



---

ISSN 1180-4386

Legislative Assembly  
of Ontario  
Second Session, 38<sup>th</sup> Parliament

Assemblée législative  
de l'Ontario  
Deuxième session, 38<sup>e</sup> législature

## **Official Report of Debates (Hansard)**

**Thursday 19 October 2006**

## **Journal des débats (Hansard)**

**Jeudi 19 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  
Greffier : Douglas Arnott

---

### **Hansard on the Internet**

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<http://www.ontla.on.ca/>

### **Index inquiries**

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

### **Copies of Hansard**

Copies of Hansard can be purchased from Publications Ontario: 880 Bay Street, Toronto, Ontario, M7A 1N8.  
e-mail: [webpubont@gov.on.ca](mailto:webpubont@gov.on.ca)

### **Le Journal des débats sur Internet**

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

### **Renseignements sur l'index**

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 325-3708.

### **Exemplaires du Journal**

Des exemplaires du Journal sont en vente à Publications Ontario : 880, rue Bay Toronto (Ontario), M7A 1N8  
courriel : [webpubont@gov.on.ca](mailto:webpubont@gov.on.ca)

---

Hansard Reporting and Interpretation Services  
Room 500, West Wing, Legislative Building  
111 Wellesley Street West, Queen's Park  
Toronto ON M7A 1A2  
Telephone 416-325-7400; fax 416-325-7430  
Published by the Legislative Assembly of Ontario



Service du Journal des débats et d'interprétation  
Salle 500, aile ouest, Édifice du Parlement  
111, rue Wellesley ouest, Queen's Park  
Toronto ON M7A 1A2  
Téléphone, 416-325-7400; télécopieur, 416-325-7430  
Publié par l'Assemblée législative de l'Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE ON  
FINANCE AND ECONOMIC AFFAIRS**

**COMITÉ PERMANENT DES FINANCES  
ET DES AFFAIRES ÉCONOMIQUES**

Thursday 19 October 2006

Jeudi 19 octobre 2006

*The committee met at 0907 in room 151.*

**MORTGAGE BROKERAGES, LENDERS  
AND ADMINISTRATORS ACT, 2006**

**LOI 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.

**The Chair (Mr. Pat Hoy):** The standing committee on finance and economic affairs will now come to order. We're here this morning for clause-by-clause consideration of Bill 65. Good morning, everyone.

I'm obliged to ask if there are any comments, through certain sections. I do note that there are no amendments until we get to section 6. Are there comments for sections 1 through 5?

**Mr. Tim Hudak (Erie-Lincoln):** Hold on a second here; I've got to catch up. To clarify, Chair: So there are no amendments proposed to sections 1 through 25, as part of our package?

**The Chair:** Sections 1 through 5, not 25.

**Mr. Hudak:** Sorry, 1 through 5. I was looking—  
*Interjections.*

**Mr. Hudak:** Exactly.

**The Chair:** You actually have the first motion—section 6.

**Mr. Hudak:** I was just wondering why 1 through 5 got away so clean.

**The Chair:** Do we have any comments on those? Hearing none, shall sections 1 through 5, inclusive, carry? Carried.

Now, we do have a PC motion. Mr. Hudak? It's number 1 in your package. They're numbered, as is customary.

**Mr. Hudak:** Yes. I've just got a whole bunch of different packages here.

I move that subsections 6(7) and (8) of the bill be struck out.

**The Chair:** Comment?

**Mr. Hudak:** Absolutely. One of the concerns that the opposition has expressed with the act is that a lot of the information that's required for us to pass judgment is left to the regulatory process. We'll get to some other amendments that address that later on, but it seems like everybody's seen regulations, shared regulations that have been before the committee, except members of the committee themselves.

There has been consultation of regulations; I commend the government for consulting the draft regulations. The concern I would raise is that not all of the regulations that have been shared with stakeholder groups have been shared with members of the committee. It's a general concern we have about the bill. Again, I will give credit to the parliamentary assistant, the assistants of the Minister of Finance, for the consultation with stakeholders, but I just feel that committee members were left out of that process.

This gets to the point on subsections 6(7) and (8). The problem here is that these are extremely broad exemptions. Let me just read what subsection 6(7) says, if the amendment were not to pass: "Such other persons and entities, or classes of persons or entities, as may be prescribed are exempted from the requirement in sections 2, 3 and 4 to have a brokerage licence in such circumstances as may be prescribed." It's a broad, wide-open, drive-a-truck-through-it type of exemption, and (8) is the same: "Such individuals, or classes of individuals, as may be prescribed are exempted from the requirement in sections 2 and 3 to have a mortgage broker's or agent's licence in such circumstances as may be prescribed."

So maybe I would just ask the parliamentary assistant what the government's intention is in having such a broad scope of exemption for other persons and entities that aren't described anywhere in the legislation or the minister's remarks.

**Mr. Wayne Arthurs (Pickering-Ajax-Uxbridge):** First, I appreciate the comments from Mr. Hudak and the concern he raised at the first round of hearings on the matter of regulations. We did provide information on the status of that whole process at this point. I hope that that was helpful, although it certainly didn't address all of his concerns.

Clearly, the issue we have with the amendment would be that it would, to a large extent, eliminate the possibility of making appropriate exemptions through that regulatory process, and that consultation is ongoing. It's

our view that the superintendent ultimately needs, through the regulations and through that consultation, the capacity to scope the appropriate opportunities for exemptions from the legislative framework. Unfortunately, it keeps it broad, but that provides the opportunity to scope it during the course of the regulatory refinement.

**Mr. Hudak:** Thanks to the parliamentary assistant for the response. Is there anything that is contemplated by the government? There are a number of exemptions, which I can understand. Lawyers is one; we heard from the bar association as well as the law society. Simple referrals are exempted. Those who practise in other financial institutions are exempted. Those who are licensed under other acts have exemptions. I'm just trying to contemplate who else may possibly be exempted under Bill 65, aside from those already mentioned in the previous subsections.

**Mr. Arthurs:** Off the top of my head—the stakeholder consultation continues. I can't recall whether trustees are mentioned. That may be a matter that would be considered as part of that process.

**Mr. Hudak:** I just don't recall in the hearings or from written submissions—please correct me if I'm wrong—any other groups or individuals who asked for broader exemptions from the act. Those who came before us made their points. That's reflected in the act to one degree or another, such as those who practise law, as I said. I just can't get my head around the broad loophole of subsections 6(7) and (8).

Have we had any deputations or any written submissions from other groups who feel that they should also be exempted from the act?

**Mr. Arthurs:** I'm not aware that we've had anything very specific beyond what is identified. As I say, the process is not yet fully completed.

**Mr. Hudak:** Consumer protection is an important theme of this bill and one of the reasons why we support the bill. We do have some concerns, as I've mentioned. For the sake of consumer protection and maintaining high standards for those who deal in mortgages, I had no choice, really, but to bring forward this amendment. Without a better understanding of who else could go through this, and because of the broad nature of these exemptions, I think it should be taken out of the bill.

**Mr. Arthurs:** Just as a final comment, if I could, the existing legislation is under review after some 30 years or thereabouts. In all likelihood, the legislation that we're dealing with now may stand for some considerable time, if past experience dictates. As a result, it would be to some degree prudent, I think, to provide that window to address what may transpire in the future through a regulatory process as opposed to being too constrained in the legislation, in spite of the fact, as the member opposite has indicated, what we heard at the hearings limited things to—much as he has put forward today.

**Mr. Hudak:** I appreciate that point. My last comment on that is, we could always bring in a bill to amend the act later on. If there is a groundswell of support for former cabinet ministers, for example, to deal in

mortgages and you wanted to put that in as part of the act, you could bring that forward as part of the red tape bill or what have you. There are mechanisms to do so. I just think allowing it through a regulatory process that will be above and beyond the scrutiny of the Legislature, or even members of this committee, is asking for too much.

I'll leave my arguments at that, but that was the underpinning argument for removing the Mack-truck loophole in this legislation.

**The Chair:** Are we ready for the question?

**Mr. Hudak:** A recorded vote.

**The Chair:** A recorded vote is requested.

### Ayes

Barrett, Hudak, Prue.

### Nays

Arthurs, Delaney, Mitchell, Ramal, Sandals.

**The Chair:** The motion is lost.

Shall section 6 carry? All in favour? Opposed? Carried.

We move to number 2 in your package, a government motion.

**Mr. Arthurs:** I move that subsection 7(2) of the bill be struck out and the following substituted:

“Authorized activities

“(2) A brokerage licence authorizes the licensee to carry on the business of dealing in mortgages in Ontario or the business of trading in mortgages in Ontario or to carry on business as a mortgage lender in Ontario, as the case may be, by engaging in the activities permitted under the licence issued to the licensee.”

**The Chair:** Comment, if any?

**Mr. Michael Prue (Beaches—East York):** I have a question. It reads almost the same to me. What is the significance of your change?

**Mr. Arthurs:** I think it might be appropriate—we do have some officials here with us. Some of these are technical amendments legislatively. If we could maybe call upon one of our officials, that might be helpful just to get the technical context of it.

**The Chair:** Please state your name for the purposes of Hansard.

**Ms. Caryl Silver:** My name is Caryl Silver. I'm a lawyer at the Ministry of Finance.

The amendment being proposed is a technical amendment to clarify the language with respect to brokerages. Brokerages are licensed to carry on the business of dealing or trading in mortgages. The amendment inserts that carrying-on-business element into this provision.

**Mr. Prue:** But why the change in the wording? The only thing I can see is that subsection 7(2) is written in the first place with the verb in the present tense: “the licensee to deal in mortgages.” The only thing I can see

here is that you've got: "to carry on the business of dealing." It doesn't seem to be as specific as the first.

**Ms. Silver:** It relates to the subsections in the "Dealing in mortgages" provision, section 2 of the bill. Subsection 2(2) says, "No person or entity shall carry on the business of dealing in mortgages ... unless he, she or it has a brokerage licence..." It's to be consistent with that prohibition in subsection 2(2) that the language should be adopted also in subsection 7(2). "Carry on the business" is the appropriate terminology for the business entity. When we refer to individuals, the prohibition in subsection 2(3) says, "No individual shall deal in mortgages..." It does not have the carrying-on-business aspect. Therefore, when we refer to individuals, we say, "No individual shall deal..." Again, it's a distinction between the business entity and the individual, and flows from section 2 and section 3 of the bill.

**Mr. Prue:** Thank you.

**The Chair:** Further comment? Hearing none, all in favour? Opposed? Carried.

We move to a government motion, page 3.

**Mr. Arthurs:** I move that subsection 7(6) of the bill be struck out and the following substituted:

"Principal broker

"(6) A person or entity who has a brokerage licence shall designate a principal broker to exercise such powers and perform such duties as may be prescribed, and the individual so designated shall carry out his or her powers and duties in accordance with the regulations, if any."

**The Chair:** Comment?

**Mr. Hudak:** Just an explanatory note, if possible.

**Mr. Arthurs:** I'm just going to ask the official to stay with us at this point, if they would, seeing that most of these are technical in nature.

**Ms. Silver:** Again, this is a technical amendment. It clarifies that a person designated as a principal broker would be required to comply with the powers and duties set out in the regulations. That element of that person being required to do the job that he is required to do in the regulation was omitted from the bill as drafted.

0920

**Mr. Hudak:** Who do you blame for that?

**Ms. Silver:** There is no blame in this project.

**The Chair:** Further comments? Hearing none, all in favour? Opposed? Carried.

Shall section 7, as amended, carry? All in favour? Opposed? Carried.

Opposition motion. PC motion, page 4. Mr. Hudak.

**Mr. Hudak:** I move that the bill be amended by adding the following section:

"Prohibition against multiple offices unless licensed

"7.1(1) No brokerage shall carry on the business of dealing in mortgages in Ontario, trading in mortgages in Ontario or as a mortgage lender in Ontario from more than one place to which the public is invited unless the brokerage is licensed in respect of each place, one of which shall be designated as the main office and the remainder as branch offices.

"Branch offices

"(2) Every branch office of a brokerage shall be under the supervision of a broker and each such office having more than one broker or agent shall be under the direct management of a broker who has been licensed for at least two years."

**The Chair:** Comments, if any?

**Mr. Hudak:** Members of the committee will recall this was a suggestion by Jeff Atlin, who made a presentation on behalf of the Independent Mortgage Brokers Association of Ontario, IMBA. Basically, the notion is lifted from the Real Estate and Business Brokers Act, 2002, for which I have some affection as the minister who had brought that legislation forward. I thought it was a good idea at the time with respect to real estate. I thought it important that we give Mr. Atlin's suggestion that a similar system for mortgage brokerages be brought forward under Bill 65.

**Mr. Arthurs:** This is the concern the government has with the amendment, and thus can't support it: It would, at the very least, restrict some types of activity. Mortgage brokerages aren't necessarily large enterprises. It could very well much restrict a home operation—as an example, a home office—without licensing that particular facility, without potentially having a broker doing direct supervision. We think it's not as progressive in the context of today's business environment as one might otherwise anticipate or hope we could find.

**Mr. Hudak:** I appreciate that. We're always loath to create any additional red tape, so I appreciate the parliamentary assistant's answer.

The concern that Mr. Atlin had, and this is one of the reasons I want to bring this up for discussion at committee, is a consumer protection angle. I think Mr. Atlin's concern was that if you have a series of attached offices, the quality control, the standards, are at risk of deterioration the farther it gets away from the principal.

Back to the parliamentary assistant: What reassurances does the government have that the high standards for mortgage brokers and those who hold licences under this act will be maintained if this amendment doesn't go through?

**Mr. Arthurs:** Clearly, the objective in the legislation is in part to raise the bar and the standards of education where they don't exist; and where they do exist, to provide a better framework for broker management, whether it's through the established brokerages, the principal brokers, the reporting relationship and the responsibility.

We know the legislation can achieve that without necessarily having a site-specific licence, particularly as it relates to things like rural Ontario, a home operation or something similar to that.

I know Mr. Hudak has referenced some of the deputations. Certainly, among the stakeholders, those who maybe represent a larger block of stakeholders organizationally have expressed concern with this amendment for much the same reasons.

**The Chair:** Further comments? Hearing none—

**Mr. Hudak:** A recorded vote, Chair.

**Ayes**

Hudak.

**Nays**

Arthurs, Delaney, Mitchell, Ramal, Sandals.

**The Chair:** The motion is lost. Page 5 in your package, a government motion.

**Mr. Hudak:** Chair, sorry to interrupt. I've had some discussions with the parliamentary assistant—no, it's 47(1). Sorry. Go ahead.

**The Chair:** Government motion on page—

**Mr. Arthurs:** Mr. Chair, I move—

**The Chair:** Just a moment. I'm ahead of myself here. There are no proposed amendments for sections 8, 9 and 10, inclusive. Any comment on those sections? Hearing none, shall they all carry? Carried.

Now we move to the government motion on page 5.

**Mr. Arthurs:** I move that section 11 of the bill be amended by striking out “that will lead to the belief” wherever it appears in subsections 11(2), (4), (6) and (8) and substituting in each case “that might reasonably be expected to lead to the belief.”

**The Chair:** Comment?

**Mr. Arthurs:** Very briefly. Again, if there's a requirement for some technical expertise, our officials are here. Generally, the amendment is intended to stop unlicensed individuals from misleading the public by suggesting that they are licensed under this act.

**Mr. Prue:** I'm just a little bit worried about this. The words need to be accurate. What this is doing or what I see it doing—“might reasonably be expected.” So if an individual walks in and misconstrues what is being said and then goes on to seek some protection under this bill, this is a pretty high onus being put on someone. It's much higher than the original words, “That will lead to the belief.” I just find it's going too far, and maybe if the staff will comment.

**Ms. Silver:** These subsections each refer to using terminologies or descriptions to imply that you are licensed under this act. The threshold, “That will lead to the belief,” is high, but the proposal is to make it a lower threshold, “That might reasonably ... lead to the belief,” exactly to preserve the meaning of being licensed under this act, so that someone could not suggest that they were licensed under the act and then make the argument, “Oh, you could not have possibly believed that I was actually licensed under the act.”

**Mr. Prue:** So they could bold-face say that under the first one and get away with it?

**Ms. Silver:** It is intended to not let them get away with using descriptions where they are not entitled to use those descriptions. A person who is not licensed under the act should not insinuate that they are licensed under the act, and if they lead you to believe that they are licensed under the act, they will have committed a

contravention of this act and could be subject to prosecution.

**Mr. Prue:** So if a guy says, “I do work around mortgages”—he's not licensed under the act, but he does do work around mortgages—is he now caught in a contravention?

**Ms. Silver:** He may be caught in a contravention, depending on the factual circumstances, yes. He may also be exempted from being licensed under this act. But unless one of those two circumstances apply, if the person is dealing in mortgages or trading in mortgages, and suggests that he is licensed under the act when in fact he is not, it could be a contravention of the act.

**The Chair:** Further comment? Hearing none, all in favour? Opposed? Carried.

Shall section 11, as amended, carry? Carried.

There are no proposed amendments to sections 12 or 13. Shall those sections carry? Carried.

Page 6: a PC motion.

**Mr. Hudak:** I move that subsection 14(1) of the bill be struck out and the following substituted:

“Issuance of licence

“(1) The superintendent shall issue a licence to an applicant who,

“(a) satisfies the prescribed requirements for the licence; and

“(b) in the case of an applicant for a mortgage broker's or agent's licence, has successfully completed a prescribed examination,

“unless the superintendent believes, on reasonable grounds, that the applicant is not suitable to be licensed having regard to such circumstances as may be prescribed and such other matters as the superintendent considers appropriate.”

**0930**

**The Chair:** Comment?

**Mr. Hudak:** We did hear significant support for maintaining high standards for those who participate in this industry, important checks and balances by the superintendent and strong support for education.

One of the most impressive presentations was by the handsome and affable Jim Murphy on behalf of CIMBL—one of my favourite acronyms, by the way, the Canadian Institute of Mortgage Brokers and Lenders. In his presentation, Mr. Murphy talks extensively, and rightly so, about high education for those who participate in the sector. To quote from Mr. Murphy, “Standards rest on the foundation of professional education. To create an effective education program, there must be a common curriculum, a common set of learning materials and a common exam.”

What this would do is follow up on the recommendation of Mr. Murphy and others to create that common exam. Obviously, I couldn't put all the details in myself, so we would trust those in the industry to help come up with the best exam, working with FSCO and with the Ministry of Finance. But I do think that it's a sensible way of ensuring high standards, high-quality

dealings, in the industry and that consumer protection is paramount.

**Mr. Arthurs:** Although we around the table agree in the context of the need for strong educational requirements, the government can't agree to the amendment as prescribed. The educational consultation is under way. I assume reference was made even at the last hearing to the website on educational activity that was established online for input. I believe that closed for input on the 17th, in my recollection, so that data is obviously being collected, and the stakeholders are continuing to be consulted in building the educational framework. I'm confident that we'll have a good process at the end, as so many of the stakeholders have been supportive of the initiative of the bill so far over these past couple of years. And although we're in agreement in the context of the need for solid educational requirements, we can't agree as government to the inclusion of a prescribed exam in the legislation.

**Mr. Hudak:** I appreciate the government's commitments on the record to high-quality education. I thank the parliamentary assistant for reminding me that the education consultation was done publicly, which we appreciated. That was publicly accessible to members of the committee.

Just a quick question, though, to make sure I understand: Is it the government's intention to actually proceed with a standardized exam in the future?

**Mr. Arthurs:** My understanding at this point is that the ongoing consultation process will help to further refine how it will look. Among the kinds of issues that were discussed here and that have been discussed among stakeholders are the educational requirements. A prescribed examination in legislation may bring one to the conclusion that all parties, either those with absolutely no particular educational background—the cabinet minister who might want to become a broker—or the lawyer, would be required to fulfill exactly the same requirements from ground zero. The outcome of this, I think, may very well be that you're giving those kinds of variations, that one group who has extensive background in mortgage education may find that the educational requirement would be modified to identify those equivalencies, in effect.

Yes, it's the intent to move forward with a strong educational framework, and the consultations will define that through regulations, ultimately. But I wouldn't think that the same prescribed exam would necessarily be required for all individuals, when we recognize that there may be equivalencies for those who have training or education already in the mortgage field.

**Mr. Hudak:** My last comment on this, and I thank the parliamentary assistant: This is for those who are seeking licensure as a mortgage broker or an agent's licence, not those who practise in other professions that have exemptions under the bill. It doesn't sound like this baby's going to pass, but I do hope the government will keep that in mind as it goes through the consultations in the future; that if it does see the wisdom in a prescribed examination down the road, it will adopt that.

**The Chair:** Further comment? Hearing none—

**Mr. Hudak:** A recorded vote.

### Ayes

Barrett, Hudak, Prue.

### Nays

Arthurs, Delaney, Mitchell, Ramal, Sandals.

**The Chair:** The motion is lost.

I'm advised that PC motion on page 7 will not move forward, as the previous motion failed.

**Mr. Hudak:** Chair, if I could: I appreciate that. This proposed motion, which is recorded as 7, would amend the previous motion that failed, so I appreciate that you are ruling this out of order. Just for the sake of the public record, it was intended to be a grandfathering for those who are already licensed under the act to give the government and the industry time to come to the prescribed examination. I think that's fair. Obviously, any piece of legislation of this importance in an important industry needs some degree of time for a transition period.

I do want to say, though, that if the government does determine to go to some form of prescribed examination down the road, a standardized test of some kind, then obviously a grandfathering provision would exist for transition matters. Thank you, Chair.

**The Chair:** Shall section 14 carry? Carried.

There are no proposed amendments to sections 15 or 16. Shall they carry? Carried.

Now, government motion, page 8. Mr. Arthurs.

**Mr. Arthurs:** I move that subsection 17(5) of the bill be struck out and the following substituted:

"Effect of suspension

"(5) During the suspension, the licensee is not authorized to carry on the business of dealing in mortgages in Ontario or the business of trading in mortgages in Ontario, to deal in mortgages in Ontario or trade in mortgages in Ontario or to carry on business as a mortgage lender in Ontario, as the case may be."

**The Chair:** Comment, if any?

**Mr. Prue:** What's the purpose of the technicality?

**Ms. Silver:** Again, it's to make it consistent—

**Mr. Prue:** Make it consistent with the other stuff?

**Ms. Silver:** Exactly.

**The Chair:** Further comment? Hearing none, all in favour? Opposed? Carried.

Shall section 17, as amended, carry? Carried.

Now we have a government motion, page 9. Mr. Arthurs.

**Mr. Arthurs:** I move that subsection 18(7) of the bill be struck out and the following substituted:

"Effect of suspension

"(7) During the suspension, the licensee is not authorized to carry on the business of dealing in mortgages in Ontario or the business of trading in mortgages in Ontario, to deal in mortgages in Ontario or trade in mort-

gages in Ontario, to carry on business as a mortgage lender in Ontario or to carry on the business of administering mortgages in Ontario, as the case may be.”

**The Chair:** Comment? Hearing none, all in favour? Opposed? Carried.

Shall section 18, as amended, carry? Carried.

There are no proposed amendments for sections 19, 20, 21 and 22. Shall those sections all carry? Carried.

Now we have government motion, page 10. Mr. Arthurs.

**Mr. Arthurs:** I move that subsection 23(1) of the bill be amended by striking out “who is an individual.”

**The Chair:** Comment, if any?

**Mr. Arthurs:** It’s technical in nature.

**The Chair:** All in favour? Opposed? Carried.

Shall section 23, as amended, carry? Carried.

Government motion, page 11. Mr. Arthurs.

**Mr. Arthurs:** I move that section 24 of the bill be amended by striking out “who is an individual” in the portion before paragraph 1.

**The Chair:** Comment, if any?

**Mr. Hudak:** I think this reflects the deputation we heard. I forget the gentleman’s name now—it’s terrible; I should have it in front of me—who had questioned that phraseology, and I do thank the parliamentary assistant for getting back to us through counsel at finance to indicate that it was being changed. So I’m pleased to see it proceeding and I thank the parliamentary assistant for getting back to us well in advance of the committee hearings today.

0940

**The Chair:** Further comment? Hearing none, all in favour? Opposed? Carried.

Shall section 24, as amended, carry? Carried

Government motion, page 12. Mr. Arthurs.

**Mr. Arthurs:** I move that subsection 25(1) of the bill be amended by striking out “who is an individual” in the portion before paragraph 1.

**The Chair:** Comment? All in favour? Opposed? Carried.

Shall section 25, as amended, carry? Carried.

Section 26: a government motion. Mr. Arthurs.

**Mr. Arthurs:** I move that section 26 of the bill be amended by striking out “who is an individual.”

**The Chair:** Any comment? All in favour? Opposed? Carried.

Shall section 26, as amended, carry? Carried.

Government motion, page 14. Mr. Arthurs.

**Mr. Arthurs:** I move that the English version of section 27 of the bill be struck out and the following substituted:

“Prohibition re disclosure in advertising

“27 No person or entity shall authorize any advertisement for a mortgage which purports to contain information relating to the cost of borrowing or any other prescribed matter unless the advertisement contains such information as may be required by the regulations and is in such form and manner as may be prescribed.”

**The Chair:** Comment? Hearing none—oh, Mr. Prue?

**Mr. Prue:** As you were reading, I was trying to read the old one, and I can’t even see a difference in the word—did I miss? Is there some word change?

**Ms. Silver:** The words “the information that may be required” are being replaced with the words “such information as may be required.” This makes the English more consistent with the French version of the bill.

**Mr. Prue:** All right, okay. I just couldn’t even see the change. Maybe I wasn’t paying close enough attention.

**The Chair:** Any other comment? All in favour? Opposed? Carried.

Shall section 27, as amended, carry? Carried.

Page 15, PC motion. Mr. Barrett.

**Mr. Toby Barrett (Haldimand–Norfolk–Brant):** The committee will see on page 15 a motion with respect to section 27.1 of the bill.

I move that the bill be amended by adding the following section:

“Duty re Disclosure of Other Information

“Duty to disclose other information

“27.1(1) A mortgage brokerage and mortgage broker shall disclose the following information to each borrower and lender in a mortgage transaction in which the brokerage or broker is acting:

“1. The nature of the relationship between the brokerage or broker and the borrower and lender.

“2. A description of the products the brokerage or broker offers, and the lenders on whose behalf the brokerage or broker offers those products.

“3. A description of the fee, commission or any other kind of compensation, including compensation based on volume of business or other factors or gifts, such as the payment of travel expenses or of expenses for attendance at seminars, that the brokerage or broker may receive for their services.

“4. The brokerage’s or broker’s policy on the refund of fees.

“5. Any additional fees payable by the borrower or lender to the brokerage, broker or any other person or entity in respect of the transaction.

“6. A description of the compensation, of any kind, if any, payable by the brokerage or broker to any other person or entity in respect of the transaction.

“Same

“(2) The information required by subsection (1) shall be disclosed in the manner and at the time prescribed by the regulations.”

**The Chair:** Comment?

**Mr. Hudak:** The goal here is obviously to enhance consumer protection in Bill 65. We need to ensure that not only does 27, as unamended, prohibit improper disclosures in advertising; we think that there’s a duty of disclosure in this industry of other information.

I think it’s important for the consumer, when making decisions around mortgages or mortgage products, to understand the relationship with the broker/brokerage. As well, what’s the relationship of that individual to the borrower, to the lender; what kind of incentives exist? If there’s a clear understanding by the consumer of the



motivations and incentives of the agent they're dealing with, I think that makes for strong consumer protection enhancements and it makes for the best possible transactions.

Folks will remember that, again, CIMBL had strongly suggested the importance of disclosure. They were kind enough in their package to share with us their own mortgage borrower disclosure document, which they're encouraging their members to use. Members have that, and they'll see that there are similar items CIMBL asks its members to produce when engaging a consumer interested in pursuing a mortgage product.

These six points really reflect what exists not only in CIMBL's proposed disclosure document, but also in the province of Alberta, which recently brought forward some strong consumer protection initiatives around this duty of disclosure of their relationship with a brokerage and broker to borrowers and lenders.

We did hear a lot in the presentations, as well as written submissions, about types of incentives that may exist. If a broker, for example, sells a greater number of product for one particular lender, there may be incentives there. There may be incentives to those who refer to an individual broker. I'm not trying to step into the marketplace by any means, but we want to make sure that the information is fully revealed at the beginning of the relationship with the individual consumer.

I do have a subsequent amendment that is a bit more general in nature, but I thought these six points particularly were reasonable and would be of great interest to consumers.

**The Chair:** Thank you. Further comment?

**Mr. Prue:** I'm going to support this amendment. I think it's a good one. I had toyed with the idea and ultimately did not put in an amendment limiting the amount of money that could be charged based on some of the discussion the other day, but this one here seems to be the absolute minimum. People should know what fees are changing hands. It's not readily apparent to them if a mortgage broker or a lawyer are making references to each other, are exchanging monies and doing deals. People need to know that. They need to have this information and it should be up front. I don't see any reason why it would not be passed.

I would ask the government members to carefully consider this, not so much in terms of this act but in terms of consumer protection.

**Mr. Arthurs:** Although we certainly appreciate the approach, we acknowledge that much of what is here is framed, as Mr. Hudak said, on the presentation by CIMBL, who have been active stakeholders in this process and generally are obviously supportive of the approach, since they put forward a disclosure document that's strongly reflected in these words. Having said that, the intent is to continue to build into the standards of practice which are referenced in the bill.

Subsection 10(4) speaks to: "The licensee shall comply with such standards of practice as may be prescribed for the licence issued to the licensee." The intent is,

through the regulatory process, to put in place appropriate disclosure documents. I will continue, obviously, to use the input of CIMBL and others in this process to well frame the standards of practice regulations for the purposes of the legislation.

The objective is to achieve, through the regulatory process, that continuing dialogue and continuing stakeholder engagement that Mr. Hudak is proposing at this point we put in the legislation. We won't be able to support the amendment, but clearly we want to see the intent carry forward through to the regulatory process, and the standards of practice will reflect that, because there is a regulatory consultation on standards of practice currently ongoing.

**0950**

**Mr. Hudak:** I appreciate the parliamentary assistant's response and his kind words about the intent of the amendment.

Subsection 10(4) is very general. It says, "The licensee shall comply with such standards of practice as may be prescribed for the licence issued to the licensee." It's very general. It's a catch-all. I understand that this could potentially fit under there, but it is so broad that I think it's important for us to have a stand-alone section with respect to disclosure. It's an industry that can be complex and there's such a potential for some in the industry to have incentives that may not always be in the best interests of consumers.

My colleague Mr. Prue mentioned types of payments. I think the vast majority of those engaged in this industry would do this as a matter of course, and CIMBL asks its members to do so. Nonetheless, I think it is vital that this type of disclosure duty actually exists and is embodied in the bill itself as opposed to a very general section of the act that relies simply on regulations. Subsection 10(4) doesn't even talk about the disclosure relationships. I would have liked to have seen that exist somewhere in the legislation itself. Failing that, I guess I would ask the parliamentary assistant: is it the government's intention through subsection 10(4) to actually come forward with mandatory disclosures?

**Mr. Arthurs:** I would remind you again that consultation is going on through the ministry and through the stakeholders. It would be my view that there would be mandatory disclosure requirements in the regulatory framework to be very clear from the standpoint of consumer protection in particular as to what those expectations are.

**Mr. Hudak:** Does the parliamentary assistant believe that the types of disclosures that would come through the regulatory process reflect those that are in the six bullets?

**Mr. Arthurs:** I would venture to say, given the strength of CIMBL as one of those significant stakeholders representing a large sector of the industry, that in that consultation and stakeholder input the government would want to take very seriously the input from CIMBL as part of that framework. I wouldn't want to say exclusively so or come to that conclusion in the absence of all of that activity, but I think it would be fair when

you have a large segment of the industry being represented and when they've taken the time to ensure that we have this through the process. We would want to take it very seriously in the context of the regulatory framework.

**Mr. Hudak:** My last question on this: Is the concept of a mandatory disclosure document like CIMBL suggests also part of the consultations that the government would take very seriously?

**Mr. Arthurs:** In my view, yes, and I would certainly undertake as part of this process where we are on record to ensure that those comments are forwarded to that consultation process and taken into consideration. In my personal view, yes, but I wouldn't want to pre-empt that activity. I certainly would encourage it.

**Mr. Hudak:** I do feel pleased to hear the comments from the parliamentary assistant. We know the weight he can wield at the Ministry of Finance. If he feels this way, I have every confidence that these types of protections will be in place for the regulatory process. I know he has one of the hardest-working interns now in his office too and no doubt she'll be readily engaged in this process as well. I appreciate the parliamentary assistant's comments. It is encouraging that the government will be looking at this and engaging in consultations.

Nonetheless, I think, for the sake of consumer protection and the very broad and general nature of section 10, that it actually should be in the bill as I have proposed in 27.1, and we'll proceed with this motion.

**The Chair:** Further comment? Hearing none, all in favour—

**Mr. Hudak:** A recorded vote, please.

#### Ayes

Barrett, Hudak, Prue.

#### Nays

Arthurs, Delaney, Ramal, Sandals.

**The Chair:** The motion is lost.

PC motion on page 17. Mr. Hudak.

**Mr. Hudak:** I move that the bill be amended by adding the following section:

“Duty re Disclosure of Other Information

“Duty to disclose other information

“27.1(1) A mortgage brokerage and mortgage broker shall disclose prescribed information to each borrower and lender in a mortgage transaction in which the brokerage or broker is acting.

“Same

“(2) The information required by subsection (1) shall be disclosed in the manner and at the time prescribed by the regulations.”

**The Chair:** Comment?

**Mr. Hudak:** It's the same principle as the previous amendment. This one is more general in nature. It would allow the consultations to take place and for details of the

disclosure to be brought forward through the regulatory process. It certainly isn't the preferred amendment, but seeing that the first one failed, I'd still like to proceed with this to ensure that actual disclosure duties are enshrined in the bill itself.

**Mr. Arthurs:** Our response would be generally the same. Although we are in agreement in the context of the need for disclosure, it's our view that those will be achieved through the regulatory process. That process is currently ongoing, so we will not be able to support the amendment.

**The Chair:** Mr. Prue?

**Mr. Prue:** I don't know that that answer is good enough. I understand the collegiality around the table here today, but all this says is that they “shall disclose prescribed information” which is set out by the regulations. This does not stop the consultation; it simply enshrines in the bill for the force of law for all to see that when the government makes regulations, people have to follow them. I don't see the argument being the same as the last one.

You set whatever regulations you want and the bill says that they shall be imposed. I don't see the problem with this. I'm sorry; I don't.

**Mr. Hudak:** Mr. Prue is exactly right. I'm happy to hear that consultations are taking place. It sounds like there are some in-depth conversations with respect to duty of disclosure of relationships and incentives. All this does is allow that to proceed. You can come back with the feedback through consultations and invoke them through regulation, but this is simply a placeholder to show that there is a specific part in the act for the sake of consumer protection around duty of disclosure. The Ministry of Finance is free to bring forward regulations as it pleases through the consultations that are already existing.

**Mr. Arthurs:** Again, I appreciate the comments. We're reasonably confident at this point that the details, as they'll be set out under the standards of practice, which are dealing with the matter of disclosure, will adequately provide the opportunity for ensuring that those disclosures are in place.

**The Chair:** Further comment?

**Mr. Hudak:** A recorded vote.

**The Chair:** A recorded vote is requested.

#### Ayes

Hudak, Prue.

#### Nays

Arthurs, Delaney, Mitchell, Ramal, Sandals.

**The Chair:** The motion is lost.

There are no amendments for sections 28, 29, 30, 31, 32, 33, 34 and 35. Shall all of those sections carry? Carried.

Government motion, page 18. Mr. Arthurs.

**Mr. Arthurs:** I move that subsection 36(6) of the bill be struck out.

**The Chair:** Comment?

**Mr. Arthurs:** The subsection is somewhat redundant with provisions that are already available in statutes under the federal Bank Act. We're obviously trying not to overlap with other legislation that covers the needs.

**The Chair:** Further comment? Hearing none, all in favour? Opposed? Carried.

Shall section 36, as amended, carry? Carried.

Page 19, government motion. Mr. Arthurs.

**Mr. Arthurs:** I move that subsection 37(1) of the bill be struck out and the following substituted:

"Appointment of receiver, etc.

"(1) The superintendent may apply to the Superior Court of Justice for an order appointing a receiver, receiver and manager, trustee or liquidator of property that is in the possession or under the control of a licensee or person or entity who the superintendent believes, on reasonable grounds, is or was required to have a licence (the 'designated person')."

**1000**

**The Chair:** Comment? Hearing none, all in favour? Opposed? Carried.

Government motion. Mr. Arthurs.

**Mr. Arthurs:** I move that the French version of subsections 37(5),(6) and (7) of the bill be struck out and the following substituted:

"Pouvoirs de la personne nommée

"(5) La personne nommée a les pouvoirs précisés dans l'ordonnance et, si le tribunal le lui ordonne, elle peut liquider ou gérer les affaires de la personne désignée."

This is very nice. Thank you, staff.

*Interjections.*

**The Chair:** Order.

**Mr. Arthurs:** "Effet de la nomination

"(6) Si une ordonnance est rendue, les administrateurs de la personne désignée n'ont plus le droit d'exercer les pouvoirs qui sont conférés à la personne nommée; ils retrouvent cependant ce droit lorsque le tribunal libère cette dernière.

"Honoraires et frais

"(7) Les honoraires et les frais de la personne nommée sont laissés à la discrétion du tribunal."

**The Chair:** Comments? Hearing none, all in favour? Opposed? Carried.

Shall section 37, as amended, carry? Carried.

Page 21, PC motion. Mr. Hudak?

**Mr. Hudak:** Thank you, Chair.

**The Chair:** Oh. I moved yours, but apparently there are no amendments to sections 38, 39, 40, 41, 42, 43 or 44.

**Mr. Hudak:** I am proposing an amendment to section 42 which resembles the amendment I had proposed for section 44, so I think we're good up until section 41 without amendment.

**The Chair:** Very good. We will need a copy of that, if you would, for the clerk. Then, you say that up to 42 is fine?

**Mr. Hudak:** Up to 41. I do have an amendment for 42.

**The Chair:** Shall sections 38, 39 and 40 carry? Carried.

That brings us to section 41.

**Mr. Hudak:** Sorry, Chair. To be clear, I have a section for section 42. We're okay through 41.

**The Chair:** Shall section 41 carry? Carried.

I'm advised that this would create a new section to the bill, so we could deal with section 42. Shall section 42 carry? Carried.

**Mr. Hudak:** I've created a new section, I guess, that can go right after.

**The Chair:** We have a proposed motion from Mr. Hudak. We'll get copies for the committee members.

**Mr. Hudak:** I'll also give them a copy of the new 47(1).

I'll explain it to committee members in this pause. We have the official opposition amendments 21 and 22 dealing with false or deceptive information prohibitions. Mr. Arthurs and the hard-working, similarly handsome and affable Arthur Lofsky were kind enough to work with the official opposition to make sure that the language in the amendment met with the kind of language used in the act.

The two new motions we're getting copies of for the committee members have the exact same intent as motions 21 and 22; they're simply worded somewhat differently and are in slightly different parts of Bill 65 than proposed. So I'll be standing down 21 and 22, but in their place, I'll be moving, as substitutes, two amendments that get at the exact same purpose. I don't know if members have received their copy.

**Mr. Arthurs:** There were a couple of extra copies available. Mr. Prue now has them as well. If Mr. Hudak feels he wants to proceed with any comments, we could do that and, as soon as the copies come in, we'd certainly provide them to the balance of the members on this side.

**Mr. Hudak:** Terrific. So I'll go ahead—

**The Chair:** We have agreement? Mr. Prue?

**Mr. Prue:** It's up to them. I have a copy. My privilege is not being violated. I think the members' privilege is being violated, though, if I can speak on their behalf. Every member should have a copy of this in their hand if we're dealing with it. It's not fair.

**The Chair:** I agree.

**Mr. Prue:** They may not want to see it, but they should have it.

**The Chair:** Not every member has a copy.

**Mr. Hudak:** It's on its way?

**The Chair:** It's coming presently.

**Mr. Hudak:** I could give a bit more explanation.

**The Chair:** Are we agreeable for an explanation, and then we'll read it into the record, rather in reverse order? Agreed? Agreed.

**Mr. Hudak:** Great. My explanation should be approximately how long, I say to the clerk?

*Interjections.*

**Mr. Hudak:** The intent of the new section, 42.1, that I'm bringing forward is to prevent false or deceptive information for any of those who are licensed as a mortgage brokerage or a mortgage administrator from conveying.

Chair, you know, and I know other members of the committee are concerned, about the existence of mortgage fraud or title fraud and related issues. I understand that the Minister of Government Services is bringing forward an act this afternoon, which I read about in the paper, where I expect he'll be bringing forward some suggestions on how to combat fraud in these areas. We certainly have read, with horror, cases of some residents in the province of Ontario who, through no act of their own, have found themselves with a new mortgage tacked onto their title or losing title of their property, simply through a sophisticated mechanism of fraud. It is my view and, I suspect, shared by other members of the committee, that this is an unfortunately growing phenomenon in Ontario.

I know my colleague Mr. Tascona, who represents Barrie–Simcoe–Bradford, has brought forward a private member's bill to combat mortgage fraud. Again, we'll see what the minister brings forward into the Legislature later today, if media reports are accurate.

I was actually working on a private member's bill myself in this area, and Mr. Tascona was at the same time. As our critic, as you can understand, sort of trumps me as the member for Erie–Lincoln, we proceeded with his bill. Although, if I had Adam McDonald working in my office, I think we probably would have won that battle, but we lost him and therefore I lost the argument. But Joe's bill is a good bill, which I fully support.

One of those who provided great advice to me in the formation of the private member's bill, and now to Mr. Tascona, is Alan Silverstein. Mr. Silverstein is, of course, a well-known lawyer but, very importantly, a consumer advocate. He has shown an interest as well in Bill 65 and had given me some excellent and helpful counsel in bringing forward this amendment, which we can see is a companion piece, really, to whatever mortgage fraud legislation comes through the Legislature.

In this respect I also want, if I don't get a chance this morning—depending on how our time goes—to thank Susan Klein for her assistance as legislative counsel. We put forward a variety of amendments, some of which were complex or maybe my directions weren't exactly clear in terms of legal language, but I think, at the end of the day, we've brought forward some strong amendments in the proper language. Ms. Klein was very helpful in forming this, which is one of my favourite amendments in the package, as well as the earlier ones, that I think in her heart of hearts she was cheering for, that didn't win the votes when it came to duty for disclosure. But I know it was not easy to put in proper legal language for legislation from my outright stealing of the suggestions from the CIMBL presentation.

**1010**

I think that members of the committee have in front of them my proposed motion, so perhaps I'll read it into the

record as they read it as well—and I appreciate their patience with this. As I said, it really is the same thing with some slightly different language that I had proposed in amendment 21 of the package.

**The Chair:** Everyone does have a copy now, I do believe, so we'll let Mr. Hudak read.

**Mr. Arthurs:** We just have the second amendment. We're just making sure we're getting copies made. We need the next one, which is an adjunct companion amendment.

**The Chair:** Go ahead. Mr. Hudak will read it into the record.

**Mr. Hudak:** I move that the bill be amended by adding the following section under the heading "Prohibitions and Offences":

"Prohibition re false or deceptive information

"42.1(1) No mortgage brokerage or mortgage administrator shall give, assist in giving or induce or counsel another person or entity to give or assist in giving any false or deceptive information or document when carrying on the business of dealing in mortgages in Ontario or the business of trading in mortgages in Ontario, when carrying on business as a mortgage lender in Ontario or when carrying on the business of administering mortgages in Ontario.

"Same

"(2) No mortgage broker or agent shall give, assist in giving or induce or counsel another person or entity to give or assist in giving any false or deceptive information or document when dealing in mortgages in Ontario or trading in mortgages in Ontario."

**The Chair:** Thank you. Further comment?

**Mr. Arthurs:** We're pleased to be able to support the amendment as presented. The intent in the amendments that were proposed earlier—this helps the wording from the standpoint of the legislation to fit better. Having said that, we were pleased with the inclusion. I'm happy to support it.

**The Chair:** Further comment? Hearing none—

**Mr. Hudak:** A recorded vote for the sake of posterity.

**The Chair:** A recorded vote is requested.

### Ayes

Arthurs, Delaney, Hudak, Mitchell, Prue, Ramal, Sandals.

**The Chair:** That's carried.

This motion that just carried created a new section. Shall section 42.1 carry? Carried.

There are no amendments for sections 43 or 44. Shall they carry? Carried.

Now we come to the PC motion on page 21. Mr. Hudak.

**Mr. Hudak:** The amendment that just carried unanimously, which I thank all my colleagues for so doing, supersedes 21, so I will stand 21 down.

**The Chair:** Thank you. Sections 45 and 46 have no amendments proposed. All in favour? Carried.

The PC motion on page 22. Mr. Hudak.

**Mr. Hudak:** Again, I think members have been provided with an updated version of this amendment. I thank Ms. Klein for her help in crafting this, and the parliamentary assistant, Mr. Arthurs, and Mr. Lofsky from the minister's office for making sure that it fit with the government's language used elsewhere in the bill.

The new amendment is in replacement of what's number 22 in our package. For the sake of clarity, I'll read it.

I move that subsection 47(1) of the bill be amended by adding the following paragraph:

"7.1 Subsection 42.1(1) or (2) (Prohibition re false or deceptive information)."

**The Chair:** Comments?

**Mr. Hudak:** This adds to the list of offences of the provision that we had brought forward in the previous amendment regarding false or deceptive information. That will ensure that any sanctions that can be brought under Bill 65 can be brought forward for any violations of the new section 42.1.

**Mr. Arthurs:** The government remains in agreement with this companion amendment.

**The Chair:** Further comment?

**Mr. Hudak:** Recorded vote.

### Ayes

Arthurs, Delaney, Hudak, Mitchell, Prue, Ramal, Sandals.

**The Chair:** The motion is carried.

Shall section 47, as amended, carry? Carried.

There are no proposed amendments for sections 48, 49, 50, 51, 52 and 53. Shall they all carry? Carried.

PC motion, page 23. Mr. Hudak.

**Mr. Hudak:** I move that subsection 54(1) of the bill be amended by adding the following clause:

"(i.1) prescribing the maximum fee or other compensation that a person or entity may receive, directly or indirectly, for a referral described in subsection 6(4) or (5)."

**The Chair:** Comment?

**Mr. Hudak:** We heard this from the independent mortgage brokers. We did hear a number of concerns around simple referral. The intent of this amendment is to allow the Lieutenant Governor in Council to prescribe the maximum fee or any other type of compensation for a simple referral that exists. I think there was some concern expressed by the independent brokers and other groups that if proper caps or controls were not put in place, then it would create a significant incentive for the simple referral process to be abused. I know that "simple referral" will be defined even further in regulations, but nonetheless, I thought it important to give the Lieutenant Governor in Council this authority to regulate the fees in that grey area.

**Mr. Prue:** Yes, there was quite a bit of discussion the other day, but for me, the discussion at the very end by

the Law Society of Upper Canada basically said that we had two options: either to do nothing and to wait for problems to arise and then fix them, or to set out the regulation and set out the law as is being proposed in this particular amendment and, over time, if there is nothing, then seek to relax or amend it. It seems to me that the latter process is the best one, and I would commend Mr. Hudak for bringing this motion forward. It merely sets the maximum amount. It can be set at any amount, but it will ensure that no one, for a simple referral, is paying some kind of usurious fee.

People don't always understand. They're trying to buy property. It might be their first home. They don't understand the rules. If the government were to set a maximum fee of \$1,000, to me that would seem like some huge amount of money, but at least the person will be protected over paying \$2,000 or \$3,000 or \$5,000 for a simple referral. I think a maximum amount is not going to hurt anyone who is doing proper business.

**Mr. Arthurs:** The government cannot support the amendment. I think we heard a variety of input during the deputations both for and against, probably as strongly on both sides, the setting of maximum fees or setting of fees directly. It remains the government's view that the marketplace will dictate reasonably what's a reasonable fee.

The simple referral and the reason for stressing the simple referral is that the information being referred is the name, address, phone number, as opposed to all of the financial matters. So it keeps it constrained, and thus the value, to some extent, I think, is constrained as well. There are provisions, though, for disclosure of the fees as part of that simple referral, so there are provisions within the act that will ensure that there is a disclosure of what those fees are.

**1020**

**The Chair:** Further comment?

**Mr. Hudak:** I did constrain the amendment to simple referrals only, as opposed to fees in the marketplace—I want to be clear about that—the reason being that if the government ends up defining simple referrals very narrowly, as the parliamentary assistant just described, name and address information, it doesn't really require a heck of a lot of work, so you wonder about the significant compensation for that. I do worry that if, in the case of simple referrals, it's conveying information like that and there are large rewards for that, it invites abuse, that maybe following a simple referral a manila envelope arrives with further information. I think that if you have a large compensation that's allowed for that process, it does invite the possibility of abuse.

This doesn't mandate the fees. It gives the Lieutenant Governor the ability to react and to prescribe those fees, as my colleague Mr. Prue rightly indicated. I think it's important to have that power in the bill in the case of simple referral.

I know there were those who argued about regulating fees and compensation in a general sense in market transactions, but I don't recall strong objections to a

narrowly defined simple referral having some cap on the level of compensation.

**The Chair:** Further comment? Hearing none—

**Mr. Hudak:** Recorded vote.

#### Ayes

Hudak, Prue.

#### Nays

Arthurs, Delaney, Mitchell, Ramal, Sandals.

**The Chair:** The motion is lost.

Government motion, page 24. Mr. Arthurs.

**Mr. Arthurs:** I move that section 54 of the bill be amended by adding the following subsection:

“Subdelegation to superintendent

“(3.1) A regulation made under subsection (1) may authorize the superintendent to establish all or some of the education and experience requirements respecting the issuance or renewal of mortgage broker’s or agent’s licences or to establish all or some of the education and experience criteria respecting the designation of a principal broker.”

**The Chair:** Comment?

**Mr. Arthurs:** We need to include this subsection. Frankly, it was an oversight in the final drafting and should have been included at an earlier point in time.

**The Chair:** Further comment? Hearing none, all in favour? Opposed? Carried.

The next motion is a government motion. Mr. Arthurs.

**Mr. Arthurs:** I move that clause 54(4)(e) of the bill be amended by striking out “levied” and substituting “imposed.”

**The Chair:** Comment, if any? All in favour? Opposed? Carried.

The next motion is a government motion. Mr. Arthurs.

**Mr. Arthurs:** I move that clause 54(4)(f) of the bill be amended by adding “or entity” at the end.

**The Chair:** Comment, if any? Hearing none, all in favour? Carried.

Shall section 54, as amended, carry? Carried.

Government motion, page 27. Mr. Arthurs.

**Mr. Arthurs:** I move that subsection 55(3) of the bill be amended by striking out “the class or classes of mortgages or of lenders” and substituting “the class or classes of mortgages, borrowers or lenders.”

**The Chair:** Any comment? Hearing none, all in favour? Opposed? Carried.

Shall section 55, as amended, carry? Carried.

Page 28, PC motion. Mr. Hudak.

**Mr. Hudak:** Through the clerk and legislative counsel—I had earlier a proposal for an examination to be prescribed under clause 14(1)(b). That motion failed, so I don’t think 14(1)(b) actually exists, so I’m going to simply not mention that as part of my motion. So I’m altering my motion to an extent—

*Interjection.*

**Mr. Hudak:** As well, 14(1)(a). I’ll read this to be clear, but I’m going to end it at the word “licence” in that last paragraph.

I move that the bill be amended by adding the following section:

“Advisory committee

“55.1(1) The minister shall establish an advisory committee.

“Composition

“(2) The members of the advisory committee shall be appointed by the Lieutenant Governor in Council on the recommendation of the minister and shall include individuals who, in the minister’s opinion, are representative of the industry governed by this act, consumers, educators in the industry governed by this act and the Financial Services Commission of Ontario.

“Function

“(3) The advisory committee shall advise the minister on the education standards to be prescribed as requirements for the issuance of a licence.”

I hope that will now be in order.

**The Chair:** That’s fine. Mr. Hudak, any comment?

**Mr. Hudak:** As I said, I’ve commended the parliamentary assistant, Mr. Lofsky and the Ministry of Finance staff for their consultations. My only complaint is that I wish we could have seen some of the draft regulations at the committee as well. Other than that, the view here is that that type of consultation should continue. This could be a living document. Certainly, the government has asked for a lot of trust in this bill, because the real meat will be in the regulations.

I’m proposing an advisory committee, chosen by the minister and recommended by the minister to the Lieutenant Governor in Council, made up of those who have an interest in this act. We heard from a number of groups—I cited CIMBL’s strong advocacy for high education standards—and I thought an advisory committee could play an important role in ensuring that those standards are the highest in Canada. Originally, under my proposed amendment that was submitted on Tuesday, they were going to provide advice for the exam. I know the exam was lost as an amendment, and maybe the government will still continue down that path. But I do think that an advisory committee would be tremendously helpful to give the minister and staff ongoing advice when they bring the regulations forward.

**Mr. Arthurs:** The government won’t be supporting the amendment. Again, I think we want to achieve the same things—solid education requirements, raise the bar for those in the business, and that they be well trained—in the interest of the consumer at the end of the day. The education review, as we’ve indicated, is currently under way. As part of that process, there is an advisory group for the education review. That advisory group was specifically formed for the review, and the main stakeholders are all represented. So in effect, there is an ongoing process and a structure around that to achieve certainly much, if not everything, of what the member would like to see by virtue of this amendment. We’re

satisfied with that process without having it within the legislation itself.

**Mr. Hudak:** Once the bill passes third reading in the Legislature, the ability of the opposition becomes more limited to make sure the government is good to its word, so to speak.

Secondly, ministers do change. The parliamentary assistant, certainly, if I had my way, would be in cabinet right now and should be in the next number of cabinet appointments. So he may no longer be the parliamentary assistant. What this does is make sure that that committee that already exists is enshrined in legislation, so that the next parliamentary assistant will have the good work of Mr. Arthurs—who will be watching over from his cabinet seat, of course—and will maintain the good work that has taken place. So I think it's important to have the advisory committee enshrined in the bill itself.

**The Chair:** Further comment?

**Mr. Arthurs:** The comments remain the same, although I appreciate the vote of confidence, as would all of my caucus colleagues, I'm sure, if it was extended to them. I've heard those comments before, as they reflect any number of members of our caucus who would be able to fill those roles. Nonetheless, I think we're satisfied at this point.

I must say too that I think we heard during the other day of hearings that, to the greatest extent, the stakeholders were expressing much support for the work by the minister's staff and the ministry staff in this long process, that it's been transparent and they've been engaged. I hope that the member opposite will have some confidence that it's the intention of the government and the ministry to continue in that vein as they continue through the educational review process, and that it won't be subverted in any way by virtue of any change in function of either a different parliamentary assistant or other, as the case might be.

1030

**The Chair:** Further comment?

**Mr. Hudak:** A recorded vote.

#### Ayes

Hudak, Prue.

#### Nays

Arthurs, Delaney, Mitchell, Ramal, Sandals.

**The Chair:** The motion is lost.

Page 29, a PC motion. Mr. Hudak.

**Mr. Hudak:** I move that subsection 56(1) of the bill be struck out and the following substituted:

“Review of act and regulations

“Initial review

“(1) Within five years after the first proclamation is issued under section 65, the minister shall appoint one or more persons to review the operation of this act and the

regulations and to make recommendations to the minister.”

**The Chair:** Comment?

**Mr. Hudak:** First of all, I'm always pleased to see sunset reviews or five-year reviews in legislation. I think that's important, particularly when so much is left up to regulations. So I support the principle of 56(1) as it currently exists.

This bill allows, if I followed it correctly, proclamations of various sections of the act to take place over time; it doesn't happen all at once. There may be some that are proclaimed early after the bill passes, and there may be some that take a degree of time. What I thought would be important would be that the trigger for the five-year review would be once the first proclamation occurs of the act. You could, for example, for the sake of argument, have proclamations that could take place for various sections over a five-year period, and 56(1), as written, would mean potentially that you're looking at a review 10 years down the road, as opposed to five years down the road. This will ensure that as the first proclamation takes place, that review is triggered.

**Mr. Arthurs:** It remains the position of the government that the review is most appropriately triggered after the full act is proclaimed. The member is quite correct: Obviously, there are parts that would be proclaimed maybe after the first part, and it may take a little longer. But it's our view that it would be better to review the act in its entirety at that point, rather than in part only.

**Mr. Prue:** The only difficulty I see is that the reason this bill is taking so long is that we've neglected it for 30 years. I don't see what is wrong with reviewing it five years from the date of proclamation. Quite frankly, even if some of the act has only been in force at that point for six months or a year, it doesn't mean that we wouldn't have a fairly good handle on what's going on. I'm reluctant to put this off for another period between five and 10 years, when this amendment will ensure that we don't find ourselves in the difficulties that we have in this particular bill because it's been neglected for so long. So I'm going to support the amendment. I don't see that it's going to cause the government, or any future government, any grief to do an update sooner rather than later.

**Mr. Hudak:** Just for the sake of clarity, the parliamentary assistant says, “We'd be worried that part of the act would be proclaimed and part of the act would not be proclaimed,” and they want to review the entire act. This is a five-year review, so I would certainly hope that all aspects of the act would be proclaimed and in force within a five-year time frame. That's not asking for too much. I certainly hope it will be a much more constrained proclamation than five years.

For the sake of clarity, what would happen is that a review will be triggered five years after the first section of the act is proclaimed. I would certainly hope that the rest of the sections are proclaimed in short order after that. You would probably have, in all circumstances I can imagine, several years of the act being in force before the

review is triggered—so just for the sake of clarity on what the amendment’s purpose is.

**The Chair:** Further comment?

**Mr. Hudak:** A recorded vote.

### Ayes

Hudak, Prue.

### Nays

Arthurs, Delaney, Mitchell, Ramal, Sandals.

**The Chair:** The motion is lost.

Government motion, page 30. Mr. Hudak.

**Mr. Arthurs:** I move that the French version of subsection 56(3) of the bill be amended by striking out “*bénéficiaires de la nomination*” and substituting “*personnes nommées*”.

**The Chair:** Comment, if any? Hearing none, all in favour? Carried.

Government motion, page 31.

**Mr. Arthurs:** I move that subsection 56(4) of the bill be struck out and the following substituted:

“Public inspection

“(4) The minister shall make the recommendations of the appointees available to the public.”

**The Chair:** Any comment? Hearing none, all in favour? Carried.

Shall section 56, as amended, carry? Carried.

There are no amendments proposed for sections 57, 58, 59, 60, 61, 62, 63 and 64. Shall they all carry? Carried.

Page 32, PC motion. Mr. Hudak.

**Mr. Hudak:** I move that subsection 65(2) of the bill be struck out and the following substituted:

“Same

“(2) Sections 1 to 64 come into force on a day to be named by proclamation of the Lieutenant Governor, but such proclamation shall not be issued until the standing committee on finance and economic affairs holds two weeks of public hearings on draft regulations to be made under the act and tables its recommendations on the draft regulations in the assembly.”

**The Chair:** Comment?

**Mr. Prue:** I just have a question. The right of the Lieutenant Governor in Council to make regulations on anything is enshrined within the Legislature. I’m wondering why this would be unique. Why is this bill unique, this set of regulations unique? The Lieutenant Governor makes regulations every day.

**Mr. Hudak:** The purpose of this amendment is to ensure that proposed regulations, for example, on simple referral, have proper public scrutiny. While I do appreciate that some things like education standards, the document by FSCO, have been public, there are a great number of items that are still to be prescribed.

We’ve heard from deputations that they’ve had some consultations on draft regulations with ministry staff.

That’s all well and good. I just feel a little bit hurt because I didn’t have the draft regulations in front of me.

There are, in a document that was sent to us by Sarah Hanafy from the Ministry of Finance, responses to some of the concerns that I brought up at committee indicating that the government is aiming to have additional draft regulations available for public comment before third reading of the bill. I’m pleased to hear that. I think it’s important, because the devil is in the details, for us to actually see what is proposed before asking us to vote on third reading. Hopefully the government will still carry through on that purpose, so we know the draft regulations in the areas that have caused some degree of discussion by stakeholder groups in a public forum.

I don’t expect this one necessarily to pass. We got two today, so you never know. But the point here is that it would certainly have been my preference on a bill like this—there’s been a congenial process, one that is supported by the opposition in its intent—to have had the same draft regulations before us that have been shared with stakeholder groups. That’s what I’m getting at here and that’s why this rather unique amendment has been brought forward. It will give all members of the committee the chance to see the very same draft regulations that have been provided to stakeholder groups but not members of the assembly.

**Mr. Arthurs:** I’d venture to say that some of the congeniality that we’ve established is a credit to the ministry and the stakeholders in bringing forward legislation in that consultation that can generate broad support. That’s always a reflection of the degree of co-operation that ends up existing across the floor on legislation.

### 1040

Having said that, it’s not my experience, as limited as it is, that one has public hearings and consultations of that sort in the regulatory process. We always could have them here sooner, but the legislation moved along nicely through second reading and to this point; the committee hearing was designated by the House leaders to happen fairly quickly, which is good news. We will endeavour to do as much as we can prior to third reading. When it might be back there really does rest in the hands of the House leaders as well, with legislative schedules and all those kinds of things. As I understand, though, the jurisdiction for ultimate proclamation does rest with the Lieutenant Governor in Council. It’s really out of our hands.

Again, as a new member, I’m not familiar with the number of times the former government, over its two mandates, held hearings on the regulations prior to third reading. I don’t know whether the mover of the motion can enlighten me in that regard. My understanding is they were pretty limited, if at all.

**Mr. Prue:** I’m totally intrigued. I’m looking at some huge possibilities here. I just want to know from Mr. Hudak, on behalf of the PC caucus, is this what the PCs would intend to do following the next election, should they form government, that they would put the regulations before the Legislature and have two weeks of



hearings and comments before regulations by cabinet were put into effect? If that is in fact your intention, I'm going to vote for that motion. But if it's just on this bill and for the purposes that you're mildly miffed, I'm somewhat disappointed. So if you could tell me, is this what you plan to do should you form or be in a cabinet in the next government?

**Mrs. Liz Sandals (Guelph–Wellington):** Yes, this is John Tory's platform.

**Mr. Prue:** Yes, is this a platform? Because if it is, then let's impose it now, and if it's not, then I have to take it with a grain of salt, quite frankly.

**The Chair:** Further comment? Hearing none—Mr. Hudak?

**Mr. Hudak:** I am but one member of the assembly, but I'm trying to be a groundbreaker here at this committee with this innovative motion.

**Mrs. Sandals:** He's with Garth.

**The Chair:** Order.

**Mr. Hudak:** Oh, be careful on that.

If Mr. Prue wants to see more of this, encourage me by supporting my amendment, and my colleagues as well.

From time to time, we'll bring forward amendments that we know won't necessarily pass to make a point. One of the reasons, frankly, why it's been very congenial here is because some of the tough decisions still are left in the regulations; right? I do hope that we will see, before the third reading vote, some of those difficult decisions in the regulatory process brought forward to the draft regulations. I still hope that I'll be encouraged by seeing this motion pass, but I am happy I got at least two done today.

**The Chair:** Further comment? Hearing none, all in favour? Opposed? The motion is lost.

Same section, PC motion, page 33. Mr. Hudak.

**Mr. Hudak:** I move that subsection 65(2) of the bill be struck out and the following substituted:

"Same

"(2) Sections 1 to 64 come into force on a day to be named by proclamation of the Lieutenant Governor, which shall not be later than October 1, 2007."

**The Chair:** Comment?

**Mr. Hudak:** I want to make sure that the momentum that's been developed in this legislation doesn't fade in 2007. From time to time, bills that leave a number of questions to be determined through the regulatory process can drag on before they're proclaimed. I know, for example, that the Consumer Protection Act that I brought forward as a minister—it was a complex piece of legislation; we had discussions with stakeholder groups, as the Ministry of Finance is doing with Bill 65. One of the challenges is, if there's momentum lost, parts of that act are being proclaimed in 2006, four years after the bill was passed. So I'm trying to find some sort of a deadline to make sure that all of those who are concerned with the status of the regulations actually know what they're going to be within a year's time.

**Mr. Arthurs:** Clearly, it's the government's intention to see the legislation moved along to implementation on a timely basis. Having said that, we can't control specifically how that might unfold, but we want to see this done during the balance of the mandate. It's not something we want to have left at the end of the day. But if this were included and for any reason that date could not be met, it would require, then, an amendment to the legislation, as I understand it, at the end of the day. So we can't support tying the government's hands or, effectively, in my view, sort of dictating to the Lieutenant Governor when he may choose to make a proclamation since at the end of the day that is his choice.

**The Chair:** Further comment? Hearing none, all in favour? Opposed? The motion is lost.

Shall section 65 carry? Carried.

PC motion, page 34. Mr. Hudak.

**Mr. Hudak:** I move that section 66 of the bill be struck out and the following substituted:

"Short title

"66 The short title of this act is the Arthur Lofsky and Jim Murphy Act (Mortgage Brokerages, Lenders and Administrators), 2006."

**The Chair:** Comment?

**Mr. Hudak:** We've certainly heard about the outstanding work by Mr. Lofsky, who humbly will tell me he's one of many who have worked diligently in the Ministry of Finance on this legislation. Mr. Murphy, certainly on behalf of CIMBL, has been at the forefront, from a stakeholder group point of view, and has brought forward a number of well-considered suggestions for this committee's consideration, which include a number that were brought forward as amendments to the bill. So I thought it suitable to enshrine the outstanding work of these two gentlemen by having the short title include the names of Messrs. Lofsky and Murphy.

**Mr. Arthurs:** I'm sure that both those gentlemen, who are here today, appreciate the acknowledgement by Mr. Hudak of their fine work, whether it's the fine work on behalf of the ministry through Mr. Lofsky and his engagement or on behalf of all the stakeholders through Mr. Murphy.

Having said that, we can't support the amendment. When the appropriate time comes I would like a recorded vote, because I would like the member opposite to have the opportunity to acknowledge the fine work of a member of the political staff of the government.

**Mr. Prue:** Well, I have to ask the question, will the government not recognize the fine work of a member of the government?

Quite frankly, you get bills like this, and it says, "The Hon. D. Duncan"—of course, he was the minister at first reading, but he disappeared from that post very soon thereafter—and we have a whole body of people who do this. I don't think we, as government, often give them enough credit for bills and contents of bills and how government legislation is passed. Parliamentarians often will be very pleased to say the role that they had, but in a case like this and in the overwhelming majority of cases, it's people whom ordinary citizens do not see.

It is not going to harm this bill one iota if it contains a couple of names of people who worked really hard. To my mind, if posterity wants to know who really did all the work on the bill, it's not going to have Michael Prue's name on it or Wayne Arthurs's name on it because, although we did a little bit in this committee, the people who spent a year, two years or five years on this bill are in this room and it should cause no one any umbrage to recognize that. I'm willing to do that on behalf of people who work for the government. I would only hope the government would be willing to do it as well.

**The Chair:** Further comment? Hearing none—

**Mr. Hudak:** Recorded vote.

**Ayes**

Hudak, Prue.

**Nays**

Arthurs, Delaney, Ramal, Sandals.

**The Chair:** The motion is lost.

PC motion, page 35. Mr. Hudak.

**Mr. Hudak:** I'm disappointed that that last motion didn't pass. I'm willing to give it another go here. I do note, though, that Mrs. Mitchell was not recorded voting against that last one, so I hope we had at least one ally.

I move that section 66 of the bill be struck out and the following substituted:

“Short title

“66 The short title of this act is the Arthur Lofsky Act (Mortgage Brokerages, Lenders and Administrators), 2006.”

I was worried that Murphy felt I might be pulling Lofsky down in that last motion and wanted this one to stand on its own.

**The Chair:** Further comment?

**Mr. Hudak:** Recorded vote.

**Ayes**

Hudak, Prue.

**Nays**

Arthurs, Delaney, Ramal, Sandals.

**The Chair:** The motion is lost.

Shall section 66 carry? Carried.

Shall the title of the bill carry? Carried.

Shall Bill 65, as amended, carry?

**Mr. Hudak:** No. I'll say no, then. Recorded vote.

**The Chair:** A recorded vote. Shall Bill 65, as amended, carry?

**Ayes**

Arthurs, Delaney, Hudak, Prue, Ramal, Sandals.

**The Chair:** Carried.

Shall I report the bill, as amended, to the House?

Thank you, committee. We are adjourned.

*The committee adjourned at 1053.*



## CONTENTS

Thursday 19 October 2006

<b>Mortgage Brokerages, Lenders and Administrators Act, 2006, Bill 65, Mr. Sorbara / Loi de 2006 sur les maisons de courtage d'hypothèques, les prêteurs hypothécaires et les administrateurs d'hypothèques, projet de loi 65, M. Sorbara.....</b>	<b>F-539</b>
--	--------------

### STANDING COMMITTEE ON FINANCE AND ECONOMIC AFFAIRS

#### **Chair / Président**

Mr. Pat Hoy (Chatham–Kent Essex L)

#### **Vice-Chair / Vice-Président**

Mr. Phil McNeely (Ottawa–Orléans L)

Mr. Ted Arnott (Waterloo–Wellington PC)

Mr. Wayne Arthurs (Pickering–Ajax–Uxbridge L)

Mr. Toby Barrett (Haldimand–Norfolk–Brant PC)

Mr. Pat Hoy (Chatham–Kent Essex L)

Ms. Judy Marsales (Hamilton West / Hamilton-Ouest L)

Mr. Phil McNeely (Ottawa–Orléans L)

Mrs. Carol Mitchell (Huron–Bruce L)

Mr. Michael Prue (Beaches–East York / Beaches–York-Est ND)

Mrs. Liz Sandals (Guelph–Wellington L)

#### **Substitutions / Membres remplaçants**

Mr. Bob Delaney (Mississauga West / Mississauga-Ouest L)

Mr. Tim Hudak (Erie–Lincoln PC)

Mr. Khalil Ramal (London–Fanshawe L)

#### **Also taking part / Autres participants et participantes**

Ms. Caryl Silver, counsel,

Ministry of Finance

#### **Clerk / Greffier**

Mr. Douglas Arnott

#### **Staff / Personnel**

Ms. Susan Klein, legislative counsel;

Ms. Anne Marzalik, research officer,

Research and Information Services