is intending to amend, that's what he shows.

MR. BANMAN: And I think the principle is very, very clear that the consumer, I feel, knows exactly what he's paying, he knows the interest rate he's buying at, and I sort of object to the word "disclosure" of a gift because really when it boils down and we analyze the whole thing, it comes down to a seller's commission, and I think this is what we're talking about right now. You know, it might sound way out to talk about a can of peas that Safeway's selling, but this in effect is what's happening. The consumer knows that he's paying X percent interest. If he doesn't like that particular amount, he can go to the bank.

MR. CHAIRMAN: If there are no further questions . . . --(Interjections)--

MR. BANMAN: May I rephrase my question? (Laughter)

MR. CHAIRMAN: Thank you, Mr. Anhang.

MR. ANHANG: Thank you very much.

#### BILL 86

MR. CHAIRMAN: Mr. Diamond, please. Order please. You proceed, Mr. Diamond.

MR. DIAMOND: Mr. Chairman, gentlemen, please excuse my nervousness because I'm not accustomed to speaking in such a knowledgeable delegation.

My name is Marty Diamond. I'm a member of the 1911 Manitoba Motorcycle Club. You might be interested to know that we believe our organization to be the oldest in North America. We've got a very proud history.

I guess the most common complaint to Bill 86 specifically, regarding the proposed mandatory helmet legislation, is that it takes the freedom to make personal decisions away; that it dictates to the individual what items of clothing to be worn and where; that it interferes with the freedom of movement; that it restricts the senses of vision and hearing; that it has caused some individuals a loss of equilibrium; that a helmet will in no way prevent an accident - and this is what we're after, prevention; that helmets have caused some riders to have accidents which resulted in death or injury; that a helmet traps stinging insects and excessive perspiration, which you all know by now; that it causes much fatigue on long hot trips; and that it's just plain old constitutional.

Now let us look at the New York situation for which the doctors didn't have figures for. There's a member which heads the New York Motorcycle Rights Association. His name is Mr. James Tranquil (?). Now New York is already ahead of us; they do have a mandatory law, so perhaps we can look into their situation and see just how they're progressing there. This is a personal report by Mr. James Tranquil: "After allowing myself to be arrested some ten times, I, James Tranquil, do hereby swear that the following is the truth, the whole truth, and nothing but the truth, so help me God. For the purposes of showing the confusion in the courts and the controversial helmet law, the following arrests and disposition records are offered.

"Ticket No. 1 - case dismissed; No. 2 - case dismissed; Ticket No. 3 - failure to prosecute; Ticket No. 4 - case dismissed; Ticket No. 5 - case dismissed, cycle towed away at my expense; Ticket No. 6 - beaten, clubbed and maced, failure to prosecute; Ticket No. 7 - found guilty after trial, \$5.00 fine; Ticket No. 8 - no long form information available, case dismissed; Ticket No. 9 - found guilty after trial, \$10.00 fine; and Ticket No. 10 - failure to prosecute."

"In my own personal estimation, it has cost the taxpayers more to enforce this law in my case than it is worth. How many times this has taken place around the States, I could not begin to estimate."

Let's look at the California situation, which again the doctor didn't have statistics for, and I wish he would have stayed. It would have enlightened him quite a bit. California, the state with the most motorcycles, refuses to pass a mandatory helmet law because the only

(MR. DIAMOND cont'd) . . . . states that have reduced their accident rates that have helmet laws are the ones that passed a special motorcycle operator's license simultaneously. Here's where we're making a good step in making our motorcyclists take a test and teaching them how to drive. States that have passed mandatory helmet laws, regardless of the special motorcycle operator's license, have been experiencing slightly higher fatality and injury rates. The use of mandatory helmets in New York state lowered head involvement slightly, while the incidence of fractured necks more than doubled. This is mentioned time and time again.

Illinois, third-ranked in motorcycle registrations, repealed its mandatory helmet law outright on the grounds of constitutionality alone. The following states flatly refused to pass a mandatory helmet law with no reason given: Iowa, Mississippi, Montana, Oklahoma and Wyoming. Based on the over-all poor performance of mandatory helmet laws nationally, at least 14 other states are now actively setting up repeals.

Again, I have a lot of gas figures, which you all have copies of I am sure, and I will not dwell any further on this piece here.

The doctor also mentioned something about a psychological feeling of a motorcyclist having a helmet on his head and thinking that he was impervious to any type of accidents. I have here a psychological survey, again done by, I believe it's the New York Institute. A psychological survey was also conducted; the most interesting facts were noted: "that motorcycle riders having a feeling of contempt towards laws passed concerning them, because they were not consulted or asked to be given any opinions in formulating legislation concerning them." Well here I feel we've made a great advance forward, because a majority of other people involved in legislation-making are not actively involved in the sport of motorcycling and therefore do not understand its wants and needs - these are how the bikers feel. A now too-often heard phrase is: "So what? I've got my helmet on." It is now thought by this organization that many accidents are caused by this added confidence instilled in the rider by requiring of him to wear a protective helmet, thus leading him to irrational habits in the operation of his motorcycle. It was also noted that riders operating their cycles without protective helmets on, operated in a much more cautious and defensive manner. After researching thousands of motorcycle accident reports, the New York Motorcycle Association has come up with a formula most likely to involve a serious or fatal accident: a small motorcycle plus a rider over-equipped with safety gadgets and unfamiliar with the machine, perhaps a year or less of riding experience, equals death or serious injury.

I have here, gentlemen, a letter from the Motorcycle Owners, Riders, Enthusiasts of Sacramento, California, Mr. Russ Sanford, President. You were all given copies of this, I believe.

"The enclosed article reprinted from the August, 1973, issue of Roadrunner Magazine, depicts the motorcyclist's major concern regarding governmental regulations which would prescribe the mandatory wearing of so-called safety helmets. Moreover it points out the absence of any data which supports the theory that motorcycle helmets save lives."

I would like to encourage you to read this carefully. I believe, gentlemen, you all have these copies. They were put in the mailbox and they were given out to you personally.

"Furthermore, in California the government recently discovered that most of the helmets they are forcing motorcyclists to wear" - this should be New York - "that they are forcing motorcyclists to wear won't even pass a minimum safety test." The following is quoted from the U. S. Department of Transportation dated October 12, 1972. Again we have facts and figures which the doctor just couldn't get hold of, apparently. "Almost 90 percent of the motorcycle helmets tested by the government failed to meet the performance requirements set by the industry specifications, the Department of Transport announced today. The Department of National Highway Traffic Safety Administration said that '74 tests of 54 different model helmets showed that only eight complied with the standards set by the industry, American National Standards Institute. The tests were conducted by Dayton T. Brown, an independent laboratory.

"One of the unfortunate facts of the whole helmet controversy is that almost everyone, including the motorcyclist, has the mistaken notion that the motorcyclist's head is indestructible once encased in the helmet. Although protected somewhat, his head is far from being considered indestructible." To many people's surprise, the helmet was only designed to withstand 13 to 14 miles per hour impact. This figure varies. A lot of people batted around, some . . . and 14, but it's a very low figure. Perhaps now we can understand why the motorcycle helmet

(MR. DIAMOND cont'd) . . . . industry does not support mandatory helmet laws.

Again, you have this copy, "A Practical Case Against Helmet Laws". I don't think I'll go into it but I urge you to please read it. This is facts and figures. You've all got copies of it. Some of you have seen this; I got it in the mail the other day and I wonder how you would feel if you received this: "Motorcycle helmets cause accidents, not prevent them. In 1973, when the Kansas helmet law was in effect for the first full year, motorcycle fatalities almost doubled to 40 from the previous year's total of 22, while registrations were up only 12 percent over 1972. The same thing happened when the very first helmet law was passed in 1967. Helmets help only after the accident has already happened. During normal street riding, the drawbacks of vision, hearing, limitations of heat fatigue, cause accidents. Your chance of being killed has been doubled by the helmet law. The above statistics are from the Safety Department of the Kansas Highway Commission, Topeka, Kansas."

I have here a doctor's reports. Again, I wish the doctor would have stayed for this. We found his comments interesting and obtained his permission to reprint them here. "I was disappointed the television station did not provide the audience with even one piece of information for the enlightenment regarding the pros and cons of mandatory helmets. I am always surprised when people raise questions as to why motorcyclists wish to oppose laws. There are many disadvantages and difficulties connected with wearing a helmet. A helmet impairs hearing and vision - you've heard this many times - it enhances falling into a hypnotic trance by virtue of producing relative sensory deprivation. Recent research of space sciences has shown that perception, cognitive function and alertness are maintained at higher levels and for longer durations when astronauts are equipped with cool helmets which decrease intracranial temperature." This, again, shows a regular typical helmet is just unsatisfactory at this point.

The doctor goes on: "Protection should be a matter of individual wisdom and choice. When a rider falls he may skin his hands, possibly to the bone, which can result in permanent immobility of the fingers due to scar contractures. Look around. What do you see? Behind riders there are often girls: young, pretty, mini-skirted girls with bare knees, elbows and arms. One ought never ride a bike without sturdy pants, jacket and, above all, leather gloves. But it is a matter of education or law enforcement. Obviously automobile drivers would benefit by the wearing of helmets. So would the passengers in their autos, pedestrians on the street, and babies in carriages. How about helmets for skiers, sky divers and bull fighters? We need laws to provide good brakes for cars, non-flammable electric blankets, non-poisoning mushrooms on grocery shelves, sterile surgical rooms and functioning TV antennas. Shall we also have laws for the prevention of obesity or blood cholesterol levels?"

Gentlemen, let us now look at a police officer's view. This is a motorcycle officer's view by Officer Rodney C. Detts (?). "I support a no-legislation stand which would require the use of helmets by motorcyclists. I do not know that a helmet may be capable of absorbing or deflecting a possible fatal head injury. I've been a California highway patrolman for over seventeen years in the metropolitan basin; I've investigated accidents involving cars, pedestrians, buses, motorcycles and trucks. Even airplanes. I've been present at the scene on similar occasions. What kills people is the impacting helmet on the head or whatever other portion of a body is involved. This is the real issue.

"If the Provincial Department of Transport would look impartially, this would be their focus of attention. I do not recall being at the scene of a motorcycle accident wherein a helmet saved the rider's life, nor where a rider lost his life because of absence of the usual helmet. I assisted in the investigation of an accident involving my partner, who was killed on duty wearing his helmet and suffered fatal skull injuries impacting with the broad side of a truck. A few other on-duty uniformed motorcycle buddies lost their lives colliding with trucks. Their deaths occurred from crushed bodies. Helmet impact had no safety relevance whatsoever.

"How many pedestrians would have lived had they been wearing a helmet? How many motorcyclists, truckers, car and bus occupants, how many of these have lost their lives because they wore helmets, and why? I'm for saving lives, but based on the practicality of the highway user's willingness and acceptability to accept and afford the expense. Humans have become projectiles in and out and through cars, buses, trucks, motorcycles and pedestrians. It is the impacting element that kills, that has little to do with who failed to wear a helmet."

Gentlemen, I have a letter here written by the American Motorcycle Association, and this is the association that covers all of the United States, North America. They are in charge

(MR. DIAMOND cont'd) . . . . of all motorcycle registrations, etc. "Mr. Marty Diamond, Manitoba Motorcycle Club. Dear Mr. Diamond: The position of the American Motorcycle Association regarding mandatory helmet legislation is that we feel motorcyclists should be able to make a free choice as to whether or not they wish to wear motorcycle helmets. We have always encouraged the use of motorcycle helmets under certain conditions." This letter is available for anybody who wishes to see it.

Gentlemen, do not think it all ends here. The Manitoba Motorcycle Club is working with Mr. Reg. Lewicki of the Canadian Safety Council, to bring forward a group of ideas that will help to educate and teach motorcyclists how to ride defensively rather than sticking a helmet on his head and saying, "Now, fend for yourself. Go out and have a good time." Gentlemen, let us not make a mistake and take a step backwards. Let us educate, not legislate. Thank you very much for your time. Are there any questions at this late hour?

MR. CHAIRMAN: Are there any questions of Mr. Diamond? Hearing none, thank you, Mr. Diamond.

MR. DIAMOND: Thank you very, very much.

MR. CHAIRMAN: Committee rise. Mr. Paulley.

MR. PAULLEY: Mr. Chairman, I wonder if Mr. Green would rise and indicate the possibilities. Would you kindly do that?

MR. GREEN: . . . suggested is that the House will decide around noon tomorrow as to whether it would be useful to come back to committee tomorrow evening or useful to spend the time in the House tomorrow night. So I think that there will probably be -- Mr. Paulley will be talking to Mr. Jorgenson to see whether one course or the other course is more . . . So we won't . . . anything tomorrow night that we . . .

MR. CHAIRMAN: Committee rise.