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Thursday 12 October 2006

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Jeudi 12 octobre 2006

**Standing committee on
finance and economic affairs**

Mortgage Brokerages, Lenders
and Administrators Act, 2006

**Comité permanent des finances
et des affaires économiques**

Loi de 2006 sur les maisons
de courtage d'hypothèques,
les prêteurs hypothécaires et
les administrateurs d'hypothèques

Chair: Pat Hoy
Clerk: Douglas Arnott

Président : Pat Hoy
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
FINANCE AND ECONOMIC AFFAIRSCOMITÉ PERMANENT DES FINANCES
ET DES AFFAIRES ÉCONOMIQUES

Thursday 12 October 2006

Jeudi 12 octobre 2006

*The committee met at 0935 in room 151.*MORTGAGE BROKERAGES, LENDERS
AND ADMINISTRATORS ACT, 2006LOI DE 2006 SUR LES MAISONS
DE COURTAGE D'HYPOTHÈQUES,
LES PRÊTEURS HYPOTHÉCAIRES ET
LES ADMINISTRATEURS
D'HYPOTHÈQUES

Consideration of Bill 65, An Act respecting mortgage brokerages, lenders and administrators / Projet de loi 65, Loi concernant les maisons de courtage d'hypothèques, les prêteurs hypothécaires et les administrateurs d'hypothèques.

SUBCOMMITTEE REPORT

The Chair (Mr. Pat Hoy): The standing committee on finance and economic affairs will come to order. The first bit of business we should do is to have the report of the subcommittee read into the record.

Mr. Wayne Arthurs (Pickering–Ajax–Uxbridge): Mr. Chairman, your subcommittee met on Wednesday, October 4, 2006, to consider the method of proceeding on Bill 65, An Act respecting mortgage brokerages, lenders and administrators, and recommends the following:

1. That the committee hold public hearings in Toronto on Thursday, October 12, 2006.

2. That the committee clerk, with the authorization of the Chair, post information regarding Bill 65 on the Ontario parliamentary channel, the committee's website and in the Globe and Mail as soon as possible.

3. That interested people who wish to be considered to make an oral presentation contact the committee clerk by 12 noon on Wednesday, October 11, 2006.

4. That if necessary, the members of the subcommittee prioritize a list of requests to appear and return it to the committee clerk by 1:30 p.m. on Wednesday, October 11, 2006.

5. That a subcommittee member's failure to return a prioritized list by 1:30 p.m. on Wednesday, October 11, 2006, would indicate the member's intention to keep the list in its original priority.

6. That if all requests to appear can be scheduled the committee clerk can proceed to schedule all witnesses and no prioritized list would be required.

7. That all witnesses be offered 10 minutes for their presentation, and that witnesses be scheduled in 15-minute intervals to allow for questions from committee members if necessary.

8. That the deadline for written submissions be Thursday, October 12, 2006, at 5 p.m.

9. That for administrative purposes, proposed amendments should be filed with the committee clerk by 5 p.m. on Tuesday, October 17, 2006.

10. That the committee meet for the purpose of clause-by-clause consideration of Bill 65 on Thursday, October 19, 2006.

11. That the committee clerk, in consultation with the Chair, be authorized prior to the adoption of the report of the subcommittee, to commence making any preliminary arrangements necessary to facilitate the committee's proceedings.

Mr. Chairman, that's your subcommittee report.

The Chair: Mr. Hudak?

Mr. Tim Hudak (Erie–Lincoln): Thank you to the parliamentary assistant for reading that in. There had been some commitment by the Minister of Finance to bring forward draft regulations as part of this process. I don't know if it was expected for the first day of committee hearings, but given that we're coming back for clause-by-clause consideration on Thursday, October 19, I wonder if you could endeavour to bring forward some draft regulations for some of the key areas before that date for the committee.

Mr. Arthurs: I know that staff are working on some draft regulations. I don't think they would be comprehensive. I can't tell you right this minute. I'll have staff check—they are here—to see what the status might be and the availability of getting any of that material to us before clause-by-clause next week.

Mr. Hudak: I'd appreciate that, because this is largely a non-controversial piece of legislation and you know that the official opposition supports the bill. I think what we'll hear most from the groups coming before us today is some discussion of what those regulations could contain. It would certainly help our job as a committee if those regulations came forward as promptly as possible, and I appreciate the parliamentary assistant's efforts to do so.

The Chair: With that stated, all in favour of the subcommittee report? Carried.

CANADIAN INSTITUTE OF MORTGAGE
BROKERS AND LENDERS

The Chair: We'll begin this morning's presentations. I would ask the Canadian Institute of Mortgage Brokers and Lenders to come forward, please. Good morning. You have 10 minutes for your presentation. There may be up to five minutes of questioning following that. I'd ask you to identify yourself for the purposes of our recording Hansard.

Mr. Jim Murphy: Thank you very much, Mr. Chair and members of the committee. Good morning. My name is Jim Murphy and I am the senior director of government relations and communications for the Canadian Institute of Mortgage Brokers and Lenders, or CIMBL, as we call ourselves, the acronym—at least for another month, before we change our name. CIMBL has over 9,400 members across Canada, with approximately 5,400, or nearly 60%, here in the province of Ontario. CIMBL represents all facets of the mortgage industry, including lenders, such as the banks and credit unions, mortgage insurers, title insurers, and mortgage brokers and agents.

Research CIMBL has undertaken, some of which you have in your packages, showed that at the end of 2005 there was roughly \$660 billion in outstanding mortgage credit across the country. Roughly half that total is in the province of Ontario. This total is expected to grow by a further 10% by the end of this year, so we'll have a total of \$725 billion. In short, our industry helps Canadians and Ontarians meet their dream of home ownership.

CIMBL has also established an accredited mortgage professional, or AMP, designation as part of our ongoing commitment to increase the level of professionalism in Canada's mortgage industry through the development of educational, mortgage and ethical standards. I'm proud to say that over 3,000 of our 9,000 members have their AMP designation.

CIMBL also developed best practices for fraud avoidance a couple of years ago, a copy of which is in your packages, and also has a strong ethics process that we undertake in terms of our members to ensure that integrity is maintained within the mortgage industry.

0940

The tremendous growth of our industry is reflected in the tabling of new legislation that will govern our industry, and that is currently before you today: Bill 65. This is the first major rewrite of the legislation in some time, since the late 1960s, and reflects the tremendous growth of the mortgage industry that we've seen in Ontario and across the country. The overall intent of the legislation, as stated by the government, and one CIMBL supports, is to increase professionalism in the industry by raising the bar on several important standards, such as disclosure and education.

As is often said, however, the devil is always in the details. While we have been working with the Ministry of Finance and the government and the Financial Services Commission of Ontario, which is our regulator, we have

not yet seen the final set of regulations that will accompany the legislation.

Let me review for you some of the important issues and CIMBL's positions, some of which you'll hear about this morning from other presenters.

First and foremost, Bill 65 creates a tiered registration model for mortgage professionals. Mortgage brokers, mortgage agents, mortgage administrators and also principal brokers will have to be licensed with FSCO, which is the regulator of the mortgage brokerage and agent industry in the province, and meet eligibility requirements, including minimum education standards.

Included in our package are copies of correspondence that we've had with the government over the last couple of years on this issue. I should briefly pause here and commend the government for the process it followed. Mr. Colle, who's currently the Minister of Immigration, began the process as the parliamentary assistant to the Minister of Finance, a very open and transparent process, with stakeholders involved. There were draft copies of legislation tabled for stakeholders to discuss. It was a very good public process.

Our letter dated May 29, to the current Minister of Finance, Minister Sorbara, is also in your package. Let me just go through some of these points:

CIMBL supports mandatory errors and omission insurance for all brokerage firms in the province, that they should be covered in order to practise and receive a licence.

CIMBL supports minimum capital requirements for both mortgage administrators and brokerage firms in the province in order to practise.

CIMBL supports disclosure, including enhanced disclosure of mortgage professionals' incentives and commissions. Earlier this year, CIMBL established a task force to capture these types of remuneration, and a copy of the form we developed is included in your package. We're quite proud of this. We've gone above and beyond the normal statement of mortgage so that consumers and borrowers will have an understanding of how their mortgage professional is paid, what conflict-of-interest situations may arise. A number of these issues under disclosure will be dealt with by regulation, but we think it's important, to meet the intent of the legislation in terms of professionalism and raising the bar, that this issue be dealt with. You'll be interested to know that Alberta, on October 1, a week or so ago, became the first province to mandate enhanced disclosure, which we are promoting and which I think the government is also committed to seeing.

CIMBL believes the legislation should allow for a simple referral in which the name of a business, an individual, or somebody on a business card can be passed to mortgage professionals without the referral source being licensed. This is the subject of much discussion you'll hear about this morning. CIMBL believes that if an individual is undertaking a credit check, however, filling out a mortgage application, gathering any financial information or providing mortgage advice, they are

engaging in mortgage activity and should be licensed. The intent of this legislation is to raise the bar and increase professionalism. I think one of the things this legislation does is end the deeming provision, for example, for real estate brokers, that they no longer automatically can undertake mortgage brokering activities. So I don't think we want to see loopholes created. We want to see things tightened so that the overall standards and quality can be increased.

Likewise, for legal services, CIMBL believes that if lawyers are engaged in mortgage activity, which we've defined above in terms of filling out applications or providing mortgage options, credit checks, then lawyers should also be licensed.

Finally, let me address education standards. The specifics of education standards will be determined by the regulations, but they are very important and the failure to get them right could undermine the success of the initiative. Again, CIMBL supports higher standards for education. A draft education paper was released by the Ministry of Finance and FSCO at the end of August, I believe. CIMBL believes the options should be strengthened beyond what is in that paper.

The whole purpose of the legislation is to create high standards that the public and the board can rely on. Standards rest on the foundation of professional education. To create an effective education program, it is our belief there must be a common curriculum, a common set of learning materials and a common exam. Within that framework, there could be multiple deliverers of training, but only if they are teaching the same materials from the same text, culminating in the same exam. Consistency in content is vital if the government is to meet its objectives of raising standards, improving quality and enhancing consumer protection. Indeed, CIMBL believes that a common education standard should be implemented across Canada.

Our request would be that when the government and FSCO finalize the regulations, including educational requirements, minimum standards and quality be not only maintained but indeed enhanced. We look forward to working with the ministry, with FSCO and the committee to ensure that this happens.

Thank you for your time this morning. I would be pleased to answer any questions that you may have.

The Chair: Thank you for your presentation. We'll begin this round of questions with the official opposition. You have up to five minutes.

Mr. Hudak: Mr. Murphy, great to see you again. Thank you very much for attending.

The first and most important question of course is, should the short title of the act be changed to the Arthur Lofsky Act or the Jim Murphy Act?

Mr. Murphy: I don't know about the second one, but we'll have to see the government amendments on the first one. We would support that, by the way.

Mr. Hudak: CIMBL has been excellent at getting members of the assembly information on the act and CIMBL's other activities. It's good seeing you again.

You've obviously made your points very clear in the run-up to the bill as well as here at the second reading committee hearings.

With respect to the main point we'll be discussing—and hopefully we'll see some draft regulations in a short time—on simple referrals, what is wrong with simply filling out an application as a simple referral? You said that simply passing on a business card should count. But what's wrong with an application or gathering financial information?

Mr. Murphy: I think it comes back to standards, back to quality, raising the bar. We want to make sure that people who are providing mortgage advice, undertaking mortgage activity, have the proper education, the background. This is the most important investment somebody is going to make in their life, and the person sitting across the table from them should have the expertise and the knowledge to provide them with the best advice.

All the major provinces—British Columbia, Alberta, Ontario and Quebec—have the concept of a simple referral, that if you pass a name along to a mortgage professional, if you're a financial planner, if you're an insurance representative, that's allowed. Once you go beyond that, in terms of credit checks, in terms of filling out applications, in terms of providing mortgage options, in terms of even financial information, we think that's moving beyond, that that in fact is mortgage activity. People should be licensed for that. People should take background education courses on that to understand the implications of all those things. We just don't think that people necessarily are qualified to provide that advice. It's a very slippery slope. We don't want to create loopholes in legislation that allow people to make a living without being licensed. There's no audit function, there's no ability for FSCO to check records and all those sorts of things, because people wouldn't have to be licensed.

Mr. Hudak: Do you think that clarity exists currently in the bill, or do we need greater clarity?

Mr. Murphy: The bill does speak to it, in some form. But as you indicated earlier, some of that will obviously also come out in the regulations, in terms of what exactly would be allowed and what would constitute activity, what would constitute somebody having to be licensed.

Mr. Hudak: Absolutely. Again, I appreciate the endeavours of the parliamentary assistant to try to get us that information before committee is closed.

You made some excellent points about the common curriculum and maintaining high standards in the education. The ministry had the draft paper out. You want to see that strengthened. You give some examples of how it could be strengthened. How do you think that common curriculum, that common set of training materials, should be put together?

Mr. Murphy: We're working with the ministry and FSCO on that. There are a number of options they've presented. We think the recommended option is not the best. We've voiced that to the regulator at this point. We don't have a problem with multiple deliveries of the system. But if you want to raise the standards, there should

be some sort of common knowledge. There should be a common set of materials that people are tested on. You don't want to have one deliverer out there talking about one set of standards and interpreting something one way, and then somebody else interpreting it another way. You're going to end up with a lot of different courses and different materials that may or may not be appropriate. We think that there should be common elements, common materials, common exams so that when somebody's dealing with a mortgage professional, they know they have the common background. We think that's exceedingly important.

Mr. Hudak: Chairman, am I okay for time?

The Chair: You have 30 seconds.

Mr. Hudak: Consumer protection is obviously a very important theme in this legislation. You talk about how CIMBL has brought forward stronger elements on disclosure. Any further comments on how this bill can strengthen consumer protection through disclosure?

Mr. Murphy: We support enhanced disclosure. We've made that known to the government, to the regulator. We think we can be a leader in that. Other industries, like insurance, are looking at this: How is your mortgage professional remunerated? When you go to get a mortgage, how are they paid? Who pays them? What are conflict-of-interest situations that they may have? These are all things that the consumer should know, should be aware of, that may influence the decision or the recommendation that's being made to them.

As part of our efforts to raise the bar in terms of professionalism and enhanced standards and quality, we think that's a good thing. We've developed the form. We're glad to see that Alberta was the first province to do that. We hope Ontario follows suit on that in terms of making those requirements. I think a vast majority of people practising in the field today would have no problem with disclosing.

Mr. Hudak: Thank you.

The Chair: Thank you for your presentation.

0950

INDEPENDENT MORTGAGE BROKERS ASSOCIATION OF ONTARIO

The Chair: I would call on the Independent Mortgage Brokers Association of Ontario to come forward, please. Good morning. You have 10 minutes for your presentation. There may be up to five minutes of questioning following that. I would ask you to identify yourselves for the purposes of our recording Hansard.

Mr. Jeff Atlin: Thank you. Mr. Chairman, honoured members, guests, fellow presenters, I'm Jeff Atlin and I'm a director and the government relations chair of the Independent Mortgage Brokers Association of Ontario, IMBA, as we call ourselves. My associate is Mal Eccles, our director and chair of education.

The Independent Mortgage Brokers Association of Ontario represents solely the interests of mortgage brokers and agents, although we do have associate mem-

bers from those other categories such as insurers, lenders etc. Our membership has grown from 65 people six years ago to 1,200 presently and is continuing to grow at that rate. Mal and I are probably the only two active mortgage brokers in the room.

IMBA would like to congratulate the government on the introduction of Bill 65, which the industry has been anxiously anticipating, a legislative overhaul long overdue. I must say that the bill has been well received by the industry in general. We also want to thank the Minister of Finance and FSCO for their consultative approach, both to the legislation and the forthcoming regulations. We thank you for inviting us to be part of the consultation process to date and look forward to continuing discussions on the regulations.

In reviewing Bill 65, we've noted a few areas on which we would like to provide some comment and input. Like my friend from CIMBL, I preface my comments by saying that some and probably all of the things we're going to talk about will likely be further addressed in the regulations.

The first matter is the actual definition of a mortgage broker. Like our friends at CIMBL, we would like to see the bar raised, and the way to do that is to allow the fewest loopholes possible as to who can participate in the business of mortgage brokering. Make the definition as tight as possible. If it walks like a duck and quacks like a duck, it's a duck. If you arrange a mortgage for somebody, if you refer somebody for a mortgage, then you're acting as a mortgage broker—we'll get into referrals in a minute. Then you can define your specific exemptions: if it's a bank, a financial institution, the employee of a financial institution acting for that financial institution or a private investor acting through a mortgage broker. Define your five, six or seven specific definitions. Otherwise, if you touch a mortgage, you're a mortgage broker. It makes it very simple when you want to enforce.

Secondly, a matter that's glossed over in the act is the matter of mortgage syndication. Many of you may recall a couple of years ago, in March and April 2005, when the securities commission was looking at the harmonized legislation. At that point in time, mortgage syndication was going to be included in the harmonized legislation, but due to presentations from ourselves, CIMBL, OREA and others, it was removed.

The business of mortgage syndication in Ontario is a major activity, and its activity should be specifically recognized in this bill. In our opinion, it would be a grievous error not to take this opportunity to actually incorporate it into Bill 65 and to have formal ownership of this mortgage product, which is vital to the Ontario economy, included under the act.

We're quite concerned about the loose concept of simple referrals that seems to have been promoted to date. We believe that the permission of compensation for referrals, without some strict definitions and limitations, will invite abuse. It will in fact create another loophole for those who wish to circumvent the act.

I can assure you that if I'm paying somebody \$100 for a referral, I'm getting a name, a phone number and an address. If I am paying somebody \$5,000 for a referral, he's quite likely providing far more than a name, address and phone number, although nobody would ever say that that's what he's doing. For that matter, it would also expose consumers to either an uneducated or under-educated individual providing them with advice on what is likely the largest investment of their life. We strongly suggest that a simple referral be capped monetarily to a nominal amount. This can be done under either the act or the regulations, but it needs to be considered.

We have suggested in earlier correspondence and presentations a quantum formula for that, which is in our written presentation. Further, to better control referrals, both the receipt of a referral payment and a payment of a referral payment that would exceed whatever the limitation is should be made illegal if it's not paid to a registered mortgage brokerage.

If the committee should agree that this belongs in the regulations, as opposed to the act, where it very well may, we ask that when they approve this legislation or go through this legislation next week on a line-by-line basis, they give direction to the framers of the regulations to incorporate these kinds of limitations in the regulations.

We also strongly support the requirement for mandatory errors and omissions insurance in the proposed draft regulations to Bill 65. This will greatly add to the professionalism and consumer protection in the industry. In that same regulation is a requirement for fraud coverage, and both we and our insurers—and I think, if you speak to CIMBL, you'll find out that they have received the same information—feel that the requirement for fraud insurance as it stands now would put at risk the actual ability to keep our errors and omissions policy, which is the key part of the requirement. The requirement for fraud coverage should either be dropped or at least narrowly defined to the point where the insurers can live with it and it won't put errors and omissions at risk.

Another concern to us is the undefined nature of lawyer exemptions under the bill. Their proposed exemption should be defined and strictly limited to providing the legal services of giving advice around an existing or proposed mortgage, or the legal services in the preparation, signing and registration thereof. Any arranging of a mortgage should be considered mortgage brokering and require registration under the act as a broker or an agent. Educational requirements and/or exemptions, if any, would be dealt with in the pending education regulations currently under consultation and formation.

IMBA feels that the omission of a branch management system in the tiered licensing requirements is an oversight that should be dealt with, probably in the regulations again. We do not feel that it is possible to manage agents and offices over great distances and still ensure proper supervision and consumer protection.

We've attached to our submission the RECO registrar's bulletin, with their views on branch management, which seem to work well. Again, we would request that

the committee give direction to the framers of the regulations when they review this bill, if it doesn't belong in the bill itself.

We have previously stated on numerous occasions that employees of banks, trust companies and other financial institutions must comply with the legislation if they deal or trade in mortgage financing for other than their employers' own account. If they're providing a mortgage to another institution, it's not being funded by their institution, they're a mortgage broker. They do not necessarily have access to all the mortgage lenders in the marketplace, only those few that their institution has made some arrangement with. They are all particularly ill-informed on the private money marketplace. This will likely result in the consumer obtaining a slanted and incomplete understanding of what may be available to them.

From the consumer's point of view, however, they're talking to a bank or financial institution mortgage expert and giving them the trust that they would be the institution itself. The bill or the regulations must clearly and unambiguously ensure that a financial institution representative providing a mortgage from anyone other than their own institution is appropriately registered under the act and complies with the requirements of the act.

Time? How are we doing?

The Chair: You have about two minutes left.

1000

Mr. Atlin: Okay. Very quickly then, I'll touch on two other things. One is the minimum capital requirement, which we believe is unnecessary in the operation of a mortgage brokerage. There may be some consideration given to it when you're doing administration, because then you're handling other people's money, but in a straight brokerage operation, there's no need for a capital requirement. You're not providing funds; you're not promising anybody your own funds; there's nothing to back up.

Lastly, education, which I didn't comment on earlier because it's a matter for the regulations. But like our friends at CIMBL, we feel the bar needs to be raised to the very top we can there. Unlike CIMBL, however, we don't think that a single curriculum is necessary. You can have multiple providers, multiple curricula, as long as they meet the learning outcomes that are set by FSCO, the regulator. The proof will be in the laundry. If our course isn't providing the proper information for somebody to pass the exams, people won't take it. They'll stop taking it and go to where they can be successful.

Where we do agree is on a unified exam for mortgage brokers, not necessarily agents. Once you get to the broker level, there should be a province-wide exam. That will test whether my curriculum or somebody else's curriculum is providing the same depth of information. If they can pass the exam from either of us, they're getting the right information. If they can't, one of us is going to fail.

I'd like to thank the committee for allowing us the time to appear here today, and again congratulate the

government, the Ministry of Finance and FSCO on the introduction and the depth of this much-needed legislation. Myself and Mal are obviously available for questions now and will be available after the closing of the session today if anybody wants to speak to us. Of course, we'd be happy to meet with you in your offices or constituency offices, if appropriate, if you have any other concerns with this legislation or the mortgage industry in general. Thank you very much.

The Chair: This round of questioning will go to the NDP.

Mr. Michael Prue (Beaches–East York): You said that mortgage syndication has been largely overlooked, and you used pretty strong words to say that it's "a grievous error." How exactly would you include this in the bill?

Mr. Atlin: It seems to be an orphan right now. It was going to go into the harmonized legislation under the securities commission; however, a mortgage is a mortgage. Whether three people own the mortgage or one person owns the mortgage, it's still a mortgage. For the borrower, it's exactly the same product. The only difference is in the administration and disclosure. You're disclosing to three people instead of one. You may be collecting money and therefore have to register as administrator, but it's a mortgage product.

We figured, when we went before the securities commission—I don't have the numbers with me; I apologize—somewhere between \$4 billion and \$6 billion a year is done in Ontario in mortgage syndication. That's a big economic driver for people who can't get money from a bank. Why would we give up ownership of that as a mortgage product, when it can be regulated as easily as any of the other mortgage products that we're regulating, and leave it out there as an orphan product? Does that answer your question?

Mr. Prue: I think so, but how would you include it?

Mr. Atlin: Just specifically include—

Mr. Prue: A definition?

Mr. Atlin:—a definition of "mortgage syndication." If you're syndicating mortgages, you have to be registered as a general mortgage broker. The disclosure requirements can refer to the same requirements as for a mortgage, except ensuring that you've disclosed all entities and that there's an operating mortgage syndication agreement among the participants, the owners of the mortgage, in place.

Mr. Prue: That's my first question. The second one is the amount of money that someone would get for a simple referral. It seems to me a lawyer hands someone a brokerage member's card and, according to what you say, you're suggesting one tenth of 1% of the value of the mortgage. If somebody buys a \$500,000 home or has a \$500,000 mortgage, you hand over a card and you say, "That will be \$500, please." It seems to me to be an awful lot to pay, because it will all come back to the consumer in the end.

If you're looking for a lawyer, as an example, you can phone the law society and, free of charge, they'll give

you the names of 10 or 15 lawyers who specialize in that particular field, and then you can go out and search your own. Why would anybody want to pay this? Why would you allow this to be paid?

Mr. Atlin: In many situations, those referrals are coming out of the finders' fees that are being paid by the institution so, in essence, they're built into the transaction whether they're paid or not; however, there are situations where they're not. That formula is a sample formula, just an example of a way to calculate it. You can limit it by absolute dollar amount if you want to; we suggested that.

We understand the concerns of some of our associates, whom you'll be hearing from shortly, about having a network of agents out there who don't necessarily deal in mortgages but refer to their mortgage people, and they want to compensate them for that. So where's the fairness in that compensation level, whatever they want to do internally, so that the person gets some kind of fair compensation for that referral, and paying them so much that you would expect it to be more than a simple referral? So we came up with that formula as a sort of compromise, a middle ground. If you want to tighten it up more, you can say \$100. From our point of view, the tighter it is, the better. The real estate industry doesn't allow referrals. I should mention that it isn't just coin of the realm; it's also in-kind compensation that we're referring to.

Mr. Prue: It seems to me that it would work the other way mostly; the mortgage broker who wants the business would go out and say, "Refer them to me." Some of the mortgage brokers I know go out to the insurance companies, to the lawyers and the real estate agents and say, "Refer people looking for a mortgage to me." Then they usually compensate those people, rather than having—

Mr. Atlin: That's fine under what we're suggesting. But we're saying limit that amount. Because if I give you a cheque for \$1,000 for the referral, I'm obviously expecting a lot more than a name, address and phone number. I'm expecting to take an application, get the employment letter, whatever. If I'm giving you \$100 or \$200 or \$300, I'm probably not; that's a cost of my doing business, if that's the way I want to source my business.

We're suggesting that what's important here isn't the actual numbers we've put in there—the regulations can come up with their own restrictive numbers under the guidance of this committee—but that that kind of restriction be put in place so it doesn't get out of hand.

Mr. Prue: Would it not be better, though, if your organization or other organizations like CIMBL had a list like the law society, where people would call you and you would simply tell them the names—

Mr. Atlin: We do.

Mr. Prue:—as opposed to building in \$100, \$500, one tenth of 1%, baksheesh, underneath the table, whatever one wants to call it? It seems to me that the consumer is not being protected by your organization unless your organization does this.

Mr. Atlin: We do have that referral source, but not everybody uses it. People go to somebody they trust. That may be their lawyer; that may be their insurance agent; that may be a mortgage broker they've had a long-term relationship with; an accountant; or another intermediary. The practice of this kind of referral happens, and the payment of those fees happens. If you just outlaw it altogether, in our opinion, it's going to happen underground. It's going to happen. You can't just put your head in the sand and ignore it.

On the other hand, if you can limit it and control it—there are people out there today making a very, very good living on referrals, who are getting around the act by not registering, because they can just call themselves a referral source. That's what we're trying to close.

The Chair: Thank you for your presentation.

Mr. Hudak: Chair, if I could, a quick question to legal counsel. Mr. Atlin had attached part of the branch managers aspect of his proposals to the bill, which I think talks about the original Real Estate and Business Brokers Act. The new one comes into effect or has come into effect this year. I'm just curious as to how branch managers are treated under the newest version of the Real Estate and Business Brokers Act. I don't expect you to know it off the top of your head, obviously. If I can just get it back to committee—and you're Hansard, I know.

I believe Mr. Atlin has the old version of the act. There is a revision of the act that has come forward. I just want to see how it's treated in the new act.

The Chair: I'm advised that if you ask legislative research to look for that for you, they would entertain that. This is Hansard here.

Mr. Hudak: It would probably be best if it's through research or legal, the point being that Mr. Atlin has suggested that we use the branch manager concept as part of this bill for mortgage brokers, based on what exists for real estate brokers. The new legislation has come into effect this year, so I'm asking how branch managers are treated under the newest version of REBBA for real estate agents, to see if that would be something we could cut and paste into this legislation.

The Chair: All right, then. Legislative research has advised that they will coordinate with legal counsel on this issue.

Mr. Hudak: Terrific; thank you.

The Chair: Very good. We'll move on.

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PRIMERICA FINANCIAL SERVICES
CANADIAN LIFE AND HEALTH
INSURANCE ASSOCIATION

The Chair: Our next presentation is Primerica Financial Services Ltd. and the Canadian Life and Health Insurance Association. You have 10 minutes for your presentation. There may be up to five minutes of questioning following that. I would ask you to identify yourselves for the purposes of our recording Hansard.

Mr. Peter Goldthorpe: Thank you and good morning. I'm Peter Goldthorpe, director of marketplace regulation issues for the Canadian Life and Health Insurance Association. With me is Hande Bilhan, senior vice-president of Primerica Financial Services. Primerica is one of our member companies. We appreciate this opportunity to appear before the committee as it considers Bill 65.

At the outset, I'd like to note that Canada's life insurance industry is strongly committed to high standards for consumer protection. In particular, we view licensing and proficiency standards of the sort introduced in Bill 65 as important components of effective consumer protection.

CLHIA is a voluntary, non-profit organization that represents life and health insurance companies in Canada. The industry's products include life insurance, disability insurance, supplementary health insurance, annuities, RRSPs and pensions. These products provide protection for nearly 10 million Ontarians. Last year, people living in Ontario received just over \$23 billion in life and health insurance benefits.

The interest that the life insurance industry has in Bill 65 is confined to the issue of referrals, so our remarks today will focus on that issue.

As you know, Bill 65 proposes that persons making referrals be exempted from licensing requirements that apply to persons dealing in mortgages. We believe this is an important exemption that should be retained in the legislation.

The bill also provides for regulation to prescribe the type of information that can be included in a simple referral. We know that the drafting of regulations is a separate process, but since regulations can, if you will, add flesh to the bones of the legislation, my colleague Hande will briefly describe our proposal for how simple referrals should be defined.

With respect to the importance of simple referrals, this is a highly effective means of making consumers aware of the services of mortgage brokers and agents when consumers need these services. The problem with most awareness campaigns is that they reach people when they are not particularly interested and thus not inclined to pay attention or remember the information. Referrals are efficient and effective because they typically occur when the prospective customer needs the service of the mortgage broker or agent.

Our industry has a particular interest in referrals to mortgage brokers and agents because life insurance agents frequently are meeting with clients when they are planning significant changes in their lives. These changes include marriage, the coming birth of a child, increased wealth from a new job or inheritance, and the purchase of a house. Frequently, one of those leads to the next. So it is not uncommon for a life insurance agent to be meeting with a client at about the same time that the client is thinking about buying a house. When a life insurance agent learns that his client is planning to buy a house, it is only natural to suggest referring the client to a mortgage

broker or agent for advice and recommendations about that specific service.

The issue of a cap on referral fees has been raised. The life insurance industry would be strongly opposed to the government regulating fees in this area. If a person making a referral is complying with all the other rules and conditions for the referral—and Hande will be speaking about that momentarily—then I would respectfully submit that there are no public policy issues remaining with a referral. The consumer protection concerns have been addressed by the other rules that Hande will be talking about.

I'll turn it over to Hande to talk about the conditions that attach to simple referrals and how we believe that process should unfold.

Ms. Hande Bilhan: Thank you and good morning. Life insurance agents who are referring their clients to a mortgage broker or agent would like to have the flexibility to pass along some basic financial information about their client. Including this information enhances the introduction of a client from one financial services professional to another. You can, if you like, think of it as providing a snapshot of the client, where that snapshot is a very basic financial description obtained generally as a result of another regulated financial services activity.

To alleviate any concerns regarding personal and financial information being passed from one person to another, we're suggesting that simple referrals that include basic financial information should satisfy several conditions.

First, the information would only be forwarded with the clear consent of the client. He or she should at all times know what information is being passed along about them and why.

Second, the agent should disclose that a fee may be paid for the referral and whether any conflicts of interest are involved in the referral. I might add that life insurance agents in Ontario already would be required to make this disclosure under current regulations.

Third, the agent should clearly explain to the client that the referral does not constitute advice or a recommendation about a mortgage product.

I also want to clarify exactly what is included in the information we are proposing be included in a simple referral. It is basic information that the life agent has already collected for other purposes, such as preparing a financial plan for their client or analyzing their life insurance needs. This information in itself is not sufficient to analyze needs related to mortgages and give advice or recommendations about mortgages.

The basic financial snapshot that we are proposing thus does not present a public policy concern. The mortgage agent or broker would still need to collect more detailed information about a variety of matters before he or she could analyze the information and give advice or make recommendations about the mortgage. In other words, all the consumer safeguards that Bill 65 will provide through the licensing of mortgage agents and

brokers would remain in effect with our proposal. We view these safeguards as very important.

We have attached a chart to our prepared remarks that illustrates this point. You can see that attached to the remarks that you've received. This simply allows the life agent to introduce his or her client, as I said, from one financial services professional to another in a meaningful manner.

In conclusion, we believe that the ability to make simple referrals offers a valuable service to prospective mortgage customers. We also believe that allowing financial services professionals to include basic financial information in the referral is a convenience to the client, enhances the referral, and does not present a risk.

We would be happy to answer any questions you might have at this time.

The Chair: Thank you. We'll move to the government on this rotation.

Mr. Arthurs: Thank you for the presentation this morning. The issues that you're presenting in the context of a simple referral move into some degree of financial information about the client. That seems to be a clear difference in your presentation from the earlier presentations. Those earlier presentations indicated that simple referrals should be, for all practical purposes, the name, address, phone number, and e-mail in today's world, without any financial implications whatsoever. I think what I heard earlier, if I can paraphrase, is that including financial information is a foot in the door to expanding the capacity to provide information about the referral. How would you respond to that?

Mr. Goldthorpe: With respect, I don't see it as a foot in the door and I haven't seen any convincing arguments to suggest that it is a foot in the door, and this matter has been discussed extensively in the consultations that led up to the introduction of Bill 65.

What we're proposing be included is information that the life insurance agent has already collected for other purposes. You can see in the chart that it's very basic gross totals. That information by itself cannot in any conceivable fashion support a credit check or advice or recommendations about mortgages. It would be impossible to give responsible advice or recommendations about mortgages with the information that we're proposing be forwarded as part of a simple referral.

Mr. Arthurs: You're quite clear in the presentation on two or three matters, and I commend you both for articulating them: first, that information would only be forwarded with the consent of the client; second, that the agent should disclose that a fee may be paid on the referral; third, that the agent should clearly explain to the client that it does not constitute advice or recommendations about a mortgage. I think those are good inclusions, irrespective of the outcome of other things that we include. That type of information, that type of disclosure, is to the benefit of those who might be looking for mortgages, mortgage advice or a simple referral process.

You made reference to the issue of capping the referral fee. I think you said that the industry would be opposed to capping on the referral fee.

1020

Mr. Goldthorpe: That's correct.

Mr. Arthurs: Expand on that a little bit for me. I didn't catch it all the first time. I'm good on refreshers.

Mr. Goldthorpe: The reason people propose caps, or at least one of the reasons people propose caps, is the notion that compensation above a certain level gives rise to conflicts of interest and may unduly influence the advice or recommendations that an individual is making.

Our view with respect to simple referrals is that if you follow the rest of the procedures and you comply with the restrictions that are in place and you are not giving advice or are not making recommendations, then there's no public policy interest left over that could be addressed by a cap on the referral fee. So if you're in compliance with the rest of those conditions and rules, then the safeguards are already in place and the cap is unnecessary.

Mr. Arthurs: You said "the agent should disclose that a fee may be paid for the referral." Should that disclosure include the value of that fee?

Mr. Goldthorpe: I'm not sure if, in every situation, a life insurance agent who is making a referral would know what the fee is at the time they're making the referral. They can certainly talk about the fact that they will receive a fee and possibly how that fee might be calculated, but they may not know the specific dollar amount. I don't think it would be practical to ask them to disclose the specific dollar amount.

The Chair: Thank you for your presentation.

ONTARIO BAR ASSOCIATION

The Chair: Our next presenter is the Ontario Bar Association. Please come forward. Good morning. You have 10 minutes for your presentation. There may be up to five minutes of questioning following that. I would ask you to identify yourself for the purposes of our recording Hansard.

Mr. Steven Pearlstein: Good morning. My name is Steven Pearlstein. I'm here representing the Ontario Bar Association. I intend to be quite brief, hopefully.

My thrust will be on the exemption for lawyers. The basic presentation is that if you focus on this bill, it's our principle that this is consumer protection legislation. The thrust of this bill is to protect the consumer, not to micro-manage the industry. The basic thrust is a valid one, that you want to regulate individuals in society who are providing these services from taking advantage of the consumer. In order to do that, you have to draft the definition of the services being provided in a broad manner: dealing in mortgages, trading in mortgages, negotiating and arranging mortgages. All of those we support.

But as a result of those broad definitions in order to protect the consumer, you incorporate certain services that are already being provided, and it's not in the public's best interests to prevent those services, the key

one here being broad and full access to lawyers and legal advice. In the ordinary course of practising law, lawyers regularly and in proper cases are providing these kinds of services.

A good example would be that you own your home and your mortgage comes up for renewal and you decide you're going to get a new mortgage. You go to your bank. The banker says, "Here are the terms under which we'll provide you with the mortgage." You may not want to hire a mortgage broker and pay them a fee, but you have a family lawyer. It's very, very common to get a phone call from a client to say, "Is this the kind of proposal I should take? Should I seek advice from somebody else? Are there other sources of mortgage lending at this particular time?" Because, just like any other circumstance, it changes over time. "Should I put clauses in that are different? Is it normal to ask for an early prepayment clause?" or any other arrangement or negotiation.

In the public interest, we would submit that the public should be allowed and continue to be allowed to seek this kind of advice from their lawyer. It's not in the government's interest to regulate or restrict the broad access to legal advice, so there should be an exemption for lawyers. In fact, there needs to be an exemption for lawyers in the public interest.

But if you then say, "Are we then putting the consumer at risk?"—because the goal here would be to have the party advising, negotiating and arranging be somewhat regulated, have educational requirements, insurance requirements and a complaints process. If you compare everything that's been proposed for mortgage lenders under this or any other piece of legislation I've seen to the ongoing and long-term regulation of lawyers, it's our clear finding that they actually exceed or equal those requirements. Lawyers have training in contracts, negotiations and ethical obligations. Lawyers are heavily regulated by the law society: They're audited, the public has a compensation fund, lawyers are required to maintain errors and omissions insurance of \$1 million each, there's a complaint process if the consumer is unhappy, and there's a regulation that if lawyers are not following the rules, they can be disbarred or otherwise sanctioned. So the consumer is fully protected. There's no need to have these exclude the free and open, fullest advice of consumers seeking advice from their lawyers.

That's essentially the presentation.

The Chair: Thank you very much. This rotation goes to the official opposition.

Mr. Hudak: Mr. Pearlstein, it's good seeing you again. Thanks very much for coming forward with a presentation.

An exemption for lawyers under all circumstances of the bill? There are no parameters around—it sounds like you're asking for a very broad-based exemption.

Mr. Pearlstein: The actual proposal recognizes, and the Ontario Bar Association is very clear, that we are not advocating that the fact that you're a lawyer would allow you to simply conduct business as a mortgage broker itself. So the exempt services are related or arising out of

your retainer as a lawyer. You have to be providing legal services.

The wording is being negotiated with the ministry; it's heavily negotiated. The government has proposed that it be contained in regulations; our original proposal was that it be contained in the act. But there are negotiations and compromise going on here. All of the lawyer organizations that I'm aware of are clear that the exemption will not permit a lawyer to carry on the business of a mortgage broker simply by the fact that they're a lawyer. The exemption will relate to their legal services.

Mr. Hudak: To be specific, then, some advice around, as you mentioned, clauses that would exist in a mortgage contract?

Mr. Pearlstein: Well, it could be any mortgage advice within the wording in the act. The act proposes to regulate dealing in mortgages, trading in mortgages and those kinds of activities. So for anything related to that, which a lawyer is doing for their clients, they would be exempt. If they simply opened a mortgage brokerage store, of course they wouldn't be exempt. The bar association supports that regulation, and as I understand it, the ministry proposal would conform to that arrangement.

Mr. Hudak: So the bar association feels it's relatively straightforward to define where that line exists, then.

Mr. Pearlstein: We had some proposed wording that was not accepted by the government. We understand there are other parties making proposed wording suggestions, so I don't think it's straightforward. But I believe the concept is straightforward.

Mr. Hudak: Do you feel confident that the eventual language will be worked out to your satisfaction?

Mr. Pearlstein: We're very close. There's proposed wording that has been circulated for the regulations. I have to commend the government. The ministry staff has worked really hard, and I commend them. They're getting stakeholder input from all parties, and they're trying their best to find something that all parties can be comfortable with. So we're very close to getting that wording. Yes, I'm confident we'll get there.

Mr. Hudak: So you would support my earlier question to Mr. Murphy about naming the bill the Arthur Lofsky Act, as its short title?

Laughter.

Mr. Pearlstein: I refuse to answer on the grounds that it may tend to incriminate.

1030

Mr. Hudak: Do you see any other professions that should have an exemption to this act, aside from the legal profession?

Mr. Pearlstein: I'm here to represent the bar association and the legal profession. Our official position is in regard to lawyers themselves, and we haven't taken a position on any other profession. But I would answer you that exempting lawyers from this act is very consistent with the treatment of other professionals in other acts. A very good example is that doctors are exempt from the Pharmacy Act. You have to be a licensed pharmacist to

prescribe prescription medicines, but if you're a medical doctor, you're totally exempt from those regulations. So is a dentist. A dentist could technically prescribe heart medicine and is exempt from the Pharmacy Act. There are other regulations that control dentists and doctors; therefore, it's recognized in the public interest.

Mr. Hudak: Do lawyers get involved in the referral business as well?

Mr. Pearlstein: Yes. I wouldn't mind addressing that. We're strongly in favour of the simple referral. Instead of regulating this area, it fits perfectly, in my opinion, with the purpose of this act. The whole thrust of this act is to get mortgage brokerage services under the act. So if the simple referral exemption says you have to refer it to a licensed mortgage broker, which is clearly the thrust of the act, or to a bank or other institution which is otherwise regulated, then the consumer gets all the protections of the act.

The simple referral is a perfect balance between the interest of the consumer—the consumer wants to be referred. Even some of the other presenters said that you usually go to the person you trust, who could be a lawyer, a life insurance company, a bank manager or anybody else. You go there and say, "What should I do?" If you refer them to an otherwise regulated party, who is the mortgage broker, you've now brought them under the act, and then they have all the protection.

To answer Mr. Prue's question, you don't have to worry about the dollars, because the act says specifically that the mortgage broker, the other licensed party, must fully disclose all fees in writing. Whatever fees are going to be paid, already the consumer has to be told and has to know all of these. Regulating the amount of the fee is not really in the public interest, because whatever the fee is, whether the fee goes to the mortgage broker or part of that is split out to the person who has referred or whatever, the fee gets disclosed. If the consumer is paying a \$500 fee, he doesn't really care if \$200 of it goes to that person or \$300 goes to that person. What he really cares about is, "What are the total fees I'm paying on this?"

Mr. Hudak: And it's disclosed.

Mr. Pearlstein: It has to be disclosed, because the protection is that the only exemption for the simple referral is to somebody who is regulated by this act or who is recognized, like a bank or life insurance company, and is heavily regulated, and there is no issue that they would have to be disclosed under their act.

Mr. Hudak: So wouldn't you be supportive of the idea we heard earlier about a cap on what the fee—

Mr. Pearlstein: We are against a cap, because it's not in the public interest to micromanage. When you have these caps, what happens is that it starts hurting the consumer. Right now, you might say \$100 is fine. In five years—you won't be able to look at this legislation or the regulations, and they won't get changed for 10 years, and then people will not be providing the services to the consumer. Right now, the fees are not a concern; it's disclosure, and that's already covered by the act. The consumer is protected. If you keep the thrust of consumer

protection rather than managing the whole industry, I think it's in the consumer interest to get these referrals. They want them.

The Chair: Thank you for your presentation.

LAW SOCIETY OF UPPER CANADA

The Chair: I call on the Law Society of Upper Canada to come forward, please.

Good morning. You have 10 minutes for your presentation. There may be up to five minutes of questioning following that. I would ask you to identify yourselves for the purposes of our recording Hansard.

Mr. Malcolm Heins: Good morning. My name is Malcolm Heins. I'm chief executive officer of the Law Society of Upper Canada. I'm accompanied by Ms. Sheena Weir, who is our manager of government relations, and Ms. Caterina Galati, our senior competence counsel. We're pleased to be here this morning to speak to Bill 65, the Mortgage Brokerages, Lenders and Administrators Act.

The law society is the regulator of the legal profession. We have 37,000 lawyers that we regulate, and we have a staff of approximately 400 people engaged in the regulation of the legal profession. We have a broad public policy mandate as well, within our regulatory authority, and as a result of that mandate, we've had significant interest in what's going on in the area of mortgage brokers and their regulation.

If you look at the law society regulation as to how we regulate lawyers, you'll see that we have a rather extensive array of regulations which go to the issue of how lawyers actually carry on their business. As well, we have the right to audit, we do practice reviews, we have standards, all of which we look to. We have insurance; we have compensation. So it's a very broadly based regulatory environment.

Bill 65, as we see it, attempts to address some of the significant changes that have taken place in the marketplace for mortgages and credit products. Lawyers are extensively involved in financial transactions in this province. If we look at the lawyers we regulate, approximately 8,000 of them engage in real estate related activities. About 4,000 of them are primarily involved in those areas. So they are touching this issue continuously and we hear about the issues that have been taking place in the market.

In our view, there's a need for a fundamental change, and this bill goes a long way to addressing the changes that we think need to take place. The mortgage brokering marketplace is very different from the one that existed when the original Mortgage Brokers Act was introduced. The regulation of mortgage brokers and agents at that time was fairly simplistic and is now, I think, very inadequate for the current state of the marketplace.

Historically, the principal business of mortgage brokers was to find lenders suitable for their borrower clients, at the expense of the borrowing clients, often because the borrower clients had characteristics that

made them less attractive to institutional lenders. Often, the lenders were private individuals.

Today, institutional lenders—banks, trust companies, credit unions—dominate the marketplace, and they actively seek mortgage clients through mortgage origination services, at their expense. The way to put that in the vernacular is that mortgages are now sold; they're not bought. There's tremendous competition, and as a result, there is an array of individuals out there competing to essentially refer clients to institutional lenders.

Related products and services are frequently bundled. Commissions and fees are paid by the lender to the commissioned salespeople as part of the cost of the mortgage, and these amounts are bundled and often not transparent. Fees may be modest as a percentage of each transaction but are significant when measured across the marketplace. It's difficult to put a handle on this, but if you took 1% of basically the residential marketplace as probably what is flowing into the referral side of what's going on in this province, you're probably talking something in the order of \$1 billion. So it's a lot of money.

The reality is that many, if not most, borrowers in the conventional mortgage marketplace today are dealing with advisers of some type. The day of sort of going to your bank manager on bended knee for your mortgage, which I think is the way I did my first mortgage, is long gone. It's just not like that out there. You go to an adviser of some type. What we need, and I think it's in this bill, is the ability to regulate the mortgage brokers themselves and, through that, this sort of advisory scheme that takes place as consumers are moved from one adviser to another and ultimately to a lender.

1040

From the perspective of the law society and the lawyer, as we see it, Bill 65 contains a very comprehensive and widely defined list of regulated activities, and you need that because of what's going on in the marketplace. At the same time, because you've so widely defined it, which I think is necessary, you've picked up legal services, which are the services we regulate through our regulation of lawyers. I think Mr. Pearlstein mentioned some of them. In my paper, at page 5, I've outlined some of the activities that would be picked up: negotiating terms of mortgage commitments, sometimes administering a mortgage as part of an estate, arranging assignments of a mortgage as security, negotiating mortgage clauses in agreements of purchase and sale, and conducting power of sale proceedings. All of these activities are things that lawyers do and that we regulate.

When we looked at the bill and saw subsection 6(6), which gives the power to exempt lawyers by regulation, we felt that authority was necessary. We haven't seen a final regulation at this stage, but we certainly understand that the intent would be not to regulate legal services, and we think that is absolutely necessary. From our perspective, what we don't want to see happening is two regulatory schemes covering the same activity. We want it clear where our authority begins and ends, and we want

it clear where the superintendent's authority begins and ends under this new act.

We have, of course, all sorts of rules and regulations that govern lawyers' obligations when they're dealing with a client, including rules that deal with how a lawyer would have to conduct a referral. For instance, they would have to disclose what was being paid to them; they would have to disclose their relationship with the person they were making the referral to. Our rules already deal with that. We have the right to audit that, and we have the right to look at the lawyers' accounts in that regard.

We also agree that if lawyers wish to engage in mortgage brokering activities, they need to be regulated under the act. We're not sitting here saying that the regulation of lawyers by the law society entitles lawyers to engage in mortgage brokering; we're quite clear about that. What we are saying, though, is that they need to be able to provide their legal services without interference.

That is my submission.

The Chair: Thank you. This round of questioning will go to the NDP.

Mr. Prue: There was some discussion, and you have been in the room for most of it—I know Sheena has, anyway—about the fee that can be charged. We've had suggestions that it be a percentage, 0.1%, or a flat fee. We've had other people say, "You shouldn't be doing it at all." If the lawyer is to make the referral and get the money, they're going to have to disclose how much it is. But people are often intimidated. The lawyer will say, "There's a \$1,000 fee for this." They could just easily pay it, and it takes 30 seconds' work. I'm just wondering, do you think there should be a limit to the amount someone can charge or should it just be open-ended?

Mr. Heins: I don't think the answer to that is clear-cut. First of all, in the lawyer's instance, if the consumer agreed and then had second thoughts later on, we actually have a process where the bill could be taxed and the fee written down. So we have a process to deal with that.

Taking it outside of the lawyer-based activity, I think the mortgage broker ought to have a duty under the regulations, as prescribed, to disclose what referral fee they have paid. The difficulty with referral fees is that you've got such an array of people who might be charging them, some regulated, some not. You've got regulation-making authority under the act. You deal with it on that basis.

You may decide to start off without a cap, and if you start to see abuse in some form, then perhaps you change the regulation. At least you have the flexibility. That's what regulation-making authority is for. It provides you with flexibility to deal with what you see. So I don't know that you have to come down hard and fast on it at this juncture, because it's not necessary to do so.

I can conceive of abuses without a cap. By the same token, I have some sympathy particularly for those others who are regulated for saying that it's not necessary, because of transparency, to put a cap on it. So I don't know that one size fits all here.

Mr. Prue: But again—

Mr. Heins: It's a good lawyer's answer.

Mr. Prue: I know.

Part of the duty of this government, of any government, is to look after the interests of the consumer. We won't allow banks or lending institutions to charge more than 60%. There's a whole debate going on in Ottawa about payday loans and whether that's usurious. The question is what a fair fee for this type of transaction is, and whether or not it can or should be limited. I don't know that I accept the lawyer's answer. Would you put the consumer interest above the interest of your members?

Mr. Heins: As I said, I think that you've got two ways of dealing with this issue. First of all, you have the ability to put a cap on, if you wish. You can do it if you think it's necessary in the marketplace as a result of what you're seeing happening. By the same token, though, you have regulatory authority over the brokers and agents so that you can tell whether or not they are paying unreasonable referral fees. So if there is abuse going on in the marketplace, you come down on those people and, at the same time, perhaps decide at that juncture that you are going to put a cap on. Or, alternatively, you put a cap on right out of the gate and see what happens in the market and then be prepared to change it. You've got that flexibility.

Mr. Prue: Is there more time?

The Chair: You have about a minute.

Mr. Prue: We've had two deputations—the first two groups—saying that, for legal services, they believe that if the lawyer is engaged in mortgage activity, the lawyer should be licensed. It's a bit of a grey area. At what point do you believe that the lawyers would require a licence? I mean, there are various degrees of getting involved. At what point would they be required to be licensed? You did concede that's maybe necessary if people go into mortgages.

Mr. Heins: I think where the lawyer is clearly holding themselves out as an entity that can source financing for you, then it would be our view that they're starting to cross the line and they should be licensed under the Mortgage Brokers Act.

Mr. Prue: So any lawyer who does that, in your view, should be licensed?

Mr. Heins: Correct.

Mr. Prue: That's fine. Thank you.

The Chair: Thank you for your presentation.

CANADIAN BANKERS ASSOCIATION

The Chair: I now call on the Canadian Bankers Association to please come forward. Good morning. You have 10 minutes for your presentation. There may be up to five minutes of questioning following that. I would ask you to identify yourself for the purposes of our recording Hansard.

Mr. Terry Campbell: Thank you, Mr. Chair. My name is Terry Campbell. I'm the vice-president of policy for the Canadian Bankers Association. I would like to

thank the members of the committee for the opportunity to provide some comments on Bill 65. I'll keep my remarks fairly short; I have really just a few points to make.

I'd start by saying that our industry supports the bill, supports the government's direction to bring real, positive change to the province's mortgage broker legislation. We think that the bill will help create a more structured and disciplined environment, which, again, we support. We feel that the bill achieves the government's objectives of improving customer protection—which really should be the key element here—enhancing and modernizing financial regulation in the province, and encouraging greater competition and, accordingly, when you have greater competition, more choice for consumers.

I'd also like to note that we appreciate the process that has been followed in the development of the bill. There has been quite an extensive consultation process, involving a wide range of stakeholders over a couple of years, and this has resulted in, I think, some very quality input, some quality discussion. I think it has established a very solid base on which the legislation is proposed. So I did want to take an opportunity to say that.

During the process, we've taken advantage of the opportunity to make a few points, generally in the context of support. We have made some proposals that are reflected in the bill, a few items that I would like to highlight.

1050

The legislation recognizes that banks are federally regulated and are not covered by the bill. They are regulated, as you know, by the Bank Act, a federal statute. That act contains quite an extensive legislative and regulatory framework, which includes a whole host, an array, of consumer protection provisions, mortgage disclosure and mortgage-related provisions. It has also created a dedicated regulator at the federal level, the Financial Consumer Agency of Canada, which is basically dedicated to overseeing and enforcing compliance with the federal rules.

The bill also contains requirements for mortgage agents as well as mortgage brokers to be licensed, and we think that is appropriate. We're also pleased to see that the bill provides for a mechanism to enact regulations to prescribe practice standards, including education and errors and omissions insurance. Again, we think that's appropriate. We support the notion that people who deal in mortgages need to be properly trained and properly supervised, and I think the bill and the regulations will help achieve that.

Finally, the legislation implements harmonized cost-of-credit disclosure rules and improved enforcement mechanisms, all of which we think is entirely appropriate.

In terms of possible additional amendments that you may wish to consider, I would just really like to raise one issue: I'm talking about the issue of cost-of-borrowing disclosure. Our sense is that the focus of the legislation

should be—it's a consumer protection bill, a retail consumer protection bill—on consumer transactions as opposed to business transactions.

We note, in subsection 23(1) of the bill, the language provides that "A mortgage brokerage shall disclose to each borrower who is an individual the cost of borrowing...."

That's fine as far as it goes, but in some circumstances—actually, many circumstances—individuals will enter into credit agreements for business purposes. I think our sense is that the bill should have a consumer focus. It's not clear that the language is sufficiently clear as to whether business transactions are excluded from the application of the cost-of-borrowing disclosure provisions.

This kind of exclusion is provided for elsewhere in similar and related kinds of regulation and legislation. For example, the agreement for harmonization of cost-of-credit disclosure laws in Canada, which is basically a Canada-wide agreement among jurisdictions to establish a template for cost of credit, provides that the provisions do not apply to a credit agreement which is a business credit agreement. The cost-of-borrowing regulations at the federal level to which banks and other federal financial institutions are subject also provide that the provisions do not apply to credit agreements entered into for business purposes. So our suggestion for your consideration is that the cost-of-credit disclosure aspects of the legislation be amended to provide some clarification, that it's really strictly for the consumer-related transactions.

As I said right up front, my remarks are very focused on a couple of elements. We support the bill, and we support the process that has been followed to bring the bill to this point. We think that it will bring meaningful change. It will streamline and harmonize regulation. We think it will enhance consumer protection, which is really what it's all about, and provide the public with the assurances they need about the integrity and competence of the industry. That will just make for a better functioning mortgage market in the province.

Those are my few remarks. I'd be happy to take any questions.

The Chair: Thank you very much. This round of questioning will go to the government.

Mr. Arthurs: Mr. Campbell, thank you very much for your presentation. I'm sure we'll pass along to ministry staff, and the minister's staff as well, the various comments we've heard this morning about the openness and thoroughness of the consultation and the professionalism with which staff have worked to generate this legislation.

Mr. Campbell: I didn't comment on the last part, but I would comment on that as well. I would agree with that, yes, speaking as a former Ministry of Finance official myself.

Mr. Arthurs: It's always encouraging for any government to hear as they draft legislation that the work they're doing collaboratively has been well received.

Although not referenced here, the one issue, the one matter that's been the subject of more discussion here, almost more than any other, is the issue of the simple referral. I'm not sure if you could tell me whether banks are less inclined to get referrals because people tend to go to them directly than might happen otherwise. Any observations about the simple referral as proposed, which really restricts it to name, address, phone number, e-mail, as opposed to a referral that goes beyond that, with a modicum of financial information—total income—to another point in the continuum, where it begins to talk about credit checks and the like? Any comments on that, from a banking perspective or from your association's perspective?

Mr. Campbell: We didn't comment on that particularly and we haven't focused on that particular part of the bill. The provisions in the legislation as written did not give rise to any concerns at the CBA or among our members, so it would be a little difficult for me to comment specifically about the array.

I would say, just in reference to the introductory part of your question to me, and also in reference to some comments I heard from some earlier presenters, it is a highly competitive marketplace, where the business comes to lenders who have a variety of means. It can be direct. People can still walk into their bank or trust company or credit union to negotiate it, particularly if they have a relationship, but increasingly—banks are about 60% of the market. You've got a whole range of other credit granters, and they're all really competing for the business out there. One of the ways that has developed is this interesting intermediary, the broker. Whereas, traditionally, you would go to your own institution, institutions are increasingly relying on referrals and business being brought to them in a variety of ways. We welcome

that. It's the kind of tension and discipline you need in the marketplace, because if I'm not happy with you, I can walk right across the street, I can go to my broker or I can go to somebody to make a referral, and he or she can, in effect, shop the marketplace. So we welcome that. It puts us on our toes and all that. But beyond that, the specific provisions in the legislation gave no problems, from our perspective.

Mr. Arthurs: Thank you for the responses.

The Chair: Thank you for your presentation.

Mr. Campbell: Thank you, and good luck to you.

Mr. Hudak: Chair, through you to the parliamentary assistant: Mr. Campbell made a point about the intent behind subsection 23(1), whether this applies to business transactions or simple consumer transactions. The same language, I think, is used in 24(1), 25(1), and 26(1). So I'd ask if we could just have clarity from the Ministry of Finance by the end of the day on Tuesday, in case we're considering amendments in that respect, on what the ministry's intent is with respect to the language, "A mortgage brokerage shall disclose to each borrower who is an individual," etc.

Mr. Arthurs: We'll certainly undertake, through staff who are here, to try to get a response back in the time frame requested.

Mr. Hudak: Thank you.

The Chair: Very good. And thank you, sir.

Mr. Campbell: Thank you, sir.

The Chair: That concludes our presentations this morning. I want to remind committee members that any proposed amendment should be filed with the clerk by 5 p.m. on Tuesday, October 17, so that it can be taken care of and catalogued. We are adjourned.

The committee adjourned at 1058.

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