

**Third Session - Fortieth Legislature**  
**of the**  
**Legislative Assembly of Manitoba**  
**Standing Committee**  
**on**  
**Social and Economic Development**

*Chairperson*  
*Mr. Dave Gaudreau*  
*Constituency of St. Norbert*

**Vol. LXVI No. 7 - 6 p.m., Monday, October 20, 2014**

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**MANITOBA LEGISLATIVE ASSEMBLY**  
**Fortieth Legislature**

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

**Monday, October 20, 2014**

**TIME – 6 p.m.**

**LOCATION – Winnipeg, Manitoba**

**CHAIRPERSON – Mr. Dave Gaudreau  
(St. Norbert)**

**VICE-CHAIRPERSON – Mr. Ted Marcelino  
(Tyndall Park)**

**ATTENDANCE – 10 QUORUM – 6**

*Members of the Committee present:*

*Hon. Mr. Lemieux, Hon. Ms. Marcelino,  
Hon. Mr. Struthers*

*Ms. Allan, Messrs. Cullen, Gaudreau,  
Marcelino, Martin, Mrs. Mitchelson, Ms. Wight*

**APPEARING:**

*Hon. Jon Gerrard, MLA for River Heights*

**PUBLIC PRESENTERS:**

*Mr. Brian M. Collie, Manitoba Real Estate  
Association*

*Mr. David Powell, Winnipeg REALTORS*

*Ms. Gloria Desorcy, Consumers' Association of  
Canada–Manitoba Branch*

*Mr. Stewart Elston, private citizen*

**MATTERS UNDER CONSIDERATION:**

*Bill 70–The Real Estate Services Act*

\* \* \*

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

Our first order of business is the election of a Vice-Chairperson. Are there any nominations?

**Ms. Melanie Wight (Burrows):** I would like to nominate Ted Marcelino.

**Mr. Chairperson:** Are there any other–Ted Marcelino's been nominated. Are there any other nominations? Hearing no other nominations, Ted Marcelino is elected Vice-Chairperson.

This meeting has been called to consider Bill 70, The Real Estate Services Act. How late does the committee wish to sit this evening?

**Ms. Nancy Allan (St. Vital):** As long as it takes to review the legislation and get through the speakers.

**Mr. Chairperson:** Is that agreed–as long as it takes to get through the speakers? *[Agreed]*

We have a number of presenters registered tonight to speak, as noted on the list of presenters before you.

Before we proceed with the presentations, we do have a number of other items and points of information to consider. First of all, if there's anyone in the audience who would like to make a presentation this evening, please register with the staff at the entrance of the room.

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

As well, we'd like to inform presenters that with–in accordance of our rules, a time limit of 10 minutes has been allotted for presentations, with another five minutes allowed for questions from the committee members.

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

Prior to proceeding with public presentations, I would like to advise members of the public regarding the process for speaking in committee. The proceeding of–proceedings of our meeting are recorded in order to provide a verbatim transcript. Each time someone wishes to speak, whether it be an MLA or a presenter, I first have to say that person's name and this is a signal for the Hansard recorders to turn the mics on and off.

Thank you with—for your patience, and we will now proceed with presentations.

I'd like to now call Brian Collie, CEO of the Manitoba Real Estate Association.

Mr. Collie, do you have any written materials? *[interjection]* Perfect. While she's handing out your written materials, you can proceed when you're ready.

**Mr. Brian M. Collie (Manitoba Real Estate Association):** Mr. Chairman, I want to thank everyone for the opportunity to address the committee on the important matter of Bill 70, the proposed Real Estate Services Act.

I'd like to commend the Manitoba government and particularly Ron Lemieux, Minister of Tourism, Culture, Sport and Consumer Protection, for recognizing the need for modern legislation. Bringing this important initiative to this point has required determination, commitment and skill.

Manitoba Real Estate Association has appreciated the open lines of communication throughout the consultation and legislative drafting process. It's been a long—detailed and complicated. Don Murray, chair of the Manitoba Securities Commission, has provided a strong bridge between our industry and the government.

The business of finalizing the legislation has been a co-operative and respectful enterprise and is a demonstration of effective governance. Our industry recognizes and appreciates the need for new legislation. We have, in fact, been asking for it for many years. We have also made several recommendations that have been incorporated into the new legislation.

It's been more 40 years since the current Real Estate Brokers Act was developed and many years since any expansive updates have been made to it. It's no understatement to say that almost everything has changed in how we do business over a 40-year time span. We no longer use telegrams. It might surprise some to know that we didn't have email or smart phones back then.

After their proposed legislation was tabled on May 20th, and throughout the summer and early fall, we conducted an organized review of the legislation. We appreciate the time we have had to solicit input from our membership of more than 2,100 realtors and we carefully considered every comment, every email and phone call we received. We have held

several meetings to gain clarity on the intent and to develop a better understanding of the wording of certain clauses within this legislation. We now have a good grasp and are continuing to move ahead to develop the new rules and regulations together with the Manitoba Securities Commission.

The Manitoba Real Estate Association takes very seriously our role in building strong and healthy communities. We believe this legislation will help to ensure continuing public confidence in buying and selling process and in the services that real estate registrants provide.

Recent studies and surveys tell us that a majority of Manitobans do have confidence in real estate professionals, their realtors, and believe they do have a good—do a good job overall. We appreciate Minister Lemieux's acknowledgement of the reality when legislation was first announced. We also know that modern tools will help us to do better, and when correction is needed, there must be accountability.

So we welcome the changes. We have noted that many of the sections of the new legislation mirror the trajectory being taken in other jurisdictions and are not unique, and the Manitoba Real Estate Association is fully satisfied with the responses provided by the Manitoba government to the concerns we raised on a small number of issues which we had identified.

Once the new rules and regulations are available, our association will be ready to implement training and education across the province to make sure everyone understands the new legislation and any implications on their routines.

Overall, we embrace the intent and purpose of this legislation, which we believe is to bolster consumer confidence and to protect Manitobans' most valuable assets: their homes and property.

Thank you again for the invitation to speak to this matter tonight, and I'll take questions if you have any.

**Mr. Chairperson:** Thank you very much for your presentation.

**Hon. Ron Lemieux (Minister of Tourism, Culture, Heritage, Sport and Consumer Protection):** Yes, well, thank you very much, Brian, for your presentation and, I have to say, the co-operation and the way you worked and your organization worked also with Don, the Securities Commission and others involved in this legislation. It's been approximately

60 years, as I understand it, since it's been looked at, and a lot of things have changed, as you've pointed out.

I just want to say thank you very much for your presentation, and I know we'll continue to work on legislation—it's never finite—and we'll continue to work with you in co-operation with you in a collaborative way to make sure we're looking after the best interests of all Manitobans. It's the largest purchase that any Manitoban will make. I know most of us have jumped into that already and, indeed, our children are getting there now and maybe even some of our grandchildren are getting into that. But I just want to say thank you to you personally and certainly Manitoba Real Estate Association and others, Manitoba realtors, for working closely with us and Don to try to make this a made-in-Manitoba document that we'll all be proud of. So just a big thank you on our behalf.

\*(18:10)

**Mr. Cliff Cullen (Spruce Woods):** Thank you, Mr. Collie, for your presentation tonight and coming down to the Legislature.

You did briefly talk a little bit about proposed regulations, and I know there's quite an extensive section in the legislation; it talks about regulations that will be adopted. Have you been part of that discussion in terms of regulations going forward, and is there anything in the regulatory section that catches your attention?

**Mr. Collie:** Thank you for the question. Well, as you are aware, the platform legislation, as this might be called, leaves the specifics in many areas up to the regulation, and there has been in the legislation a significant amount of ability for the Manitoba Securities Commission and the government to make regulations on specific aspects going forward.

The association sees this as a reasonable way to proceed for two reasons. Reason No. 1 is that we believe there'll be a consultative process with respect to the regulations and so that the profession as a whole will have an ability to provide information and critical input into the future regulations. But, secondly, should we get the regulations wrong for any reason, they're much easier to change in the future should we need a change. And so on that basis we think that the regulations, the concept of regulations, is a very good proposal.

**Hon. Jon Gerrard (River Heights):** Thank you for your presentation. My question would be this: Is

there any areas of the legislation—you had a very thorough review—where you got feedback that there could be some improvement?

**Mr. Collie:** Thank you for the question, and I believe it is more of a concern in terms of clarity of the wording of legislation, and I could give you some examples of that. And probably the two largest outstanding examples would be one of the sections in the legislation that under article 82.1, I believe it is, that talks about remuneration, and I think that the catchword of that particular legislation left a fair bit of interpretation open as to how that might be applied and caused some concerns.

I can tell you that in meeting with representatives from the government, the Manitoba Securities Commission, our association is satisfied that the intent of that particular clause is needed for very unusual circumstances wherein somebody is actually, by design, trying to take advantage of a home seller, and so we think that that's important.

I think the other second—probably, if I still may, second point of real concern was the requirement in the legislation for service agreements. And the reason for the concern was because the wording of the service agreements themselves are not spelled out and left to interpretation in terms of the regulations. And, in preliminary meetings with Don Murray and staff from the Manitoba Securities Commission, we now have a much better understanding that really what is intended here is if you're a consumer and you're soliciting services from a real estate registrant, you should know what those services are going to be, what services are promised and what they're going to cost you. Our association has absolutely no problem with that concept going forward.

**Mr. Chairperson:** Thank you.

Ms. Allan, we have 10 seconds. Do you—question?

**Ms. Allan:** Well, yes, I do, actually. Thank you for your presentation. I think it's important that this legislation brings the whole issue of The Real Estate Services Act into Canadian mainstream as you commented in your presentation, and I'm just wondering, do you think that people are aware when they're selling their home or perhaps when they're buying their home that they can negotiate with their realtors in regards to what that remuneration is?

**Mr. Collie:** I think the answer to that question is, yes, certainly, the entire registrant population is educated that that is in fact a requirement under

federal legislation, under the Competition Act. There is no commission amount or flat fee amount that is appropriate for everyone. It all depends on the business model that each individual registrant or brokerage are utilizing to service their buyers and sellers, and, as such, they—a buyer should enquire as to what services are going to be provided and what will the fee for that service be, and they should also know that they're able to negotiate that fee.

Now, there are some agencies who, in their bundle of services, believe that they're providing true value for everything that they're doing and so they may not be prepared to negotiate. But, as a whole, the industry is prepared to negotiate and there's a substantial amount of that taking place on a day-to-day basis.

**Mr. Chairperson:** Thank you, Mr. Collie, for your presentation. Our time for questions and answers expired, so thank you very much for that.

And I will call David Towell, WinnipegREALTORS.

Do you have any written materials for the committee?

**Mr. David Powell (WinnipegREALTORS):** Sure do.

**Mr. Chairperson:** While she's handing it out, feel free to proceed.

**Mr. Powell:** I'm David Powell, and I'm the 111th president at WinnipegREALTORS. I'm not saying that to impress you but to impress upon you how long we've been around. In 1903 we were known as the Winnipeg Real Estate Exchange. We're a membership organization; by that I mean to say we do not grant licences but once licensed, we consider applications for membership. In short, all realtors are registrants; not all registrants are realtors.

The Winnipeg Real Estate Exchange became the Winnipeg Real Estate Board which now does business under Winnipeg Realtors Association. We are one and the same. As I said, back in 1903 we were established and 10 years later, in 1913, the National Association of Realtors from the United States held its national convention for the first time outside, then, the 48 states, right here in Winnipeg. It was at that convention that the US national association and the Winnipeg Real Estate Exchange created and adopted a code of ethics, standards of business practice, a version of which our collective membership still adhere to today.

We applaud the direction of Bill 70, proposing a code of conduct for all registrants, something realtors have embraced for over 101 years. As president I have circulated our position paper on Bill 70 to the MLAs. I hope you've had a chance to read it prior to this meeting. I'll just highlight a few areas in my report before I get to my six issues. Organized real estate has collaboratively—collaborated closely with government officials over the past 15 years to revise an obviously dated terminology and references of the old act, to accommodate realities of current business world and to recognize the impact of technology on all professions. The real estate industry in Manitoba is solid. It is not broken. The registrants are responsible, accountable and professional.

Under the heading of—if you look at your report, and I'll summarize real quick, under review and comment, we have a summary of the complaints during 2012 and 2013. The investigation of 60—I'm sorry, 76 complaints were made. Sixty of these complaints were still at the stage of investigation process as of March 31st. Twenty complaints were dealt with with having not carried out an extensive investigation or resolved with the assistance or intervention of commission staff. Six complaints resulted from warning or reprimand action being taken against the restaurant—registrant. And two complaints, just two complaints, resulted in other direction.

The number of transactions that happened that year, with the number of listings that were made and the number of sales that were done, were over 33,378, not including all the real estate properties that were not on the MLS. It wouldn't be an exaggeration to say over 40 to 45 thousand relationships were made between registrants and consumers, with only 76 complaints from the real estate—complaints applying to real estate brokers and the mortgage brokers. Any changes that will codify this new legislation and will govern the real estate profession for decades should ensure that business remains transparent, fair and efficient.

Organized real estate has met with—met a number of times to review Bill 70 with Winnipeg realtors and agrees the following six areas have been concerned—identified as concerns. I'll refer you to issue 1, and that relates to advertising and trading services. We were concerned that the bill would restrict our register with regulating out-of-town and other province—I'm sorry, out-of-province brokers in taking listings in Manitoba or private sale companies that weren't registered. We're pleased to work—that

we worked collectively with the minister's office and he replied a response that was satisfactory to us, and I'll just convey the response.

\* (18:20)

The definition proposed in Bill 70 was again reviewed by the Manitoba Securities Commission. The regulator is confident that the proposed definition gives them the authority to address out-of-province brokers who attempt to advertise and trade properties in Manitoba with a local—without local registration. Therefore, the definition of private sales services clearly includes advertising. We were concerned that Manitobans would end up marketing their properties with an out-of-province broker who wasn't registered here. We want to empower our registrar and keep the bad guys out.

Mandatory written agreements, my predecessor has commented on it. We had a few issues with the mandatory agreements. You've noticed I've left out issue No. 2, remuneration, and I'll leave that for the end because that's probably the reason I'm here.

We had a concern about written service agreements. WinnipegREALTORS were concerned that all types of transactions, including commercial, would now require a mandatory written agreement for which it would be difficult to draft a single standard agreement template. We're pleased to work with the minister's office and he's supplied a response that it doesn't—that this provision does not apply to commercial transactions but, rather, to residential sales. There are no plans for this requirement to be applied to farmland or large vacant lots.

We were concerned about—that commercial agents do business differently than residential agents. We're concerned that a member would be forced to sign a service agreement with an agent. The agent is the one taking the risk who doesn't have an agreement signed with their buyer. Forcing consumers to sign a service agreement may force consumers away from using a professional, and I think that would be more harm to the public than using a professional than not using one, having to guard against the consumer becoming contractually 'obligated' if they do not want to be.

Those were our concerns and we were happy with the response from the minister's office.

Search and seizure: WinnipegREALTORS raised some concerns about the authority Bill 70 would give to the regulatory investigator to search

and seize evidence, whether this could cause irreparable issues for those accused of breaching the legislation while the investigation was still under way. And we thank the minister for his response to our concern that the investigators, under the existing legislation, would have the authority to enter premises pursuant to an investigation order for a long time, and we recognize that. Legislation sets out the liability of investigators or inspectors for a regulatory body to enter a business premise and remove or copy records as relatively common, and we recognize that. We were concerned about the damaging issue—the damage in reputations that might be made until proven guilty.

Brokerage responsibilities—and that's my issue No. 5—WinnipegREALTORS was concerned about the new legislation that regulates—and its regulations that could increase a burden of oversight and supervisory responsibilities for the brokerages over individual agents, especially as it relates to those that call themselves independent contractors. In our industry, as an independent contractor, there are tax advantages for us to be called individual— independent contractors. We were concerned that the brokers' responsibility might infringe on that privilege.

Number 6, reasonable charges, fees and fines, WinnipegREALTORS were concerned about the maximum level of fines proposed in Bill 70 and how the fines are determined and whether or not the securities commission is the final authority on fines, and we are grateful for the response by the minister's office that the fines in the current legislation are quite outdated and no longer an effective deterrent in contravening the act. The new fines will be—will offer more of an effective deterrent.

In our industry, our members are supportive of this. We're known to eat our young. When one member steps out of line it paints us all, so we don't want the bad guys in place, and we want the fines to be deterrent. We're concerned that—what do you have to do to get a \$500,000 fine and how the system is set up.

Now, I'll go back to No. 2, which is 82.1, which is a remuneration clause. WinnipegREALTORS were concerned about—*[interjection]*

**Mr. Chairperson:** Sorry, just one minute. I just have to give you the one-minute warning.

**Mr. Powell:** Thank you. I'll be very quick. WinnipegREALTORS were concerned about the

new authorities proposed in Bill 70 which allow the Province to prohibit certain types of remuneration. Specifically, WinnipegREALTORS were concerned about commission caps for real 'estate' services. It did happen in the media that it came out and we're glad to see the minister's office responded immediately that this was not an attempt to catch-cap commissions and reaffirmed by our association.

There are a number of different business models. I have my boots on the ground since 1991 and I started with a corporate office where we charged a 7 per cent commission. The market didn't bear it and I changed and became an independent broker and I became a discount agent. There are many models out there, from flat fees to full services, and to regulate the commission before the service is provided could be a mistake. I've had people say to me a 10 per cent commission is out of line; not if I'm selling an island and I have to put someone in a plane to go show it. I work on success. No fees are paid up front.

I'm open to any questions.

**Mr. Chairperson:** Thank you. Perfect timing, 10 minutes on the nose.

**Mr. Lemieux:** I just want to say thank you, first of all, and I appreciate your candour and also your questions. I mean, these are ones that we've tossed around for a while now, and Don at the Securities Commission as well as my office, and all MLAs have certainly heard different views with regard to some of the questions that you raised, with regard to commission and capping commission, and that is something that we hope Bill 70 would give the Province at least a new tool to protect Manitobans.

Having said that, there is certainly no looking at that issue right now. Where there's—we don't feel that it's necessary, but we just want to make sure that everyone is aware that, even though we're not planning on capping commissions at this time, that should commissions become an issue or should Manitobans bring that to our attention saying, for whatever reason, it has become an issue, we would want to give that authority to who whatever—whoever the government of the day would be to take a look at it. So, before any changes would be 'indelimited' in any way, the Province would absolute consult with the public and the industry, as we have with this legislation, and make sure that everyone is on solid ground.

And I know that also looking at the whole issue with regard to trade, I know that the new definition

of trade doesn't affect the ability of the Securities Commission to go after out-of-province or unregistered individuals trying to advertise or sell real estate in Manitoba. In other words, as far as I've been advised, that the status quo is in effect and that's—we're pretty assured that that is good advice to us and we think that's the case.

Mandatory services agreements, I know possibly my other colleagues or others in the opposition want to raise questions with regard to the new agreement for home buyers. As I understand it, it'll be a one-page, short document applied to service agreements to acknowledge what services the agent's going to offer helping someone buy a home. It doesn't apply to commercial transactions, as you mentioned, which is, I think, which is right, and I'll try to address a couple of other ones that you raised.

The authority of the Securities Commission to search and seize, that exists now. It exists now in the consumer protection legislation to allow agents to seize documents for investigating a breach of the act in any way. So it's there now, it's not new, and it's common for most regulatory bodies, as I understand it.

The idea of brokerages could face heavier burden of supervisory responsibility for their agents: Brokers already have some supervisory responsibilities, as you are very much aware, for their agents that belong to their operation, and this is not going to change with the new legislation. The industry will be consulted if any new regulations are looked at dealing with supervisory responsibilities. I mean, we want your input. We feel we've really worked well with the industry so far, so we certainly don't want to affect our relationship in any way without the consultation taking place.

Increased fines is a real issue in the sense that what we've heard back and the feedback we've received is that, you know, that \$1,000 fine for an individual now, you know, when people are making commissions, could be \$5,000, \$8,000, \$10,000, many consumers have raised with me that—the idea that this is just part of doing business. If there's some breach of some kind and they get a fine of \$1,000, it's even less than just a slap on the wrist. So we looked at the maximum fine being proposed in Bill 70 being \$100,000 for individuals and a much more appropriate maximum fine limit, we think, and it would only be levied against the most egregious cases, you would think.



But I want to just conclude my comments by just saying thank you for coming tonight. Thank you for raising those issues. We've heard you. We're listening to you. And it should be noted here, if no one else does this evening, that 99.999999 of all real estate agents and brokers are absolutely law-abiding, great citizens of our province and do a great job for us. No matter whether the markets are up or down, there's a real stable entity with regard to real estate in this province. There's been a bit of a boom over the last while, but there's been ups and downs. And I know people that have been in the real estate industry for 25, 30 years. They've stuck with it.

\* (18:30)

So I don't want to take all the time for questions. I know others want to make it, and I apologize to the opposition for doing that, but I just want to say that thank you for coming, and we'll allow others to have a say as well. Thank you.

**Mr. Cullen:** Thank you very much for your presentation tonight, Mr. Powell, and thank you for raising the six issues of concern. I want to just highlight a couple of them and get further comments from you. One is the search and seizure clauses that you raised, and clearly we've seen this in other recent legislation where new powers and extra powers are given to the authorities to go in and actually search for documents, and this is relatively new for a lot of legislation and I just want to get your comments from your members on that. And, of course, the remuneration side of it. Again, that could be enforced by regulation here, so I want to get your sense, and I think you've said it here in your document—it's really—there's no problem existing now, but the government is maybe putting in regulation or will—could bring in regulation to close a loophole where there's really no problem. I want to get your comments on those two areas.

**Mr. Powell:** Thank you for the question. The issue for search and seizure our industry batted around at committee level, and we're concerned about the unknown which would be hammered out in the regulation. And we are much appreciative that we are invited to help establish in that regulation with the Securities Commission. Some of the 'unintentioning' consequences are in the report.

One of our biggest concerns for our members was that if there was false accusations and it became a witch hunt for a brokerage and it affected their business model. We have no problem if someone steps out of line. Go get them. We want to get them.

We're concerned that if there's not the due process of search and seizure.

**Mr. Chairperson:** Thank you, Mr. Powell. We're actually a minute and a half over our allotted time.

**Mr. Gerrard:** Just, you know, we don't have a particularly long list of presenters. The minister took a lot of time. I just have a very brief question. I ask leave to—

**Mr. Chairperson:** Is there leave from the committee to allow the question? *[Agreed]*

Go ahead, Mr. Gerrard.

**Mr. Gerrard:** Issue No. 5, you said that one of the potential unintended consequences, that is, you could have the elimination of the claim for independent contractor business model. Have you received sufficient assurances that that would not happen, or is that still a concern?

**Mr. Powell:** Once again, our level of assurance is in the meat and potatoes of the regulation. And I feel, and I'm quite confident, that we'll be a part, at least have a voice, in the regulation. And I think if our leadership in the industry has a voice in the regulation, then we will be satisfied.

**Mr. Chairperson:** Thank you very much for your presentation tonight.

I will now call on Geoff McCullough from—private citizen. Geoff McCullough? Okay, his name will now drop to the bottom of the list.

And we will now call on Gloria Desorcy. Do you have any written materials for the committee?

**Ms. Gloria Desorcy (Consumers' Association of Canada—Manitoba Branch):** No, I don't.

**Mr. Chairperson:** No? Then please proceed.

**Ms. Desorcy:** Good evening. I'm here today on behalf of the Manitoba branch of the Consumers' Association of Canada. For those of you who may not be familiar with our organization, we're a non-profit, volunteer, independent organization working to inform and empower consumers and to represent the consumer interest in Manitoba. And, on behalf of CAC Manitoba, I'd like to start by saying that we really appreciate the opportunity to offer some comments on bill c70 this—c70—Bill 70, I'm sorry—this evening.

Purchasing a home—you've heard other people say this—is, you know, probably the most expensive purchase that consumers will make, but maybe what

we haven't talked about so much is it's also the most complicated. It's very different than other types of purchases. We don't get a lot of chances to practise, most of us. Maybe we buy a few homes in our life, but we don't really get to scale that learning curve in the same way that we would with other kinds of things that we purchase more frequently, and so we put our trust in professionals to assist us in this process, and it is our interaction with those professionals that I think we're talking about this evening.

And it's important and we believe, CAC Manitoba believes, that in every transaction the consumers make that there be transparency because of the high price tag on these transactions, and because of the more complicated nature of them, it becomes even more important that there be transparency and that there be clarity in that transaction. And so, for this reason, we are pleased to see this legislation.

We believe that it has the—it provides the framework for regulation that can enhance consumer protection and enhance consumers' understanding of their rights in this important relationship or transaction with professionals who assist in home buying.

We're pleased to see—and I'm—I realize that the legislation is the framework for regulation, some of my comments will probably span from legislation to the regulation—but we're pleased to see the opportunity for required disclosure of information, particularly with regards to consumers' rights and what they can expect when they are the buyer of a home, when they are the seller of a home and when the same person—same professional is assisting them—is assisting them in buying or selling and another party in buying or selling—like, they're assisting both the buyer and the seller of the same property.

We're pleased to see—and let me just go back and say that is an area that we hear a lot from consumers as a source of confusion and a source of misunderstanding, and so that is one of the pieces that we hear about the most.

We're very pleased to see the development of a code of conduct, disclosure of a code of conduct and the possibility for information about the record of professionals to be available online. All of this can really assist consumers in making good decisions and in having good transactions with these professionals.

We're pleased to see a stronger complaints process, and in those rare occasions—and I totally agree they are rare occasions—where there is a problem for consumers or where they are not sure if their rights have been—if they have been able to exercise their rights or if they've received everything promised to them in the contract, we're hoping that one of the things that will be disclosed is clear information about how that complaints process takes place. Where do consumers go to complain? Who do they call? How do they go about it if they have concerns?

I—the means of disclosure is as important, in many cases, as the content. So we are hoping that agreements—these new agreements between consumers and realtors will be in plain language, will be—and that there will be some thought given to accessibility for those consumers for whom English and French are not comfortable languages. Maybe their literacy skills are not good in that language. They may have lived here all their lives or very often they may be newcomers who are able to buy homes but come from a country where the market for houses is very different. So it's a totally new ball game for them and English and French are not comfortable languages for them. So now it's becoming really complicated, right?

As a final comment, I think flowing very much from that, I wanted to say that consumer education is so important in this situation. Not just the education that can be provided by the legislation, but education about the new rules and the new legislation. You know, rights only protect us if we know that they are our rights. If we don't know we have them, you know, they're not that helpful. So the opportunity for some sort of education campaign or consumer education that would put forward should the bill pass and the regulation be drafted would be very important.

\*(18:40)

In closing, CAC Manitoba, you know, urges the passage of this bill and we will be watching with great interest to see the regulation come forward and what will be a part of that regulation.

Thank you very much for your time.

**Mr. Chairperson:** Thank you for your presentation.

**Mr. Lemieux:** I just want to take the opportunity to thank Gloria and to thank you so much for coming out this evening. You've been a strong advocate for the consumer for a long time, and we appreciate your

comments and, sincerely, from all of us, thank you for doing such a great job on behalf of consumers of Manitoba. Thank you.

**Mr. Chairperson:** Thank you.

**Mr. Cullen:** Thank you for your presentation tonight. I really appreciate your thoughts on Bill 70.

I had the privilege of being an insurance—sorry—insurance and real estate broker for a number of years, so, you're right. Sometimes these transactions get to be fairly complicated, and I think, you know, the more transparent we can make things, the better. Clearly, education on behalf of both the realtors, I think, has certainly improved. Probably need some more work on the education side on as far as consumers are concerned, so, very, very valid points you—you raise. We, too, are curious to see what the regulations may look like under this particular legislation.

So I just wanted to say that, and thanks for your time tonight.

**Mr. Chairperson:** Thank you.

**Mr. Ted Marcelino (Tyndall Park):** Yes, and thank you for your presentation.

Regarding the appeals process that you mentioned, what type of appeal process would you suggest to the committee?

**Ms. Desorcy:** Gosh. Can I think about that and come back to you with it? I don't know if I was thinking so much of an appeals process. I think I was looking at—and maybe it's an appeals process—I think I was looking at the piece in the—that sort of called for a more—or the discussion that called for a more—a strengthened complaints process. So, more significant fines made possible, potentially more opportunity for monitoring.

And I guess the one thing that I would say if you were—if you know, and this is just off the top of my head, I haven't really thought this out—but let me just say that the opportunity for monitoring as opposed to strictly waiting for consumers to complain is important in assisting consumers because sometimes consumers have difficulty complaining and sometimes they don't know how, as I mentioned, and sometimes they're not comfortable with it. Again, you know, we've got newcomers in this country, we've got consumers from all different walks of life, and some are very comfortable exercising their rights and going after their rights, and some are less so.

And so, when there is a possibility for monitoring that goes along with complaints, that is always a good thing for consumers. That's as much as I can really say off the top of my head. Sorry, I haven't really thought that through.

**Mr. Gerrard:** Yes, you mentioned that you believe there's a need for a public relations campaign if—should this bill pass. What would be the elements that you would suggest would be very important to be put in that public relations campaign?

**Ms. Desorcy:** I think it would be really important for consumers, first of all, to know what are the new pieces of information that they are entitled to. So, you know, we're talking about disclosure, but unless I know that I'm entitled to disclosure, I don't seek it out. Maybe I don't take it as seriously if I don't realize that I know that I am now entitled to this disclosure.

Also, I think it would be interesting for consumers to know about some of the things that are already a part of their rights. For example—and to have more education on that. So, for example, I heard discussion earlier here today about a consumer's ability to negotiate the commission, you know, and how many consumers—I would—I'm sort of going to respectfully beg to differ with the person who was up here speaking and I'm going to say that the majority of consumers, in my experience—I have no data, I have no research, but the, you know, majority of experience—majority of consumers that we would anecdotally hear from are not aware that they are able to negotiate that commission amount.

There are some consumers who are very much aware and who take advantage of that opportunity, but I think education in that area, even though that might not be a new right, would be important. So that's just a couple things.

**Ms. Allan:** Thank you for your presentation. We've heard a presenter previously talk about the fact that some brokers and agents have different business models, and in regards to your experience with consumers, can you tell me, do the majority of consumers, do you believe, do they have service agreements in place when they're doing these transactions as a buyer or a seller?

**Ms. Desorcy:** That's a good question, and I would be guessing. I would just be guessing. That's not something I have seen any research on and probably

not something that I know enough about. Certainly, I know some of them do. I can't say. I'm sorry I can't answer that one.

**Mr. Chairperson:** Thank you very much. Our time has expired. Yes? Okay. Thank you very much for your presentation.

I will now call Stewart Elston, please.

Do you have any written materials for the committee?

**Mr. Stewart Elston (Private Citizen):** I don't.

**Mr. Chairperson:** No? Please proceed when you're ready.

**Mr. Elston:** Thank you for the opportunity to speak.

My name is Stewart Elston. I'm a realtor with Realty Executives Premiere and I've been a realtor for 15 years.

My largest concern with Bill 70, The Real Estate Services Act, is with section 82.1. It states that future regulations will determine what is an acceptable commission for me to be paid.

I'm a small-business man and I take all the risk associated with my own small business. If I don't go to work, I don't get paid. If I don't make a sale, I don't get paid. I cannot phone in sick and get paid.

Commissions are negotiable and members compete with each other for the business they earn and deserve. There are no fixed rates of commission, and consumers have many options. We operate in a free market which is very competitive. In 2004 there were 1,200 realtors in Winnipeg; now there are over 1,800. That's a 50 per cent increase in competitors trying to earn a commission, and as a result of increased prices and competition, commission rates have been declining for some time now.

The most recent statistic I have heard is that a realtor's average income is approximately \$37,000. Trust me on this, it's a struggle to earn a good living as a realtor. I work a lot of crazy hours, many nights and every weekend.

I'm alarmed when I see in Bill 70 that through regulations the government can decide what is an acceptable commission and what is not. The market should make that determination, not the government.

In closing, I've heard that some of the reasoning for this clause 82.1 is that the government has felt they are being overcharged for certain projects. If that is the case, then change your internal policies

with regard to what you will pay and not pay. Do not treat an entire industry as though we are overcharging. We are not. Thank you.

**Mr. Chairperson:** Thank you for your presentation.

**Mr. Lemieux:** Yes, I just want to say thank you very much for giving your presentation, and I know we'll have opportunities to talk about commission and so on and—but thank you once again for coming out this evening. It's important that we hear from as many people as possible.

And I know—I'm not sure if everyone knows in this room—that Manitoba's truly unique where it offers people the opportunity to speak, to present to bills, and opposition and government to ask questions of those individuals, and which is really important for the democratic process. We're truly unique in Canada to allow this evening, like this, to happen.

So thank you very much for taking the opportunity to do it.

**Mr. Marcelino:** Yes, thank you for being here, Mr. Elston.

And I used to sell life insurance too, much like my colleague Mr. Cullen, and I understand the difficulty of making a living. I think the most that I made out of a year, in 1990, was \$65,000 and I paid about \$30,000 of that in taxes.

Now, my question is really this. You said you were working for a realty company, and is there any bonuses for those who are able to list properties?

\* (18:50)

**Mr. Elston:** From the real estate brokerage? I would say no. As an individual, the more properties you list and sell, the more commissions you will earn. *[interjection]* No, there are very many different business models—

**Mr. Chairperson:** Mr. Elston, wait one second. So I'll let you—Mr. Elston, you can respond.

**Mr. Elston:** Okay. There are many different business models out there where an individual working for a brokerage could be on a split where after a certain level of business their split goes up, their percentage goes up, but I don't think there's anything in terms of bonusing someone for extra listings.

**Mr. Gerrard:** I hear you loud and clear in terms of not wanting the government to be able to determine

the size of your commissions. Why do you think the government has decided to put in that section 82.1?

**Mr. Elston:** Well, you know, I've heard a number of different reasons in discussions that I've had with people over the last few months that run the gamut from, as I mentioned in my little presentation, that the government felt they were being overcharged on these types of fees. I've heard that it's a spillover from the financial services industry and that the government wants to have everything uniform throughout different industries. Beyond that, I can't say why.

**Mr. Shannon Martin (Morris):** Mr. Elston, I've talked to a few realtors about this legislation, and one of the comments that's been relayed to me in relation to the potential cap on commission was a concern that it might be used to as more of a political tool as opposed to a financial tool to protect consumers. I wonder if you've got any comment on that, that the government may use the cap for political means as opposed to, like, they're benevolent—*[interjection]*

**Mr. Chairperson:** Oh, Mr. Elston, go ahead.

**Mr. Elston:** You know, that's possible. I don't read it that way; I don't think it's political. I'm just concerned as a small-business man that someone can come along—and when I exist and survive on a commission income, that someone can come along and say, hey, we're going to limit that. It seems to me that that should be part of a free market decision.

**Hon. Stan Struthers (Minister of Municipal Government):** Yes, thanks—thank you for your presentation, Mr. Elston, I appreciate it. I was very interested in your description of what's happened in the past little while in terms of going from 1,200 real estate agents in the city to 1,800, and that's at a time when market conditions have been pretty strong. And what if we come to a period of time over the next few years where that flattens out or starts to decline? What does the market do then? Do we see a decline in the number of real estate agents? Do we see a decline in commissions? Should there be a floor placed on commissions if the market suggests that? I'd be interested in hearing your perspective on what may happen if market conditions change.

**Mr. Elston:** Sure. I would say again, the free market will be the great facilitator in terms of evening things out. If the market starts to decline and there is not as much business, there will be a decline in the number of real estate agents. There's no question. So it's not going to consistently go like this. As the market changes, it will go like this. So the market will

determine, and, as the number of agents falls, I would suspect that what's causing that is the number of transactions are falling. So, when there's less business to be done, people will fall out of the business.

In terms of a floor on commissions, I've actually never heard of that before. I don't think that's necessary. Again, I'm a pretty firm believer in the market will determine what's fair and what isn't fair.

**Mr. Chairperson:** Thank you very much. Our time has expired, so thank you very much for your presentation.

So I will now call on Geoff McCullough for a second time. Geoff McCullough? No? Seeing none, then he now falls off the bottom of the list, and that concludes our present—list of presenters that are before me. Are there any other persons in attendance who wish to make a presentation? Seeing none, that concludes the public presentations.

\* \* \*

**Mr. Chairperson:** During the consideration of the bill, the table of contents, the enacting clause and the title are postponed until all the clauses have been considered in their proper order.

We will now proceed in the clause-by-clause consideration of the bill.

Does the minister for Bill 70 have an opening statement?

**Mr. Lemieux:** Yes, thank you. Just a brief statement.

I know we've been here a fair while tonight, but I really appreciate everyone who came forward tonight to speak to this piece of legislation, and just to—once again, just to reiterate.

It's been 60 years or thereabouts since this legislation has been looked at in any substantial way, and it'll modernize regulation and oversight of the industry. The market is certainly changing and changing more frequently and, as Ms. Desorcy mentioned as one speaker tonight, it's one of the largest purchases any family will make. And, as a government, we have shown that we've made many—and introduced many pieces of legislation to protect consumers, and we intend to do that even more so as a government. We believe the public wants that, and we're going to do so. And we really appreciate the co-operation between the real estate industry and also everyone who has worked on behalf of the government trying to put this legislation together.

Many have asked that real estate agents who stray outside of the law that their name should be listed, that somewhere the consumer should be able to go to see who are the people who have been found—or have any disciplinary findings against them so someone could make a good choice and that the process is transparent in a way that people can see they're hiring and who's selling for them or buying for them, which is really important.

Maybe I'll just conclude by saying that, you know, in closing, the Securities Commission has worked really hard. Don, you and your team, and I really want to thank you for your leadership on this piece of legislation, updating real estate legislation, certainly, all the leaders from the real estate industry, some who were here tonight, giving their good advice and support. And I'd like to thank the hundreds of Manitobans who took the time to share their views in public consultation, not scientific, but just comments that they made in a way that tried to give the government and the real estate businesses, as well as the Securities Commission, some guidance as to where to go. After all, it's been a long time since it's been changed.

So I just want to say that—thank you to all the presenters tonight and thank you for all the MLAs here tonight who raised questions because they've heard from their constituents on how important this is. And I just want to thank the Real Estate Association and all the salespeople involved in the real estate business for doing such a great job. And we really—we—I think the bottom line is that you have to know we're going to consult with you. We're not going to be making any changes without having a good discussion. It doesn't mean we agree on everything. We don't. But we'll have that discussion. We'll make sure that everyone has a say in a way that this made-in-Manitoba legislation will be, hopefully, good for another 60 years. But it changes repeatedly, so we'll continue to work on it and continue to work on the regulations with you. For that I just want to say thank you for coming out this evening.

**Mr. Chairperson:** Thank the minister.

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

**Mr. Cullen:** Yes. Just briefly, I want to thank all the presenters tonight for their input on this important legislation.

We certainly look forward to continued dialogue as this legislation moves forward in the process, and,

certainly, when we get to a point when regulations are developed, we look forward to having your dialogue at that time too.

So again thank you very much for your part in this legislation.

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

Due to the size and structure of this bill, I would like to propose the following order of consideration for the committee's consideration. For a reference we will provide copies of the outline to committee members with the understanding we may stop at any point where members have questions or wish to propose amendments.

I propose that we will call the bill in the following order: parts 1 through 7, which is pages 1 through 62, called in blocks conforming to the parts; the table of contents, pages 1 through 4; the enacting clause, page 1; and the bill title.

Is that agreed? Is it appropriate order of consideration for Bill 70? *[Agreed]*

We will begin with parts 1 through 7; that's pages 1 through 62.

Part 1, pages 1 through 4, clauses 1 and 2—pass; part 2, pages 5 through 14, clauses 3 through 23—pass; part 3, pages 15 through 24, clauses 24 through 43—pass; part 4, pages 25 through 42, clauses 44 through 64—pass; part 5, pages 43 and 44, clause 65—pass; part 6, pages 45 through 53, clauses 66 through 78—pass.

Part 7, pages 54 through 62. Shall clauses 79 through 91 pass?

**Some Honourable Members:** Pass.

**Mr. Chairperson:** Clauses 71 through 91 are accordingly passed.

We will now consider the table of contents: pages 1 through 4, table of contents—pass.

We will now consider the remaining items of the bill: page 1, the enacting clause—pass; title—pass. Bill be reported.

The hour being 7 o'clock, what is the will of the committee?

**Some Honourable Members:** Rise.

**Mr. Chairperson:** Committee rise.

**COMMITTEE ROSE AT:** 7:01 p.m.

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