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Monday 4 December 2006

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Lundi 4 décembre 2006

Standing committee on social policy

Comité permanent de la politique sociale

Ministry of Government Services
Consumer Protection and Service
Modernization Act, 2006

Loi de 2006 du ministère
des Services gouvernementaux
sur la modernisation des services
et de la protection
du consommateur

Chair: Ernie Parsons
Clerk: Trevor Day

Président : Ernie Parsons
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON SOCIAL POLICY

COMITÉ PERMANENT DE LA POLITIQUE SOCIALE

Monday 4 December 2006

Lundi 4 décembre 2006

The committee met at 1604 in committee room 1.

ELECTION OF CHAIR

The Vice-Chair (Mr. Khalil Ramal): Good afternoon, ladies and gentlemen. I guess the first step of our program for this afternoon is we have to elect a Chair. I'm the Vice-Chair. Can I do the job? I guess. I'm asking the floor.

Mr. Vic Dhillon (Brampton West–Mississauga): I nominate Ernie Parsons.

The Vice-Chair: Mr. Parsons, are you accepting the nomination?

Mr. Ernie Parsons (Prince Edward–Hastings): Yes, I do.

Mr. Kuldip Kular (Bramalea–Gore–Malton–Springdale): I second it.

The Vice-Chair: Any further nominations? Seeing none, congratulations, Mr. Parsons. You're the Chair of this committee. Thank you very much.

MINISTRY OF GOVERNMENT SERVICES CONSUMER PROTECTION AND SERVICE MODERNIZATION ACT, 2006

LOI DE 2006 DU MINISTÈRE DES SERVICES GOUVERNEMENTAUX SUR LA MODERNISATION DES SERVICES ET DE LA PROTECTION DU CONSOMMATEUR

Consideration of Bill 152, An Act to modernize various Acts administered by or affecting the Ministry of Government Services / Projet de loi 152, Loi visant à moderniser diverses lois qui relèvent du ministère des Services gouvernementaux ou qui le touchent.

The Chair (Mr. Ernie Parsons): Good afternoon. Thank you, first of all, for the overwhelming support of my colleagues. We are late. Unfortunately, the Legislature ran a little later than normal. We will do our best to catch up.

ONTARIO RESTAURANT, HOTEL AND MOTEL ASSOCIATION

The Chair: The first item is the Ontario Restaurant, Hotel and Motel Association. I would ask if you'd come forward. You have 15 minutes in total. Any time left over will be used for questions by the three parties. If you would state your name for Hansard, it would be appreciated.

Mr. Terry Mundell: Mr. Chairman and members of the committee, my name is Terry Mundell. I'm the president and CEO of the Ontario Restaurant, Hotel and Motel Association. With me is my colleague, Syd Girling.

I'd first like to thank the government for including our association in their consultations leading up to the proposed amendments to the Liquor Licence Act found in Bill 152. The final package reflects and addresses many of our industry's concerns.

On the whole, we think the package of amendments to the act, its regulations and the AGCO's policies and procedures strike a balance between community safety and social responsibility while cutting red tape, lessening the administrative burden and offering greater flexibility for liquor licensees.

To that end, we are certainly pleased that the government has adopted the ORHMA's recommendations, such as establishing monetary penalties for certain offence categories and providing greater flexibility to liquor licensees by expanding the allowable licensed areas, as well as the promise of greater latitude in licensee pricing of beverage alcohol and all-inclusive travel packages.

However, we would like the government also to consider further industry concerns not addressed in the current package of reforms and provided in the ORHMA's original submission to the Liquor Licence Act review committee. They include recommendations around minors and false ID; the ability for licensees to take advantage of value-adds and price specials available to retail consumers; the separation of the adjudicative and tribunal role of the board of the AGCO from staff enforcement functions; streamlining the transfer of liquor stock when a licensee changes locations under a new liquor licence; and expanding permitted stadium events to permit the consumption of beverage alcohol in tiered seating during conventions.

Many of the proposed amendments to Bill 152 provide greater powers in licensing and enforcement to the Registrar of Alcohol and Gaming. The ORHMA has concerns as to how and when these new powers would be exercised and under what conditions.

For example, the registrar's ability to charge applicants or licensees "reasonable costs" of any AGCO in-

quiry or investigation under subsection 6.1(3) has us especially concerned for the following reasons: Contrary to natural justice, there's no appeal mechanism available to an applicant or licensee on the imposition or assessment of investigation costs; "inquiry or investigation" or "reasonable costs" are not defined, rendering the power too open-ended and vague; when and how often the registrar might choose to invoke this power is not addressed—any boundaries or limits on the application of this power are absent; it imposes a further and considerable financial and administrative burden to obtaining a liquor licence over and above current licensing fees; and the OPP and AGCO are already sufficiently funded to conduct inquiries and investigations.

For the above reasons, the ORHMA recommends that policies and procedures be developed in concert with the hospitality industry to establish boundaries and parameters around the registrar's power to charge back the costs of AGCO investigations or inquiries.

Enhancing the authority of the AGCO's registrar to refuse a licence application or to revoke or suspend an existing licence upon failure to demonstrate sufficient control over the business under clause 6(2)(g.1) also has us concerned. In the absence of any definitions or guidelines, what constitutes "to the satisfaction of the registrar" and "exercise sufficient control" is vague. As this is one of the bases for refusing to issue a licence or suspending or revoking an existing licence, further work is needed to find more exact wording or guidelines controlling when and how it is applied. Also, unlike the other conditions to issuing a licence under subsection 6(2) of the act, this appears to be a reverse onus; i.e., the applicant has to demonstrate to the satisfaction of the registrar. It should be the other way around: The registrar must prove or demonstrate.

1610

New section 6.1 gives enhanced authority for the registrar to investigate the associates of a liquor licence applicant or existing licence holder. The ORHMA has continued reservations that such a proposal may serve to discourage legitimate third-party investors in licensed establishments through undue invasion of their privacy, generating considerably more red tape and slowing down the licensing process. While the ORHMA promotes, endorses and represents a responsible hospitality industry, neither should we create a barrier to legitimate investors who contribute to industry's economic health and sustainability.

A new risk-based licensing system is being proposed under section 8.1. While generally in support of the concept, we question the role of the board in developing policy. It's always been our understanding that the role of elected government is to develop policy, while the role of boards and commissions is to implement it. However, section 8.1 has the board of the AGCO developing policy by establishing criteria and specifying a range of conditions that the registrar may impose on his assessment of risk. The government should revisit section 8.1 to determine if the board is the proper vehicle to be developing public policy.

The registrar, under amended subsection 8.1(5), will be given the authority to consolidate two or more liquor licences at the same premises and under the same licence holder. This ability is apparently at the discretion of the registrar without having to hold a hearing and with no appeal mechanism to the licence holder. The ORHMA recommends that the registrar only be able to exercise this power with the consent of the licensee. Lacking consent, the registrar should have to issue a notice of proposal with reasons and hold a hearing to consolidate any licences.

With the proposed amendment to subsection 8(4) and subsection 20(1), the registrar can issue a new type of notice of proposal, namely, to refuse an application. In essence, this will unfairly tip the balance in public interest hearings against the licence applicant, because the registrar's counsel, normally neutral in public interest hearings, can now become actively involved on the side of objectors. We recommend that this new category of notice of proposal to refuse an application not be allowed for public interest situations.

As outlined in the latest issue of the AGCO's Licence Line, there is a proposed new regulation creating an offence for disorderly conduct to occur on property adjacent to a licensed establishment. The intent is to address disorderly behaviour, like fighting, inside an establishment dealt with by moving the problem to just outside the establishment. The ORHMA is not in favour of such a regulation as it is, among a host of reasons, redundant and contrary to a licensee's current obligations under the act and regulations.

Subsection 45(1) of regulation 719 already creates an offence for a licensee to permit drunkenness, riotous, quarrelsome, violent or disorderly conduct to occur on the premises. As there is no definition of "premises" under the act or regulations and the section does not specify "licensed" premises, this can have wide interpretation to include outside an establishment as well. Also, police already have a considerable range of legal powers to deal with disturbances inside or outside a licensed establishment under the Criminal Code or the Liquor Licence Act.

Most importantly, such a regulation runs contrary to a licensee's obligation under section 34 of the act to ensure that those breaking the law do not remain on the premises and are removed, by reasonable force if necessary. Such a proposed regulation creates a situation of double jeopardy for the licence holder and is, therefore, ill-conceived.

With regard to gift cards, I would like to briefly comment on subsections 13 and 14, regarding amendments to the Consumer Protection Act to give the government regulation-making authority concerning gift cards.

The government's communications regarding gift cards have been brief and generally limited to discussion around expiry dates. As the policy work will be done in regulation, not in the legislation itself, I'll keep my comments brief.

As we understand it, government intends on prohibiting expiry dates on gift cards purchased by consumers.

The ORHMA looks forward to working with government to ensure that the following elements are protected in regulation: that regulations regarding gift cards refer exclusively to those gift cards that are purchased by consumers and have a specified dollar amount; that gift cards or gift certificates used by businesses for promotional or charitable purposes not be included within the scope of the regulations; that gift card agreements not include those gift cards offering a percentage value, such as 10% off a meal; and that regulations developed recognize and account for the administrative cost to business concerning those gift cards that are unredeemed for a long period of time.

The ORHMA looks forward to working with the government throughout the development of regulations under the Liquor Licence Act and for gift cards under the Consumer Protection Act and to continuing the constructive dialogue in developing a package of reforms that accommodate industry and government.

I'd like to thank the members of the committee for their time today, and I, along with my colleagues, would be pleased to answer any questions you have.

The Chair: Thank you. We have about six and a half minutes left.

Mr. Dhillon: Thank you very much for your presentation. How big is the gift card market for your industry?

Mr. Mundell: It's a fairly significant tool that our businesses use, whether it's in the accommodation industry, the resort industry or through the restaurant industry. It is a fairly typical marketing or promotional piece that consumers are used to in Ontario.

Mr. Dhillon: That's fine. I have no more questions.

The Chair: Any other questions? You have clearly impressed everyone.

Mr. Mundell: It's a great way to get caught up, Mr. Chair.

The Chair: Yes, thank you. I appreciate that.

Mr. Mundell: Thank you for your time.

The Chair: We're going to take a very short recess, as there is a quorum call in the Legislature. They are short individuals. We will be about two minutes. Hopefully it will clear itself up.

The committee recessed from 1616 to 1618.

POLICE ASSOCIATION OF ONTARIO

The Chair: We are back in session. The next presentation is the Police Association of Ontario. Mr. Miller, I would ask that you state your name for Hansard. You have 15 minutes, although you're quite free to use less.

Mr. Bruce Miller: Thank you. I will try, Mr. Chair.

My name is Bruce Miller, and I'm the chief administrative officer for the Police Association of Ontario. I was also a front-line police officer for over 20 years prior to taking on my current responsibilities.

The Police Association of Ontario represents over 30,000 police and civilian members from every municipal police service and the Ontario Provincial Police Association. We've included further information on our organization in our brief.

We appreciate the opportunity to provide input into this important process. As you know, Bill 152 covers a number of areas, many of which are outside of our expertise. We plan to address those issues that we believe could impact on community safety, and we'll be limiting our remarks to the proposed changes to the Liquor Licence Act.

Working closely with government, the hospitality industry and other concerned stakeholders, the PAO has been pleased to provide our experience and expertise to this important policy debate. Let me say at the outset that our province is fortunate to have a responsible hospitality industry that understands and shares our goal of maintaining the safety of Ontario's communities. We look forward to working with them and other stakeholders to ensure safe communities.

We support the following initiatives that are either contained in Bill 152 or are associated with the legislation:

—Broadening the scope of the AGCO investigations during the licensing process;

—Enhancing the authority of the AGCO to refuse licence applications and revoke or suspend a licence that was previously issued;

—Giving the AGCO the power to revoke or suspend licences if disorderly conduct occurs on property adjacent to the establishment;

—Creating a process to allow the AGCO to use a risk-based licensing system;

—Allowing for the introduction of a schedule of monetary penalties that may be imposed with respect to contraventions of those acts and regulations administered by the AGCO;

—Allowing establishments to have additional areas of their premises licensed, including hallways and washrooms. As you know, this change will allow consumers to carry their drinks with them throughout an establishment, thereby not having to risk leaving their drink unattended while using the washroom or other facilities.

We appreciate that some of these initiatives will necessitate regulatory changes and/or changes to AGCO policy. As committee members appreciate, there are also complementary initiatives under way, such as changes to the private security industry, which address the activities and role of so-called bouncers in hospitality settings. Some of these initiatives will no doubt intersect with the changes to Bill 152. As a result, we believe that it would be helpful to have further consultations on these important issues and would be pleased to participate in the process.

We support the proposed changes to the Liquor Licence Act in Bill 152 and believe that many of the changes will help to enhance community safety. The legislation reflects the need for provincial control and consistency across the province. However, our organization remains very concerned about the possible impact the City of Toronto Act and the proposed new Municipal

Act may have on community safety and feel that we should once again raise the issue in conjunction with our presentation today. Both pieces of legislation will allow a municipality to pass bylaws extending the hours of sale of liquor in all or part of the municipality by the holders of a licence, and a bylaw may authorize a specified officer or employee of the municipality to extend the hours of sale during events of municipal, provincial or national significance.

In 1996, the hours of sale for licensed establishments was extended to 2 a.m. This was done in part to address some of the inequities facing businesses that operated at or near provincial and national borders. The new 2 a.m. closing brought Ontario in line with other jurisdictions.

We have spoken to our members in Ottawa, Niagara Falls and Windsor. Police services in these jurisdictions face many challenges coping with people who are drinking and driving in an effort to take advantage of extended hours in licensed premises in neighbouring communities. We believe that granting discretionary authority to municipal governments to set hours of operation for the sale of liquor may replicate some of the problems.

Hours of service in licensed premises need to be consistent across the province in order to ensure community safety. Maintaining consistency in liquor licensing provisions will help to ensure that additional problems associated with drinking and driving do not occur.

Thank you. We'd be pleased to answer any questions that you may have.

The Chair: I believe the NDP has the first question on this.

Ms. Cheri DiNovo (Parkdale–High Park): I'll pass, Mr. Chair. Thank you.

The Chair: Mr. Ramal?

Mr. Khalil Ramal (London–Fanshawe): Thank you, Mr. Chair. Congratulations on your election.

The Chair: Thank you.

Mr. Ramal: Thank you, Mr. Miller, for your presentation. I know about the concern I heard you speaking about. But don't you think that working together closely with the AGCO is going to eliminate a lot of high-risk people getting licensed and will benefit your members by keeping them from trouble and also making them aware of the issues?

Mr. Miller: I think that's one of the issues that we raised today in our presentation. As you know, many of the issues in Bill 152 have to be covered off by regulation and/or AGCO policy. Certainly we would offer our assistance to help in developing the policy and regulations. We have worked closely with the government, the hospital industry and other concerned stakeholders on this issue. We just urge the government to continue those consultations so that together we can ensure that communities in Ontario remain safe.

Mr. Ramal: Do you think that if this bill passes with the same provisions and sections, it wouldn't be enough to cover your concerns? Or do you want to add something to it in order to strengthen it?

Mr. Miller: In fairness, the hours of service are outside this legislation. That was an issue in the Municipal Act and the City of Toronto Act. But certainly, in this bill we support all the initiatives dealing with the Liquor Licence Act. We think it's going to help to make a safer Ontario. There are a number of issues that need to be covered off by regulation and policy, and we'd certainly like to work with government and the hospitality industry to deal with those issues.

Mr. Ramal: Thank you very much.

The Chair: Ms. Matthews, we have about two minutes left.

Ms. Deborah Matthews (London North Centre): Thank you for your presentation and for all the good work you do. I wonder if you could comment on the previous speaker's concern about something you actually support, the regulation creating an offence for disorderly conduct to occur on a property adjacent to the licensed establishment. I think, if I understood properly, the previous presenter said, "We need to have the right to throw people out." I wonder if you could just comment on that.

Mr. Miller: I think that's another area that needs to be covered off in further discussions. We share some of the concerns with the industry. I think everybody would agree that the licensee has to be responsible if they're connected with an act that occurs on adjacent property; by that, I mean if there's over-service or something of that nature.

But incidents will happen which are beyond the licensee's control and we recognize that just because an incident happens outside a licensed premise, there may be no connection and the licensee shouldn't be responsible for that. We also don't believe that the licensee should be responsible for policing or maintaining community safety outside his or her establishment; that's a role for fully trained police officers.

Should there be some accountability in certain cases? Yes. But I think those are some of the areas that we need to work together on with the hospitality industry and government.

Ms. Matthews: Thank you.

The Chair: Mr. Ouellette?

Mr. Jerry J. Ouellette (Oshawa): Thank you, Mr. Miller, for your presentation. A couple of things: You mentioned broadening the scope of the investigation during the licensing process. Do you have an expected time frame that you would think would be acceptable to make sure that there is—one of the biggest things that we as elected officials hear about from new facilities opening is that it takes so long to get through the process to get that done. What do you think is an acceptable time frame to make sure that the process is completed so that when somebody is opening a new restaurant, they can go in and say—within a month, 30 days, 90 days?

Mr. Miller: That would be something that's outside of our expertise, although we believe, obviously, that thorough investigations need to be made. We'd need

some more information before giving you a definitive answer on that.

Mr. Ouellette: Okay. To carry on with what Ms. Matthews had mentioned about the disorderly conduct on adjacent properties, typically what happens is that a police force has its staffing geared toward when the bars are closing, at 2 a.m. now. A lot of times, somebody will get thrown out at 1 o'clock, and they'll head to another spot. They're in the parking lot, and a confrontation takes place there. When this process of revoking or suspending a licence takes place, how can there be accountability in there? And who's going to be the one to make the decision as to whether somebody was or was not responsible for having that patron in their facility at the time? Because a lot of times they could walk in the door and the doorperson escorts them right out immediately. What sort of provisions do you see as having the ability to make sure that the onus is not on the one who is not responsible?

Mr. Miller: From a policing perspective, it's always something that we try to prove, some sort of relationship between the incident and the people outside the establishment. Had there been over-service involved and things of that nature? If we could prove that those people were coming from that premise, then the licensee has to take some onus for the problems that happen.

Also, in the entertainment district, it's very difficult to prove where people came from sometimes. I don't think that's a situation where the hospitality industry or the licensee should be held responsible.

Mr. Ouellette: I would expect that the industry would have some concerns about other facilities that have escorted individuals out who caused ruckuses, particularly in some of the new complexes where there is a series of facilities or service providers in a similar area, within walking distance. It could cause problems.

One last question is, I know you spoke about a specified officer or employee of the municipality to extend the hours of sale. How do you envision that impacting policing? Normally, when a force looks at its hours of operation, when the bars are closing and within the time frame immediately after that, they make sure there are sufficient officers on duty at that time. However, if there's an extension, how would that affect the policing community in making sure its duty hours are complied with?

1630

Mr. Miller: It's obviously going to put strains on police services, but we're also concerned about the drinking and driving aspect. If we get a neighbouring community that extends their bar hours past those of another, it's going to have the unintended effect of encouraging people to drink and drive. Certainly we saw that at border crossings in Windsor, Niagara Falls and Ottawa. We don't want to see the same thing happen in adjacent communities such as London and St. Thomas, for example, or other areas of the province.

Mr. Ouellette: Thank you.

The Chair: Ms. DiNovo?

Ms. DiNovo: I apologize; I had to come in a little bit late. But I did have a question about the carrying-of-the-drink-into-the-washroom aspect of this bill. I just wanted to know the police input on that. It seems to me this has put the onus on the victim rather than on the victimizer. Again, this is a crime committed by, presumably, mostly males on women, and yet we're asking the woman to take the initiative here to protect herself, rather than the onus being on the male. From a law-and-order perspective—my husband's a former police officer—I'm wondering what you thought about an aspect of this bill that puts the onus on the victim rather than on the victimizer.

Mr. Miller: I don't know how you can approach it in any other manner. To me, it makes sense that people aren't forced to leave their drinks unattended at a table. It just makes good sense. I don't think it's a case of putting the onus on somebody; it's just that the government is taking steps to do what they can to prevent what has become a problem. Personally, I think it makes common sense. We would be the first ones to call for stiffer penalties to hold people who do these types of things accountable. We've been doing that for years. But in terms of changing the licensing provisions, we see this as a common sense provision and something that we support.

Ms. DiNovo: It seems common sense in one sense. In another sense, it seems like we've thrown up our hands and said, "We can't stop date rape and the date rape drug phenomenon, so now the only recourse is to get the woman to take the drink into the washroom," which seems bizarre to me, quite frankly. I'm just asking, from a police perspective, would you not want to see some provision other than, again, the onus on the victim?

The Chair: I'm sorry, but we're out of time.

Ms. DiNovo: Okay. Thank you.

ONTARIO BAR ASSOCIATION

The Chair: The next presentation is the Ontario Bar Association. I would ask that you state your names for Hansard.

Mr. James Morton: My name is James Morton. I'm the president of the Ontario Bar Association. We are delighted to be here today. Joining me today are Paul McCarten, from the Ontario Bar Association's real property section, and Wayne Gray, from the Ontario Bar Association's business law section, where Wayne serves as the chair of the corporate law subcommittee.

The Ontario Bar Association is particularly grateful today for the care that the committee is taking with this important legislation. You will hear after us representations from the Law Society of Upper Canada. While we deal with different aspects of the legislation, we are generally supportive of their position.

Briefly, a little background on the Ontario Bar Association. This is our centenary year; we are 100 years old this year. We are the largest voluntary legal association in Ontario, representing 17,000 lawyers, justices, law

professors and law students. We are member-driven; that means that our policies and directions are grassroots based and reflect the genuine concerns of our members. We represent lawyers through 35 associations based on expertise. It is based on that expertise that I will now turn the floor over to Paul McCarten, representing the real property section.

Mr. Paul McCarten: Good afternoon. I am the former chair of the real estate section of the OBA. I hope it's obvious to you that the bar association in the real estate section has no particular axe to grind in talking about these issues. There's no constituency that we represent other than the public interest. Generally, we support Bill 152 as it relates to title fraud and mortgage fraud. We think it's an important initiative of the government and one with some urgency.

There are a number of elements to our report. I'm only going to deal with one important aspect because there's a qualification that we have, frankly. We have some reservations about a particular part of it. What that relates to is the law that is incorporated that really proposes to change what has been a fundamental principle in the land titles registration system in Ontario, the western provinces, New Zealand and Australia for many years: that a person can rely on the title that is in our registration records, and that innocent purchasers and mortgagees can receive good title based on that. This legislation proposes to make a change which really can compromise that very significantly, and it says that in the context of title fraud.

One of the challenges about title and mortgage fraud is that there are always two innocent victims, one on either end of a transaction. The fraudster is in the middle, taking money. The homeowner is on one end of it and the purchaser, the innocent purchaser or the mortgage company, is on the other. So there are two injured parties. The challenge for a Legislature and for us in giving advice or comments about this is in trying to decide how you treat those interests, because there are going to be people hurt no matter what happens.

I need to talk about two cases very briefly to illustrate the problem. The first one is Household Realty. The Court of Appeal for Ontario decided this case fairly recently. It involved one of two homeowners, the wife, forging a power of attorney, placing mortgages on her home, and when the other homeowner, her husband, found out about it, he took the position that those mortgages were fraudulent and that he was not responsible for paying those mortgages. Frankly, that has been the law in Ontario. The Court of Appeal could not stomach the concept of a homeowner, the wife, getting to stay in her home, and blowing away the mortgages that were registered on title by these innocent mortgagees, so the Court of Appeal actually held, very recently, that the mortgage company's mortgages were valid and enforceable. That's called the Household Realty case, and that turned what has been the law on its head and essentially said that a fraudster can come up with a deed and transfer your house tomorrow to somebody else, and it's gone, just like that. That's not the law of the province of Ontario and that's why this legislation is important. I've got to say that that's one of the things—there's no doubt about it—that the legislation fixes, and it needs to do that.

The second case—I'm going to call it the Lawrence case—was in the news last week. It was argued before the Court of Appeal. In that case, a fairly straightforward mortgage fraud case, a fraudster conveyed the Lawrences' home to himself and took out mortgages in favour of a company called Maple Trust. The fraud was discovered, and the argument before the Court of Appeal, and there hasn't been a decision by that court yet, by the Lawrences was twofold. First of all, the transfer by the fraudster is void. We agree with that; the legislation says that that's the case. The second thing they said was that the mortgage given by the fraudster to the mortgage company, Maple Trust, is also void. We don't agree with that.

1640

There's a certain attractiveness about the logic of protecting a homeowner's interest when they've been taken advantage of, but there's a price when you do that. I need to talk about that. The price for that is the land registration system. If Bill 152 is passed the way it's drafted and doesn't incorporate the changes that I am proposing, you'll never again be able to get an opinion from your lawyer, when you buy a house, that you own the house for sure. There will always be a qualification, "subject to fraud." Why? Because Bill 152 does not allow an innocent third party—a purchaser or a mortgage company—to rely on what's registered on title. So the land registration system, we think, is a fundamental part of Ontario. As I said, this system is accepted across the western part of our country, in Australia and in New Zealand, and it does protect innocent purchasers and innocent mortgagees, but there's a price that's paid here. As I said before, there are two innocent parties to this fraud. In suggesting that Bill 152 be amended, as I've set out in the written memorandum, so that we can rely on the registered title, what is critical is that the government does implement something they are suggesting in here, which is a very different approach to compensation to the compensation fund by people who are injured. The legislation does that. Frankly, this legislation is implemented by regulation, and I would encourage you to focus on that. The compensation system in Ontario has not been a very satisfactory process, and it was like getting injured twice when you were making a claim against the fund. Now the land registrar is given a much greater power to implement—it should be like an insurance claim. Where there is an obvious fraud, the person who's injured should be able to get a claim back.

I will just conclude my remarks by saying that we support the legislation with that proviso.

Mr. Wayne Gray: Thank you, honourable members, for allowing me to speak today on Bill 152. I will be addressing the business law modernization portions of the bill, namely, schedule B on the OBCA amendments, and schedule E on the PPSA amendments.

Generally, the OBA is supportive of these amendments but says that they fall short. As you will recall, the recent impetus for OBCA and PPSA reform traces back to the May 2005 Ontario budget. On top of the usual fiscal focus, the budget also announced some non-fiscal business law reform initiatives. In particular, it was announced that the then Minister of Consumer and Business Services, the Honourable Jim Watson, would introduce securities transfer legislation later that year. In addition, the minister was to lead the implementation of a multi-year plan to update Ontario's commercial law framework and, after implementation of the Securities Transfer Act, or STA, develop comprehensive legislation to modernize Ontario's corporate laws.

The budget explicitly recognized the need for Ontario's corporate and commercial laws to be competitive by global standards. It accepted the considerable evidence that businesses view the regulatory environment as an important factor in making global investment decisions. Accordingly, the government said that it recognized the importance of securing Ontario's position as an attractive and secure place to invest. It also recognized updated commercial and corporate laws as supporting a competitive business environment that attracts investment and ensures prosperity for Ontarians.

This was a powerful message, and business law practitioners eagerly anticipated the details. We didn't wait long. Within a matter of days, Minister Watson, at an OBA program, no less, elaborated a three-phase program on business law reform.

The first phase: The STA will come into force this coming January 1. The government is to be commended for this very important initiative. Here, however, the government's sins are those of commission, not omission. In particular, it adulterated the STA with poorly conceived provisions dealing with crown securities.

With respect to phase two, the business reform project which Bill 152 addresses, Minister Watson stated that it would focus on making additional changes to the OBCA to modernize it and make it more consistent with its federal counterpart. There were three stated highlights.

First, serious consideration would be given to eliminating the requirement that a majority of the members of the board of directors on an OBC corporation be resident Canadians. Minister Watson described the rule as an unnecessary limitation that few other jurisdictions require and one that may force corporations to trade their most qualified and experienced people for those who are geographically convenient.

The second and third specific highlights were unlimited liability corporations, or ULCs, and unanimous shareholder agreements. Bill 152 makes many salutary technical changes to the OBC and the PPSA. The problem with Bill 152 is the converse of the STA. Bill 152 reflects sins of omission rather than commission. Let me give three specific examples.

Directors' residency: Bill 152 cuts the residency requirement in half but does not eliminate it. Ontario remains at a competitive disadvantage to those jurisdictions where there is no residency requirement. The only other provinces or territories in Canada that impose such requirements are the prairie provinces and Newfoundland and Labrador.

Second, ULCs: In contrast to Alberta last year, Ontario takes a pass. It has thus fallen behind Nova Scotia and Alberta as the place through which US investors, who represent approximately 70% of investment in Canada, will invest in the Canadian economy to receive flow-through US tax treatment.

Third, PPSA: Since at least its 1998 report, the OA has been saying that the Ontario PPSA requires clarification as to licences, an important asset in many businesses and an important underutilized source of secured collateral. Ontario businesses and lenders are still struggling under an almost 20-year-old Ontario Court of Appeal decision that held that tobacco production quotas cannot be the subject of a security interest. Courts in other provinces have not followed the decision. A statutory amendment will enable borrowers to assess additional collateral and at the same time help harmonize Ontario's PPSA with the PPSA regimes in its sister provinces.

I do not wish my remarks to be taken as a criticism of what is in Bill 152 or the members of the ministry staff who contributed to the bill. Both the OBCA corporate law subcommittee and the PPSA subcommittee have the highest regard for Allen Doppelt, John Mitsopoulos and others at the ministry who have worked tirelessly and well on the STA and the OBCA and PPSA amendments. Again, our criticism is not with what is in the bill but with what has been left out, for unexplained and unfathomable policy reasons.

Unfortunately, the net effect of the omissions is that Bill 152 does not live up to the promise of the 2005 budget to make Ontario business laws competitive with those in other Canadian jurisdictions, let alone globally. Ontario is still at the bottom tier on directors' residency, unlimited liability corporations and collateralization of licences. Bill 152 falls far short of what is required to signal that Ontario still aspires to become Canada's leading commercial law jurisdiction.

The OBA therefore urges the standing committee to complete business law reform with a bang, not a whimper. Thank you.

The Chair: Thank you. There is no time for questions.

MULTI-STORE GIFT CARD COALITION

The Chair: The next presenters are the Multi-Store Gift Card Coalition. As you've heard me state earlier, would you read your names into the Hansard record.

1650

Mr. Heath Applebaum: Thank you, Mr. Chair and members of the committee. Good afternoon. My name is Heath Applebaum, manager of corporate communications for the Cadillac Fairview Corp. Ltd. Cadillac Fairview owns and manages 29 of Canada's largest retail shopping centres, 18 of which are here in Ontario, such

as the Toronto Eaton Centre, the Toronto-Dominion Centre, Fairview, Erin Mills, Masonville and the Promenade, just to name a few. I'm speaking to you today in support of consumer protection, full disclosure of all fees and, speaking for Cadillac Fairview in particular, we do not have expiry dates on our shop card at all.

I'm here representing Cadillac Fairview and a growing coalition of companies across Canada who issue and/or administer multi-store gift cards. Multi-store gift cards can be used at more than one store or chain of stores at multiple locations. They are quite different from standard retail gift cards issued by individual retail stores.

Joining me here today is Michael Miroslaw, president of StoreFinancial Services of Canada. StoreFinancial implements and processes multi-store gift card programs for shopping centres across Canada, the United States, Puerto Rico, Canada and the United Kingdom.

We're pleased to be here to discuss section 8 of Bill 152. Our comments today are limited to the issue of multi-store gift cards as they pertain to disclosure fees, expiry dates and cancellation rights on gift cards. Our group has also been invited by the ministry to consultations being held later this week, and we look forward to explaining how new regulatory provisions can both protect consumers and accommodate the significant differences between single-store retail cards and multi-store gift cards. Our ultimate goal is that consumers will continue to have full confidence in the services we offer.

Our purpose for appearing before you today is the following:

—to provide an overview of the differences between multi-store gift cards and single retail cards;

—to share the current marketing and administrative practices of multi-store gift cards in Canada;

—to provide background information on how multi-store gift cards work in the US and Canada;

—to provide insights into how US states have approached legislative guidelines for the selling and redemption of gift cards;

—most importantly, we hope to have some time at the end to answer questions you may have on these important issues.

Unlike single retail cards, the recipient of a multi-store gift card can use it at multiple retailers within a shopping mall. In the case of Cadillac Fairview, our gift cards can actually be used at all 28 of our retail shopping centres across Canada, giving consumers the freedom to spend their card at more than 4,000 stores. Single retail cards can only be used at a single retailer.

How does it work? Single retailer gift cards are operated by the issuing retailer. When the card is redeemed at the retailer, the costs of the program are covered from the profit margins on the sale of the actual goods or services. Multi-store gift cards, on the other hand, are issued on behalf of the mall owner through a company such as StoreFinancial to implement, process and provide program management services for the gift cards. At Cadillac Fairview, we do not earn a profit from the operation of our multi-store gift cards. Rather, we offer it as a service to our retailers to attract customers who want the convenience and choice of a multi-store gift card, something very useful, especially this time of year.

The individual retailer located at a shopping mall is a participating merchant and has elected to accept the shopping mall gift card as a form of payment for the goods or services they sell. Some retailers also use their own single retail cards in addition.

Multi-store gift cards are sold to shopping centre customers directly at our mall guest service kiosks. The gift card recipient can use the card to purchase merchandise and services from participating stores and restaurants in the shopping centre. Gift cards can range in value anywhere from $10 to $500 or more, with an average purchase of $70. As you can see by the sample card in your package that's circulating—if you haven't seen it yet, here it is—the Cadillac Fairview card appears exactly like a debit or credit card and uses a magnetic strip on the back.

Multi-store gift card programs operate through the use of a sponsor bank and must utilize a global payment network such as MasterCard or Visa. When the gift card is sold, the funds are loaded onto the gift card account and are held on deposit at the bank. When the gift card is redeemed with a retailer, the transactions are processed, settled and paid to the retailer by the bank in the same way as a debit or credit card transaction.

Now I'm going to touch on some of the additional services provided by multi-store gift cards. Multi-store gift cards have five unique features.

Unlike single store gift cards, the cardholder has the flexibility and choice to use this card at 4,000 stores.

Cardholders can return merchandise to the retailer with funds credited back to their account.

Also, account tracking is a feature. Cardholders can access their personal account information 24/7 over the Internet, through an automated phone inquiry, as well as through a 1-800 toll-free service line; in addition to that, daily automated updates of each individual gift card account and special security features that protect and replace a customer's lost, stolen or damaged gift card.

On the issue of disclosure, Cadillac believes in full disclosure of all fees and conditions up front. It's important to clarify that the Cadillac Fairview Shop! card does not have an expiry date. Secondly, we are strongly opposed to the idea of any hidden fees or terms. As you can see in the packages that were distributed earlier, all the costs of purchasing a multi-store gift card are fully disclosed in clear, easy-to-understand language at the time of purchase and on the gift card itself. To ensure full disclosure at all Cadillac Fairview properties, the terms of the gift card purchase are actually outlined in six different places: (1) verbally at the point of purchase with a guest service person; (2) signage showing our policies at every guest service kiosk; (3) policies are clearly printed on the purchase receipt; (4) policies are clearly printed on the cardholder packaging; (5) our policy of charging a $2 maintenance fee after 15 months is also

clearly printed on the back of the card; (6) terms and conditions are outlined on Cadillac's shop.ca website.

Our approach explains the growing popularity of this product and why 95% of these Shop! cards are completely used within the 15-month period before any kind of maintenance fee will ever come into effect.

It's important to note that for mall owners like Cadillac Fairview, multi-store gift card programs are not a business we run for profit. We offer multi-store gift cards because it's a valued service consumers want, with the goal of driving more traffic to our tenants, and ultimately loyalty to our malls. The operating and service costs associated with these gift cards are covered by the service fees themselves and the maintenance fees paid by the consumer.

Pertaining to service fees specifically, the multi-store gift card service fee is paid when the card is purchased and costs $1.50. In some cases, multi-store gift cards are used by corporations for corporate gifts for their employees, and special incentives are provided that may waive that fee. For example, if someone is purchasing a $20 gift card, you would pay $21.50 at the time of purchase.

Maintenance fees: Unlike many single-store cards that expire after six or 12 months, we do not have an expiry date after which the card doesn't work. In the case of Cadillac Fairview's card, all the maintenance fees are waived until after 15 months, at which point the $2 fee comes into place. The rationale here is that 15 months gives the cardholder two holiday season cycles to fully redeem the gift card. Our research shows that 15 months gives the vast majority—95%—sufficient time to use our card. You may ask, what is the remaining 5%? This often accounts for lost cards that are not reported or cards that have a small amount of money remaining that customers never fully use.

That ends my portion of the discussion. I will now pass the podium to Michael Miroslaw, president of StoreFinancial.

1700

Mr. Michael Miroslaw: Mr. Chairman and members of the committee, thanks for giving Heath and I the opportunity to present today.

At this time I'd like to provide the committee with some insight into recent regulatory activity pertaining to gift cards in the United States. StoreFinancial currently administers nearly 300 programs in the US, Puerto Rico, Canada and soon the United Kingdom. Since the year 2000, 24 states have enacted consumer legislation that specifically addresses gift cards. Their focus has been on expiry dates and the assessment of fees.

To summarize how those 24 states break down:

On the fee side, six states, including New York and Texas, permit the assessment of fees for all gift cards if there is clear disclosure and/or 12 months have passed from a date designated in the statute; 13 states, including California, ban or regulate fees for single-store gift cards but exempt multi-store gift cards; and three states, including Illinois, allow fees for all cards if a group of requirements are met but also exempt multi-store gift cards.

On expiry dates, eight states, including Texas, permit the use of expiry dates after a set period of time and if there has been proper disclosure to the consumer; four states, including California, ban expiry dates for single-store gift cards but exempt multi-store gift cards; eight states, including New Jersey, permit expiry dates after a designated period ranging from one to six years but exempt, again, certain multi-store gift cards; and two states, including Illinois, permit expiry dates if disclosure requirements are met but, again, also exempt multi-store gift cards.

With respect to those 24 states that I mentioned, since 2000 only two have enacted consumer-oriented gift card legislation that places an outright ban on fees or expiry dates on all gift cards. The laws in both states are currently being challenged in court with respect to multi-store gift cards issued by a federally regulated sponsor bank. In one case, a lower court has already ruled that the statutes of the state cannot be applied to such cards.

In August 2006, the Comptroller of the Currency issued a bulletin to its members to specifically address multi-store gift cards issued by national banking institutions. The bulletin requires full disclosure of service fees and expiry dates on the gift card.

To conclude, we appreciate the opportunity to appear before this committee to outline the significant differences between single-store retail gift cards and multi-store gift cards. The features and services provided to consumers are very different, the business models are very different and, accordingly, the way the two businesses are regulated should be different, as has been recognized in almost all US states that have enacted gift card legislation over the past several years. Consumers have continued to welcome our gift cards because they make gift giving easy and we provide full disclosure of all terms and fees. In fact, StoreFinancial currently administers nearly 300 programs throughout North America, including over 100 in Canada. Currently, we receive about one inquiry related to fees for every 10,000 cards we issue.

We look forward to working with the government—as Heath indicated, on Thursday we'll be at a session with the government here in Ontario—to ensure that consumers continue to get the benefit of multi-store gift cards.

At this time, Heath and I would be happy to answer any questions that the committee or the Chair may have.

The Chair: There are four seconds for questions. I'm sorry, time is now up. Thank you very much.

LAW SOCIETY OF UPPER CANADA

The Chair: The Law Society of Upper Canada. Would you state your name for Hansard.

Mr. Malcolm Heins: My name is Malcolm Heins. I'm chief executive officer of the Law Society of Upper Canada. I'm here this afternoon with Sheena Weir, our

government relations manager, and two counsel, Caterina Galati and Julia Bass.

The law society is generally supportive of Bill 152 and the Ontario government's initiatives to prevent mortgage fraud. The increase in crimes of this nature has taken advantage, I think, of a number of different phenomena, one of which is the ability to use technology to make the registry and land title system more efficient and, as well, I think changes in mortgage lending which have been predicated on efficiency of mortgage lending as opposed—perhaps in a manner that was used in the past—to validating who is doing the borrowing; what the property looks like; doing a valuation, an appraisal of the property; and having a survey done. All those things have more or less moved out of the current process that's utilized in mortgage lending.

We agree with the government's position that mortgage fraud cannot be solved by government action alone and that all parties involved in real estate transactions need to be part of the solution.

Let me just address some of the specific items that are contained in Bill 152; first of all, the changes to the Land Titles Act itself.

Section 15 of the act adds definitions of "fraudulent instrument" and "fraudulent person" to the act. We think that both of those definitions will be helpful in ensuring that fraudulent documents do not affect the register.

We also agree that the use of subsection 57(14) of the act, in conjunction with the two definitions I just referred to, will be very helpful in preventing further dealings in the property when problems are identified. In other words, when a problem is identified, the director has the power under 57(14) to put a caution on the title, do an investigation and then enter into a determination as to whose competing rights should prevail—and there doesn't necessarily have to be a loser, as I think you heard from Mr. McCarten. What you're dealing with are two competing interests: potentially the innocent owner of the property and either an innocent purchaser or an innocent mortgagee. Briefly put, the issue becomes, who has entitlement to the property itself and who has entitlement to the compensation?

Those determinations aren't necessarily straightforward. The act sets out, in our view, a reasonable approach to it, and also provides some flexibility through the section 57 process for there to be a determination in the more unusual circumstances as to whose rights should prevail to get the property and who should be getting compensation.

I talked a little bit about the problems in lending and the changes. We have appended to the presentation an article that appeared in the Toronto Star in early September involving a small property called 33 Earl Grey Road. The author of that article, Bob Aaron, points out, after doing a title search, that there were six transactions involving this property. When you look at that property, you see that there were four different financial institutions involved in lending on that property, and I think what it highlights is the lack of rigour that takes place in lending. Here you have a property that's valued, over the times of these transactions, anywhere from the low $100,000s to as much as over $400,000. It just doesn't make sense when you look at the property. In fact, my secretary lives just down the street from the property. She said to me that she often wondered about this little property, which sort of sticks out like a sore thumb on the street. Even to her untrained eye, the fact that this property would have a value of over $400,000 was patently ridiculous.

The situation is aggravated by the fact that the lender's position is often covered by insurance. The interesting thing is that insurance is paid for by the person who is taking out the mortgage. Whether it's CMHC or title insurance in these transactions, it's the consumer who pays and the lender who is getting the protection. So the incentives for the lenders in these cases are not as great as they might otherwise appear. Indeed, I also refer, at page 10 of my presentation, to the comments that were made by Mr. Justice Echlin in the case involving the Toronto Dominion Bank. As he stated, "In this instance the mortgagee cannot rely on the register because it did not even perform rudimentary due diligence and had notice of irregularities. For deferred indefeasibility to assist the bank, it must show that it is entitled to rely on the register in all circumstances." So we support the section 163.1 amendment that's in the act, which will allow the director to establish standards of due diligence in lending in order for lenders to be entitled to make a claim against the fund.

We also support the principle, set out in clause 59(1)(e), that subrogated claims not be compensable. We have pointed out to the minister that the section itself should probably be tightened up, as it's probably not specific enough to cover off all the kinds of claims that might be made against the fund by insurers.

1710

A couple of comments about the Land Registration Reform Act amendments:

We're not convinced that subsection 23(4)—that is the section that permits the director to notify an owner whenever a document is submitted by direct electronic transmission which would affect the property either by way of a transfer or a mortgage—is necessarily the best idea. It will probably mean that the consumer will be directed to purchase some kind of title insurance in order to facilitate the transaction. At the end of the day, if a fraudster is really determined to commit a fraud, that notice may not do what it's intended to do in those circumstances. What we think really needs to take place is to enforce the due diligence in the first instance, in the lending transaction.

There's a new power in section 23.1 of the act which entitles the director to suspend an electronic document submitter immediately in certain circumstances. We do have some concern that the discretion be administered judicially and that in some instances the person who is actually doing the electronic transaction may be quite innocent and it would be unfortunate if that person had

their authority to use the system pulled when they were also innocent. I think we've had some good discussions with the ministry as to how there might be a process put into place so as to avoid that kind of circumstance.

Just a couple of other comments.

Improvements to the land titles assurance fund: We believe that the fund must serve as a first rather than a last resort in certain instances. It should cover all reasonable losses and it should be administered such that it resolves cases within a reasonable time. I think it would also be useful such that some of the victims who are currently affected by title fraud have their claims moved through the system more readily.

Powers of attorney are an issue. The Substitute Decisions Act, while it has made it much easier for people to prepare powers of attorney, has had an unfortunate effect in that it's also very easy for fraudsters to use these powers of attorney to effect transfers of property. It's very difficult to follow up, because of the lack of rigor and formality around the preparation of these powers of attorney, to determine whether they're real or not. It would be our view that we need some substantial tightening and formalities around powers of attorney, particularly those that are going to be used to effect a property transfer or a mortgage of a property.

Finally, access to the registry system through the electronic system: Our information is that there are about 7,000 registered users who currently have access to the land titles system. We think it needs to be tightened up considerably. It would be our view that when it comes to effecting transfers, those should only be done by a government employee or a lawyer, someone whom the law society regulates. When it comes to putting mortgages on properties, it would be our view that those should only be registered by lawyers, a government official or a licensed financial institution.

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

The Chair: Thank you. There is about one minute each for questions. Any government members?

Mr. Dhillon: According to your organization, how big a problem is real estate fraud?

Mr. Heins: It depends what you're talking about. If you're talking about what I call title theft, which is where someone actually has their property taken away from them, it appears to be running at the rate of somewhere between 10 and 15 cases a year. The problem with respect to mortgage fraud, value fraud, which is generally speaking fraud on financial institutions—but you have to be careful about that because it's the consumer who pays for the insurance that the financial institutions take out—it's much larger. Unfortunately, there are no central records, so it's been very difficult to get any accurate figure on it. Numbers have been thrown around of anywhere from $10 million to $60 million to $75 million a year.

The Chair: Mr. Ouellette?

Mr. Ouellette: Two things. You mentioned a number of areas that should be tightened up. Did you bring any written amendments that you would suggest on how the wording should take place? The second thing is, what would be the best prevention for title fraud for the average person, not knowing or not having access? What can they watch for? What sort of things can they do immediately to ensure that they're not hit?

Mr. Heins: I think the best thing that can be done by the average person is to have this bill passed. At one point it was being touted that people should go out and buy insurance. I don't really think people should have to be buying insurance to protect their own property.

Mr. Ouellette: I agree.

Mr. Heins: The other aspect to it is to enforce diligence in lending. That's really where the problem originates. The crooks are trying to get money, and if the crook is discovered early on in the process, they're not going to get the money and the consumer will not be defrauded.

The Chair: Ms. DiNovo.

Ms. DiNovo: I believe we're all in accord that something needs to be done. We heard from the Ontario Bar Association that although this bill is a step in the right direction, it lacks a great deal. How would you differ from the Ontario Bar Association in that assessment?

Mr. Heins: I read their presentation. Unfortunately, I was just reading it as they were giving it, so I'm not much ahead of you. But they made some suggestions with respect to tightening up the definitions a little bit of "fraudulent persons," "fraudulent transaction." That's all right. I don't have a great deal of disagreement with that. But as with all legislation, so much of the real guts of this legislation is by regulation. We've been having those discussions, but we actually haven't seen the regulations. That's why we can only say it's a step in the right direction. Until we see the regs, we don't know exactly how parts of it are going to work.

Ms. DiNovo: One of their concerns—not only their concerns, but the concerns of the authors of the Star article and others—is for third party protection, in this particular instance the protection of the real estate lawyer himself or herself. I'm just wondering how you feel about the protection of the real estate lawyer in the possible transaction as the bill now stands. Of course, we know we're going to go through clause-by-clause, we hope, and tighten this up, but any concern?

The Chair: We need a précis-type answer.

Mr. Heins: The protection of the real estate lawyer in part lies with us and some of the rules that we put in place. The lawyer, again, will be protected by a tightening of the lending process, and, as well, if they are able to operate in a market where they're able to do the due diligence that's required. One of the problems is that the transaction has been so dumbed down with a view to making it easy that the due diligence requirements that were formerly involved in the transaction have dissipated; they're gone. This legislation, I think, will assist in putting those due diligence requirements back in the act

or regulation, which will enable the lawyer to do the job for the consumer that needs to be done.

The Chair: I'm sorry; we're out of time. Thank you.

Mr. Heins: Thank you very much.

CANADIAN RESTAURANT AND FOODSERVICES ASSOCIATION

The Chair: The next presentation is from the Canadian Restaurant and Foodservices Association. I would ask that you state your name for Hansard.

Ms. Stephanie Jones: My name is Stephanie Jones. I'm the vice-president for Ontario of the Canadian Restaurant and Foodservices Association. My colleague Courtney Donovan is joining me today.

The CRFA is Canada's largest hospitality trade association, with 33,500 members across the country, including over 10,000 members here in Ontario. Ontario's $19.5-billion foodservice industry represents 3.9% of the province's GDP and is also one of the province's largest private-sector employers, with 374,000 people on the payroll.

I appreciate the opportunity to appear before you today to present CRFA's thoughts on Bill 152. CRFA's accompanying submission has been forwarded to the clerk.

My comments are to the proposed changes to the Liquor Licence Act and the Consumer Protection Act as they relate to the new rules governing gift cards. They'll be limited to those two areas.

I'd like to start off by thanking the government for moving forward with changes to the Liquor Licence Act. CRFA is pleased to see that the government is willing to work with the hospitality industry to modernize Ontario's licensing and enforcement system. CRFA appreciated the opportunity to participate in the stakeholder consultations that took place on LLA reform, and our members were very pleased that many of CRFA's recommendations are reflected in Bill 152.

1720

However, CRFA does continue to have two concerns with the proposed changes to the LLA that I would like to raise with the committee today. The first is found in the proposed new section 6.1 of the LLA, which deals with inquiries and background checks during the licence application process. Under this new section, the registrar of the Alcohol and Gaming Commission will be given the ability to conduct more extensive investigations into an applicant's background and would be able to charge back the reasonable costs of these inquiries to these applicants.

I want to be clear that CRFA supports the government's decision to focus more of the AGCO's resources on problem licensees or those who are regularly in violation of the act. However, we are concerned that if this clause is passed as written, it will be open to abuse by inspectors, which could lead to unnecessarily lengthy investigations. In addition, the new section 6.1 has the potential to simply become a new revenue source for government and could make the liquor licensing process prohibitively expensive for applicants.

Ontario's liquor licensees already pay some of the highest liquor licensing fees in the country. Licensing fees are in place to help cover the costs associated with processing a licence application and for the enforcement of the LLA. It is reasonable to ask licensees to provide additional information to help aid the AGCO in their background investigations. What is not reasonable is to allow the AGCO to make a decision to conduct a more thorough background review and then hand the applicant a bill for the associated costs.

In other Canadian jurisdictions, enforcement bodies take a different approach to gathering additional background information. For example, in the province of Manitoba, if additional information is required to fulfill a background check, the applicant is asked to provide these details and is responsible for covering all costs associated with obtaining this information. A similar practice is followed in Alberta.

Although there has been a commitment by Minister Phillips to consult with industry stakeholders on the development of risk criteria and the circumstances in which additional costs would be charged, the aim of the LLA review is to modernize and streamline Ontario's liquor licensing review, not create additional red tape or confusion. With this in mind, CRFA recommends that this section be struck from the bill and be replaced with wording that requires the applicant to provide prescribed background information to the AGCO, as is currently done in other Canadian jurisdictions.

CRFA's second concern is related to the penalty and enforcement provisions of the act. Specifically, CRFA is disappointed that the government did not take this opportunity to enhance the penalties and enforcement provisions associated with minors who use false identification to gain unlawful entry to licensed establishments. More modern technology has significantly increased the incidence of fraud and identity theft around the globe. These technological developments have also been taken advantage of by the creators and distributors of false ID in Ontario. Unfortunately, fake ID is becoming increasingly more difficult to detect, even under close scrutiny. Under the current law, the onus for ensuring that minors are not permitted to enter licensed premises unless they have reached the age of majority rests with the licensee. Hospitality operators take this responsibility seriously and go to great lengths to prevent illegal entry to their establishments. A move to ensure that responsibility is shared by the individual who is knowingly breaking the law is long overdue.

There are three ways CRFA has identified that the government can address this serious issue. First, the government should move swiftly to increase penalties for minors who use fake ID and obtain alcohol fraudulently through the use of fake ID. It is equally important that the penalties in place be applied liberally, and often, to send a clear message to deter individuals from violating the act. Second, the government should authorize retailers

and licensees to confiscate alleged false identification to be turned over to police. Finally, the government should take steps to introduce legislation to make it an offence to manufacture and distribute false identification to minors.

In addition to our concerns about the LLA amendments, CRFA looks forward to contributing to the discussion on the details surrounding the changes to the regulations on gift cards sold in Ontario. The industry does not object to the government's move to remove expiry dates from gift cards purchased by customers, but is looking for guidance on the accounting principles that would accompany such a change. In addition, ensuring that expiry dates are permitted where there is no cash transaction related to receiving a gift card is also critical. CRFA will be participating in the stakeholder consultation session scheduled for later this week on this issue.

Thank you for providing CRFA with the opportunity to present to you today. I'd be happy to answer any questions the committee might have.

The Chair: Thank you. There are two minutes per caucus. Mr. Ouellette.

Mr. Ouellette: Thanks for your presentation. I don't know if you were here for the Police Association of Ontario presentation, where I asked Mr. Miller, "What do you think an acceptable time frame for an extended investigation would be—an initial one and then a separate one—so that you can ensure that properly licensed individuals can move forward?"

Ms. Jones: We don't have a specific number of days, but we do want to work with the police association to set that out and we would look to other examples, maybe where there is a heavier regulatory investigation required. Right now, our industry doesn't have a specific position on that.

Mr. Ouellette: On the disorderly conduct question I asked as well, do you experience a lot of that within your industry, whereby one individual would come from one facility into another one and then possibly—would you expect, as you mentioned, the inspectors would use this to their advantage to shut down facilities?

Ms. Jones: I don't think I caught that question.

Mr. Ouellette: What takes place is, an individual would be asked to leave one facility and then they go to another one because they're adjacent properties. And before they even get into that one, there could be some altercation at the adjacent property, which would end up shutting down the wrong facility.

Ms. Jones: We are concerned about that, absolutely. But what we would hope is that the next property would have the proper security in place to prevent that person from entering.

The Chair: Ms. DiNovo?

Ms. DiNovo: Stephanie, thank you for your presentation—both of you. Do you think this is a cash grab by the government, this particular clause, just honestly? I am aware of a government that—you know, we're short of inspectors, we're short of policing, and all of a sudden we're looking at this particular part of Bill 152. Is that what your members are frightened of?

Ms. Jones: That's absolutely what we're concerned about, but we do endorse the idea of focusing resources on what would be considered problem licensees. We have no problem with focusing resources in that direction, but how we would like to see this cleared up is through very clear language on when additional investigations would be necessary, under what circumstances, and then also that those people not just be handed a bill on behalf of the government, but that they have the opportunity to go out and provide the information, whatever the information is, through service providers of their own choosing. That way, they can pay the bills accordingly.

Ms. DiNovo: And what would your members be able to live with in terms of the gift card issue?

Ms. Jones: What we want, first of all, are clearer accounting practices, certainly over a set number of years; for example, when do certain things expire? Second, as ORHMA clearly spelled out, we need to know that if gift cards or discounts are being given as part of a promotional activity or, say, a charitable donation, they can be treated differently under the regulations.

The Chair: Thank you. Ms. Matthews?

Ms. Matthews: I wonder if you could tell us if any members of your organization have raised the issue of licensing the whole establishment, including washrooms.

Ms. Jones: They've raised the issue in that they certainly want the choice to be able to do that. It's not going to be a universal change that will happen to every licensee, but certainly they have raised it over time, whether it be washrooms or adjacent areas; for example, a hotel that has a lobby outside the restaurant, and things like that.

Ms. Matthews: So you would generally support that part of the bill.

Ms. Jones: Yes, we do.

Ms. Matthews: Thank you.

The Chair: Good. Thank you very much.

ONTARIO CATHOLIC CEMETERY CONFERENCE

The Chair: Next we have the Ontario Catholic Cemetery Conference. If you would state your name for Hansard.

Mr. John O'Brien: Good afternoon. My name is John O'Brien, and I'm the president of the Ontario Catholic Cemetery Conference. Mr. Chair and members of the committee, on behalf of the 14 Roman Catholic dioceses in Ontario I wish to express my thanks and appreciation to the members of the committee for the opportunity to speak in support of schedule D of Bill 152 respecting amendments to the Funeral, Burial and Cremation Services Act.

The Ontario Catholic Cemetery Conference has been in existence since 1985, and has been an active participant in the legislative and regulatory process under way since that time, representing the interests of the 14 Roman Catholic bishops and their respective Catholic

communities in all matters relating to the ministry, operation and administration of Catholic cemeteries in the province, of which there are over 500.

The Catholic cemetery ministry is an important part of the faith practice of a Catholic. The Catholic cemetery is a sacred place, a visible and tangible link between the community of the living and the deceased, those who have died in the hope of everlasting life. For 2,000 years, the Catholic cemetery has been a place of prayer and reflection for those who come to honour their deceased family and friends, and the lives they've lived. In Ontario, our history can be traced to the 17th century. The Martyrs' Shrine in Midland still today attracts pilgrims by the thousands.

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The OCCC is grateful to have been part of the Bereavement Sector Advisory Committee throughout these last number of years, and we wish to thank the many ministry staff, especially Rob Dowler, assistant deputy minister, who was tasked with bringing this new legislation forward.

The new legislation is not perfect, but it reflects the consensus reached through the BSAC process, which gave participants the opportunity to express their views and opinions. There are always aspects of legislation that, depending on one's perspective or bias, may seem to be difficult or even unworkable, but rarely does the impact feared materialize in the way imagined. I believe this to be true of this legislation. I understand that concerns were raised last week about the impact of allowing a payment in lieu of property tax to be made to a cemeteries care and maintenance fund rather than a tax payment made directly to a municipality when a religious, municipal or not-for-profit cemetery chooses to engage in commercial activities, such as the building of a funeral home or a cremation facility built after January 1, 2002, or wishes to sell monuments or memorials.

Let me explain to you how the payment in lieu of taxes would work in a diocesan cemetery operation such as the Diocese of Hamilton. In addition to 10 diocesan cemeteries, there are approximately 38 small parish cemeteries in the diocese, scattered in a geographical area extending from Hamilton north to Tobermory. The great majority of these cemeteries are attached to a parish church and are about an acre or two in size. They were established in the later 1800s; indeed, the Diocese of Hamilton this year celebrates its 150th anniversary as a diocese. Many graves in these cemeteries were sold and they were filled before perpetual care, as it was then known, became mandated by the province in 1955. The cemeteries relied, as many still do today, on the generosity of spirit of volunteers to maintain the graves of their loved ones. As a result, their care and maintenance funds are today deficient, and they cannot produce enough income to maintain a satisfactory level of care, let alone a level of care that reflects the faith of the people interred therein.

This legislation would allow for a payment on our cremation facility in Brantford, Ontario, to be made to the care fund of St. Paul Mission cemetery in Dornoch, Bruce County, as an example. Hopefully, over time, all of our 38 parish cemeteries, through these payments in lieu of taxes, would be able to generate enough income to hire a summer student to cut the grass once a week, or accumulate enough income to repair dilapidated monuments. This provision is a sensible one, in view of the thousands of small cemeteries that cannot afford a decent level of care. Remember that the cemetery operator cannot access care and maintenance funds, and may only spend the income in a prescribed manner, subject to audit. In addition, religious and not-for-profit cemeteries are places of passive recreation, often in the middle of urban communities, which are maintained at no cost to the taxpayer. Mount Hope in Toronto, and Holy Sepulchre cemetery in Burlington are two such places that come to mind.

Catholic cemeteries do not compete in the open marketplace; our mandate, our raison d'être, is to serve Catholic families under the direction of our respective bishops. Yet this legislation states that we should make a payment in lieu of tax to our care funds should we wish to open a funeral establishment or build a cremation facility to serve our own people. While we believe there is a certain unfairness about this, we have accepted it. Accordingly, we do not believe the late proposals to fundamentally amend the BSAC consensus should be considered.

I would like to raise the following additional points:

The Ontario Catholic Cemetery Conference would like to ensure that the educational requirements, while very important, do not unfairly burden many elderly parish employees who have been meeting and serving families for decades. We encourage simplicity in the application of this new legislation for these smaller rural locations that often conduct less than 10 interments per year.

We also suggest that the delegated administrative authority contemplated in the legislation be dropped in favour of the retention of the existing registrar and cemeteries branch. The Ontario Catholic Cemetery Conference and its members have enjoyed the service and direct relationship that has developed over the last 50 years. It is worth keeping.

In closing, there are many good elements to this legislative package. There are other requirements that are a little more difficult to digest, but it does strike a balance.

Thank you for the opportunity of making our views known. I'd be happy to answer any questions.

The Chair: Thank you. Just over two minutes for each caucus. Ms. DiNovo.

Ms. DiNovo: Thank you, Mr. O'Brien, for your submission. You're aware that Open Dialogue and the funeral directors of Ontario have a serious problem with this provision, and one of their problems is the unequal playing field, as they would define it. Part of their concern about that unequal playing field is that you have a Catholic cemetery—hey, I'm from United Church myself—that is essentially doing an incursion into the

funeral direction business here, or possibly could, providing full-scale funerals on a cemetery and not being subject to the same provisions that a Turner and Porter, say, might be. Now, I understand that you're dealing with Catholic families and a particular part of the marketplace. Their argument, of course, would be that so are they. What would you answer to that?

Mr. O'Brien: I would answer that the payment that's being made, whether it's to the municipality or to our own care funds, is exactly the same amount. It's money that we cannot access, so there isn't going to be a benefit that's going to come back to us the same way that is being suggested.

The Chair: Thank you. Government?

Mr. Dhillon: Thank you for your presentation. How would the proposed amendments benefit your members and the broader bereavement sector?

Mr. O'Brien: Specifically in what context? To which amendments are you referring?

Mr. Dhillon: You will be forced to pay that portion into your care and maintenance fund. How would that benefit—

Mr. O'Brien: Well, in the example that I gave, what it would allow is that—a number of our smaller cemeteries are scattered throughout the diocese. Because they are so old, they never developed a care fund. The parishes in those days never set aside funds for the future care of the cemetery, and as a result, they've been maintained by volunteers, and there's an insufficient level of income.

Under the current Cemeteries Act, if a cemetery is declared abandoned, it becomes the responsibility of the municipality, and it becomes the responsibility, in essence, of the taxpayer. Allowing it to be paid into our own care fund, especially for those smaller, deficient cemeteries, would allow their funds to increase to the point where they can start supplying a sufficient level of income to maintain their grounds, again, to allow somebody, a student, to come in once a week during the summer and cut the grass. That's the whole point. There are thousands of cemeteries in this province, and the vast majority of them have deficient care funds. These contributions in lieu of property tax would allow us to raise the care funds and produce the income to maintain those cemeteries without declaring them abandoned and handing them off to the taxpayer at the end of the day.

The Chair: Mr. Ouellette.

Mr. Ouellette: In your presentation, you have a couple of comments I want to question you on. Specifically, you state, "In view of the thousands of small cemeteries that cannot afford a decent level of care." You also mention that the Catholic cemeteries do not compete in this open marketplace. Potentially, though, could this not open up the marketplace for you, for those other ones that are large?

Mr. O'Brien: The vast majority of the cemeteries that we're talking about are in rural Ontario.

Mr. Ouellette: Yes, but I'm more referring to the larger ones, such as the one located in Whitby and those ones that may be in the marketplace after this comes online. If that is the case, would you be opposed to having it taxed and then being able to draw from the tax fund to support those specific sites that are in need?

Mr. O'Brien: We went through a difficult process in BSAC. It was four or five years in the making. We all brought issues to the table and submitted the best way we thought we could deal with those issues. That is why we believed, through the BSAC process, that a consensus had been reached around allowing religious, municipal and not-for-profit cemeteries—again, we're not out there. We're looking at Catholic families only. Those are our constituents here, so we're not out going after all of these other groups and we're not competing. Our market, in essence, is self-limiting. We're not out there in the general community advertising to people of other denominations to come avail themselves of our services. In fact, we can't do that. So we thought, in view of our situation, in view of the number of Catholic cemeteries in the province that are deficient, that this would be a reasonable compromise.

The Chair: Thank you. We're out of time.

1740

RETAIL COUNCIL OF CANADA

The Chair: The next presentation is the Retail Council of Canada—which stole my first executive assistant, but I'm not bitter.

If you would state your name, please, for Hansard.

Ms. Ashley McClinton: Thank you, Mr. Chair. My name is Ashley McClinton and I'm the director of government relations Ontario for the Retail Council of Canada.

Thanks again for the opportunity to appear before you today. I'll try to keep my remarks somewhat brief, or move through them quickly, at least, so we do have some opportunity for questions at the end.

As most of you know, the Retail Council of Canada has been the voice of retail since 1963. Like most associations, we're funded by our members' dues. Our association represents all retail formats: department, speciality, discount and independent stores, and online merchants. While we do represent the large mass merchandise retailers, the vast majority of our membership is in fact small ma-and-pa shops. And 40% of our members are right here in Ontario.

I want to speak briefly about the contribution of the industry. I would note that it's the province's second-largest employer, with more than three quarters of a million employees in the province. It's actually a little-known fact, but in terms of employees, we rank right behind manufacturing, and in terms of scale, retail is well ahead of health care, the tourism industry and others. So it's just a huge industry in terms of employment. In addition, the industry had more than $135 billion in sales last year and has over 85,000 storefronts in the province.

The committee has a very large omnibus bill before it today. I'm going to focus my comments on one area, and

that's the provisions respecting gift cards. I know that several presenters have touched upon the issue briefly, but I do want to go into a little bit more detail in the time allotted to me today.

I want to begin my comments by commending the minister, his staff and the dedicated public servants at the Ministry of Government Services consumer protection services division for their transparency and their readiness to consult with the retail industry and other stakeholders before proceeding with rules that are going to have a large financial administrative impact on our sector.

From the beginning, retailers expressed their commitment towards working with the government to create these rules. We were extensively involved in the consultations conducted by the minister in the months leading up to the introduction of the act. At that time, we indicated our willingness to create rules that are going to respond to the needs of consumers as well as the legitimate concerns of retailers. Our position hasn't changed since then.

I want to state at the outset that we're really pleased as a result of our discussions that although this is something that won't be developed until the regulations, the minister has stated that it's his intent to focus the gift card regulations only on gift cards purchased by consumers. This is an absolutely critical issue for us, and I'll tell you why. It's important to understand that, despite the name, gift cards are not something that are are solely given as a gift and received by consumers. Retailers give gift cards away for a myriad of reasons: for promotions, for customer service purposes, for employee benefits and rewards. Some retailers donate gift cards to charity or give them away as prizes to be auctioned off. So they're used for a variety of marketing and reward initiatives. We applaud the government for recognizing the real benefits to consumers that they can present, and we want to work with them so that retailers aren't discouraged from offering them in these innovative ways.

As the committee knows, gift cards are extremely popular. A StatsCan report that studied gift cards during the 2003 holiday season found that 53% of large retailers were offering them at that time. A report released by StatsCan just this morning entitled Gift Cards: The Gift of Choice reported that only two years later, over 80% of large retailers were offering them. That's a 29-percentage-point increase in just two years. So while large retailers certainly have the resources to support the introduction, promotion and administration of gift cards, I can say anecdotally that we're seeing a lot more small and mid-sized retailers offering them as well. This combination of security, convenience and choice that they offer to the consumer continues to drive their sales.

While they're extremely popular, I want to note that they're still a relatively new and developing phenomenon, at least in the Canadian marketplace, and because of that, there is a lack of consensus in Canada with respect to how they should be administered.

One area in which there's a great diversity of practice, of course, is with respect to expiry dates, so I wanted to just take a moment and explain why some retailers who do that choose to do so.

One reason is accounting. Specifically, they must show a gift card as a liability on their balance sheet until the card is redeemed, and expiry dates are a means of clearing that liability for cards that haven't been used for an extended period of time. CRFA, before me, touched on that issue. We have been in touch with the accounting industry and put them in touch with the ministry, so we're looking at resolving that issue and coming up with some best practices.

Also, managing gift cards becomes more complex and costly over time. The older the gift card is, the more difficult it becomes for retailers to track the validity of the card and how much value it has stored on it. Again, it's consumer demand that has driven the popularity of these cards, and for retailers, the needs of consumers are always going to work out. We recognize that consumers have some concerns about the expiry dates on gift cards, and that's why we're working with the ministry to eliminate expiry dates on cards that are purchased by consumers.

For most consumers, most people—I know myself—they burn a hole in my pocket, but we recognize that other people hold onto them for a longer period of time. Most people redeem them very shortly. There's only a very, very small percentage that go past two years, which is the most common expiry date, and in those cases we think it's fair that consumers are still able to redeem them at their leisure, and we're prepared to eliminate those.

Another area in which there is a great diversity of practice is service fees, so I want to just spend a minute explaining why retailers who do levy service fees choose to do so.

Essentially, it's to recoup some of the costs associated with them. Depending on the type of card issued, how many cards are ordered, the type of technology employed and the services offered, the cost of gift card production and implementation can be very significant, so some retailers charge fees which are similar to fees charged by financial institutions for dormant bank accounts in order to recognize the continuing cost of maintaining the balance of a card that hasn't been used for a long time. If a retailer engages a third party to manage their program, which most do, there's a charge for maintaining each gift card account. These costs are ongoing whether or not the card is used, and they continue in perpetuity in cases where the cards don't expire. So sometimes the cost of maintaining a gift card account can exceed the value that remains on the card. We recognize that some consumers have concerns about these fees, and that's why we're working with the government to eliminate them or to create rules that are fair.

I want to just briefly distinguish between these service fees as just described and service fees that are charged for services such as customization, which can include personalizing gift cards with photographs, which is an increasingly popular value-added product. We want to make sure that the regulations developed by the ministry

do not prohibit customers from benefiting from these types of services.

With respect to disclosure rules, which is the third area being proposed for regulation, again, we're pleased to work with the government to create rules regarding what information is communicated to consumers and how it's disclosed. Most retailers convey all the relevant terms and conditions to consumers directly on the card, but due to the abundance of information that has to be communicated, it's sometimes a challenge to fit it all on the card itself. So in addition to information regarding expiry dates and service fees, if they apply, many stores include information on where the card can be used and for what purpose, how to access the retailer's customer service personnel and what the customer should do if the card is lost or stolen. Other companies include bar codes and foreign currency conversions, in the case of global companies. These space considerations are exacerbated by the fact that all these terms and conditions are conveyed in both official languages. So in cases where space doesn't permit all the terms to be communicated directly on the card, some retailers disclose the terms on the accompanying sleeve or on the sales receipt with the gift card.

But we know that some consumers have expressed concern that they're not always aware of the terms associated with the gift card that they bought, and that's fair. We want to work with the government to create rules so there is some level of standards and consistency, which we think will be helpful for both retailers and consumers.

Finally, I just want to speak to the concern raised by some that the new rules won't be in place for the upcoming holiday season when the bulk of the gift cards are going to be sold and exchanged. Gift cards are an extremely complicated issue, and we want to commend the minister for taking the time to get it right. By working together on the regs, we can ensure that retailers are equipped to implement them without any disruption in service to either the consumer or the business. In the meantime, we want to make sure that consumers are educated about their gift card purchases, and that's why we're going to be developing and distributing tips for Christmas, for this holiday season. Like the minister, we believe that smart consumers are good for business.

Thank you for your time, Mr. Chair. I'm happy to take any questions, should committee members have them.

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The Chair: Thank you. We have one minute for each party. Mr. Dhillon.

Mr. Dhillon: Thank you very much for your presentation. Would you agree that these amendments achieve greater fairness?

Ms. McClinton: In the end, we hope that they're going to create great balance: fairness for consumers and workable rules for retailers. I think the details will be in the regulations, but certainly in principle we're happy to work with the government to create these amendments.

The Chair: Mr. Ouellette.

Mr. Ouellette: Thank you for your presentation. One quick question. What happens with the 5% of the remaining gift cards that are never cashed in, that are lost? You spoke about the accounting of them and those sorts of things. What happens with that 5%?

Ms. McClinton: What happens from the retailer's perspective? Typically they're closed off at some point, and it will depend. Again, there's an inconsistency with respect to their administration, but if they're not redeemed, they're not redeemed.

Mr. Ouellette: No, but you mentioned the accounting for them, and you had difficulties in explaining the maintenance fees and the expiration dates and those sorts of things. So here you have 5% of funds that are going somewhere, that are never being redeemed.

Ms. McClinton: In the case of cards that don't have expiry dates or that do have expiry dates?

Mr. Ouellette: That do have expiry dates.

Ms. McClinton: That do have expiry dates. Well, they would expire as of their expiry date, whether or not they were redeemed.

Mr. Ouellette: So the companies maintain the 5%?

Ms. McClinton: The company or the third party. It depends on how they're administered. Sometimes the third party holds the account until they are redeemed, and that's one of the other issues. Retailers aren't necessarily making all the money off these. They don't necessarily take it into account until it is redeemed.

The Chair: Ms. DiNovo?

Ms. DiNovo: First of all, I just want to give the nod to Mr. Kormos, whose formidable visage is on the screen behind you. He's the one who came up with this idea about gift cards.

But just a question, and thank you for your presentation. It becomes difficult, as you say, to track the validity of the gift card and the value it has stored over time. Now, I understand the necessity for a processing fee; that makes sense to me. But I don't understand why it becomes difficult over time to track the validity. If it's processed, if the card is manufactured well so that you know it pertains to the store that it's supposed to be used in, why can't it be used over time? What's the problem?

Ms. McClinton: Sure. It's just that some of our members today get paper gift certificates that were issued in the 1980s, and it's the same reason—technology changes, point-of-sale systems change, the expectation of the marketplace changes, and as these things change but the product becomes stagnant, it's very difficult to verify whether or not there's any validity to them. Also, there are fraud concerns, and as people become more sophisticated in how they replicate these cards, it can be more difficult to track whether or not it was issued by the retailer itself.

Ms. DiNovo: But this is like money itself. I mean, money over time has less value, so the gift card over time would have less value, one would think. You know, we have different ways of manufacturing money or counterfeiting, but at the same time, we recognize money. If it's $5 in 1980, it's $5 today. It buys less; so would the gift

card. But I don't understand the difference between the $5 bill and the gift card, if it's produced with some degree of care—and that's a processing fee, one would imagine. So, again, just a question.

The Chair: That has become a statement rather than a question. We're out of time. Thank you.

Ms. McClinton: Thank you very much.

CANADIAN INSTITUTE OF MORTGAGE BROKERS AND LENDERS

The Chair: The Canadian Institute of Mortgage Brokers and Lenders. If you would state your name for Hansard.

Mr. Jim Murphy: Good afternoon, Mr. Chairman and members of the committee. I think I'm the second-last spokesperson before the committee, so I'll try to make it brief and address the key points.

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; CIMBL is our acronym. CIMBL has over 9,600 members across the country, with approximately 60% of our membership here in Ontario, about 5,500. CIMBL, I think it's important to note, represents all facets of the mortgage industry, including lenders such as the banks and credit unions; mortgage insurers that are currently practising, CMHC and Genworth, along with the new entrants to the marketplace; title insurers; as well as mortgage brokers and agents.

Research that CIMBL has recently undertaken, copies of which you have as part of the handout, shows that by the end of 2006 there will be over $700 billion—$730 billion to be exact—in outstanding mortgage credit in Canada, of which roughly half is here in Ontario. This total is expected to grow by a further 10% in 2007. Our industry helps Canadians and Ontarians meet their dream of home ownership.

I think it's important to note for the benefit of the committee that CIMBL has also established an accredited mortgage professional, or AMP, designation as part of our ongoing efforts to increase the level of professionalism in Canada's mortgage industry through the development of educational and mortgage standards. The AMP designation sets a single, and is in fact the only, national standard for Canada's mortgage professionals across the country. To date, over 3,000 of our members have this designation and it's growing. The designation is based on a proficient understanding of the mortgage industry, a history of two years in the industry, along with a commitment to continuing education on an annual basis.

There has been much attention paid to the subject of real estate fraud, and you've heard that in terms of the deputations before the committee. The media has reported on several cases in which innocent homeowners have become the victims of mortgage fraudsters. Bill 152 proposes legislative changes that will benefit innocent victims of fraud. Before commenting on these changes, we wish to note the measures that CIMBL has taken to combat real estate fraud in the marketplace.

First, CIMBL has produced a paper on fraud avoidance standards in the mortgage industry. This paper has been updated and has been forwarded to all of our members across the country. It's important to note that real estate fraud, unfortunately, is not just an issue in the province of Ontario but is an issue in other provinces across the country. This paper educates members by telling them what to watch for when completing a mortgage application and suggests measures to follow that will reduce the amount of real estate fraud.

Secondly, at our regional symposiums that we hold across the country, including here in Ontario, CIMBL provides a seminar session where we provide an update to our members on real estate fraud and where we have experts make presentations. These sessions include examples of the types of fraud and what mortgage professionals can do to avoid or ameliorate the number of occurrences.

Thirdly, we recently updated our website, providing an overview, under the consumer section on our website, on helpful tips for homeowners and prospective homebuyers about what to look for and questions to ask in order to avoid real estate fraud.

Fourthly, we are an active participant with Teranet, which is the land registry system here in Ontario, on the REDX system that Teranet created, which aims to combat real estate fraud. As a subscriber to REDX—it can be a lender, insurers, others—background checks on professionals or firms are undertaken and periodic reviews of real estate or mortgage professionals can be undertaken to contain inconsistent information. That's available to subscribers of the system and one that we support.

Lastly, we've also strengthened our own ethics bylaws by, for example, creating the position of a CIMBL investigator, in addition to our ability to publish the names of those who may violate our code of ethics.

Due to its complexity and sophistication, real estate fraud has many victims. Innocent homeowners, third-party purchasers, lenders and insurers are all impacted by this crime.

CIMBL welcomes the fact that the government has and continues to consult with stakeholders on this important issue through the Ministry of Government Services. The legislation before you is one that CIMBL supports, although there are still outstanding issues that have yet to be finalized and that I will address in a moment. These are being left to either regulation or various orders or guidelines that will be developed by the Ministry of Government Services.

Basically, the notion set out in Bill 152 is that mortgages obtained by fraudulent means have no standing. This is one we support. This change will benefit innocent homeowners across the province. Victims of real estate fraud should not have to be the ones to track down the fraudsters.

Bill 152 also increases penalties for real estate fraud and, again, this is a measure we strongly support. CIMBL

has recommended that in fact the government go further and apply additional resources to fighting fraud, including dedicated counsel.

Unfortunately, the subject of real estate fraud is complex and has other aspects that also need to be addressed, as I mentioned earlier. Two outstanding issues that the government is currently examining, and which CIMBL has a stated interest in, are access to the land titles assurance fund, the LTAF, and access to the land registry system I referred to earlier, commonly referred to as Teranet. I've included in our package a recent letter we forwarded to the Minister of Government Services that addresses these two important issues.

On the subject of access to the LTAF, CIMBL welcomes the fact that lenders will continue to have access to this fund through aggrieved innocent registered owners or purchasers. CIMBL believes that there should be due diligence standards associated with access to the LTAF, similar to other comments that you've heard earlier today, and looks forward to continuing to work together with the government to finalize these standards. We're in ongoing discussions. There is a round table that the Ministry of Government Services has established, and we've been inputting to that. We haven't seen the final standards at this point. We hope to see that before they are finalized and implemented.

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CIMBL has also taken the view that LTAF processes should be as transparent and efficient as possible. The government has made suggestions that will expedite the process considerably in some of our discussions, and we support those. CIMBL still believes, however, that government officials should not be judge and jury; that is, to collect the data for cases that access the fund and then also to make the ultimate decision in terms of the award. We believe that adjudication should rest with either a quasi-judicial body or some form of independent third party.

In terms of access to the land registry system itself, our position has always been that this issue should be based on standards and not on title, and by "title," I mean a profession. We support enhanced standards for access to the land registry system—guidelines, whatever that might be, security features—that would raise the overall bar in terms of accessing the land titles system to maintain the integrity of it. We do not support limiting access based on title alone.

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

The Chair: Thank you. We have just over one minute each, starting with Mr. Ouellette.

Mr. Ouellette: Thank you for your presentation. Earlier on, we had presentations from two organizations, the Law Society of Upper Canada as well as the Ontario Bar Association, where they suggested that there should be a greater onus on the initial lending organizations when checking out fraud. How do you respond to that?

Mr. Murphy: I think one of the things about real estate fraud is that there are so many parties involved in a transaction, not only a mortgage broker or a lender, but there's an insurer, there are appraisers, there are lawyers, there are real estate brokers and agents. You have six or more different professions that are involved in a real estate transaction. It's a very large process. I don't know if there are many other processes that have so many professions. We all have a role to play in that. We all have a role to follow guidelines, to follow due diligence, which is why we developed guidelines for our members and why we provide seminars at our symposiums across the country to update them on things. Everybody has a role to play in that.

There are, unfortunately, examples of real estate fraud where people will come to a meeting to do an application for a mortgage and just misrepresent themselves. It's not as if you're not meeting with them. The crime is so sophisticated that they may present a driver's licence or other identification that is done so well, how is someone to know whether that is or isn't that person?

We certainly support due diligence. We certainly support the need to provide that information. Currently in the province of Ontario it's the fiduciary responsibility of the lawyers also to do that, when signing off on a real estate transaction. That's their responsibility at the end, but everybody does have a role to play in that.

Mr. Ouellette: The expectation was to have a provision in the future that it says "with an exemption in the event of fraud" in any future transactions as a result of this legislation. Would you expect the same as well?

Mr. Murphy: In the event of, when you say—

Mr. Ouellette: That the lawyers will exclude themselves because a provision will state that the lawyers will be exempt in the event of fraud.

Mr. Murphy: Well, I'm sure there are lots of others who would like to have that in place also. That's currently what their role is, fiduciary. Not to be provocative, but there are over 100 lawyers under investigation by the law society currently for real estate fraud in the province of Ontario. We all have a role to play in making sure that our process is an ethical one that works properly, and just absenting one from that process, I don't think, is going to solve it.

The Chair: Ms. DiNovo.

Ms. DiNovo: In another conversation, I would be very interested in what you would have to say about the Mortgage Brokers Act, which is also before this government. It seems to me to be blatantly unfair in dealing with your industry. It doesn't ask the same thing of lawyers, as you just pointed out, or of employees of lending institutions. But that's another conversation for another day.

I do hope your members have errors and omissions insurance, because I'm concerned, as I was with the Ontario Bar Association and the lawyers represented here, that there are some third-party problems here in this act. Hopefully this can be fought out clause by clause, but I'm just wondering about that.

Mr. Murphy: Actually, speaking of Bill 65, which is the new mortgage brokers and lenders act, it will make E

and O insurance mandatory for our members to be licensed in Ontario, which we strongly support.

The Chair: Thank you. Any questions from government?

Mr. Dhillon: No questions, Chair.

The Chair: Thank you.

CONSUMERS COUNCIL OF CANADA

The Chair: As they say, last but not least, we have the Consumers Council of Canada. If you would state your names for Hansard, please.

Mr. Bill Huzar: My name is Bill Huzar. I'm the president of the Consumers Council of Canada, and joining me is my colleague, my associate, my partner, and past president and a founding member of the Consumers Council of Canada.

Mr. Ramal: Your wife.

Mr. Huzar: Yes.

The Chair: I had guessed daughter.

Mr. Huzar: We appreciate that. Thank you.

The Consumers Council of Canada is an independent non-profit consumer organization whose vision is an effective, equitable and efficient marketplace for consumers. The council works collaboratively with consumers, business and government in support of consumers' rights and responsibilities to provide a consumer perspective and to find solutions to marketplace problems. Through consumer representation, research, education and service, the council addresses issues that affect and influence the daily lives of consumers both nationally and in the province of Ontario.

The Consumers Council of Canada commends the Ontario government for taking action to amend various acts to improve consumer protection. In general, the Consumers Council of Canada supports the proposed amendments. The following represent specific aspects of Bill 152 upon which we wish to make specific comment.

The first has to do with Internet gaming. The Consumers Council of Canada supports the amendment to the Consumer Protection Act, 2002, new section 13.1 of the act, which prohibits the advertising of Internet gaming sites. We believe that this is in the best interests of consumers, particularly vulnerable youth, at which the advertising is often targeted.

Gift cards: The Consumers Council of Canada supports the amendment to the Consumer Protection Act, 2002, which allows for regulation of future performance agreements, including gift card agreements. The Consumers Council of Canada believes that it is not reasonable that a consumer's purchase of a gift card should be restricted in its time use. The retailer has already received payment for the goods or services and should have no right to refuse the consumer access to the goods or services already purchased.

Consumer identity files: The Consumers Council of Canada supports the addition to the Consumer Reporting Act which allows a consumer to request an alert to be placed on their file held by consumer reporting agencies. This alert warns the consumer reporting agency to verify the identity of any person purporting to be that consumer.

The Consumers Council of Canada is aware of the fact that the Personal Investigations Amendment Act (Identity Theft) in Manitoba goes further to protect consumers than does Bill 152, and I'll point out specific parts of it which the committee might consider.

—The Manitoba legislation requires the establishment of a 24-hour toll-free number to request a security alert. This provides easy access to consumer protection against identity theft. Incidentally, this is something that has existed in the United States for decades.

—It also stipulates that there should be no fee for placing such an alert. Consumer protection should not be a fee-based cost to consumers.

—It also sets penalties for contraventions of the provisions of the act.

—The Manitoba legislation requires the recording of steps taken by the reporting agency and by the person who received the alert. This is a safeguard for consumers and business and protects each from potential redress difficulties.

I point these things out and I have attached a copy of the Manitoba legislation to our presentation for your consideration.

Powers of search and seizure: The Consumers Council of Canada supports the amendments to the Electricity Act, 1998, which under the new sections clarify the powers of inspectors and investigators with respect to search and seizures. This gives consumers additional protection in the recall of defective electrical products. This, a first for Canada, removes the dependency of consumers on the goodwill of manufacturers to recall defective electrical products.

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Registration and transfer of land title: The Consumers Council of Canada commends the Ontario government for taking action to protect consumers against land title fraud. The proposed amendments to the Land Registration Reform Act and the Land Titles Act go a long way to make land title fraud more difficult in Ontario. The streamlining of the land titles assurance fund is an important consumer action ensuring victims of land title fraud timely compensation.

Storage fees: The Consumers Council of Canada supports the amendment to the Repair and Storage Liens Act, which protects consumers from excessive charges with respect to an article subject to a non-possessory lien.

And finally but not least, the bereavement sector: The Consumers Council of Canada supports the amendments to the Funeral, Burial and Cremation Services Act, 2002, and the Funeral Directors and Establishments Act as found in schedule D: Amendments to Bereavement Related Statutes. The Consumers Council of Canada has been an active member of the Bereavement Sector Advisory Committee (BSAC) since its inception in 1999. As an aside, we anxiously await the final sections of the regulations so that we can have a full proclamation of the act. We fully support the amendments to the act, which will bring closer the full implementation of the Funeral,

Burial and Cremation Services Act, 2002, and its regulations.

The Consumers Council of Canada is aware of the fact that certain members of BSAC have not abided by the agreement—and I don't want to use the term "gentlemen's agreement," because it was a broader base than that—that was arrived at with Justice Adams in 2001 in not lobbying for changes outside the normal request-for-comment process. We do not think such action is in the best interests of consumers, and the Consumers Council of Canada condemns that kind of action.

The Consumers Council of Canada requests that the proposals in schedule D, Amendments to Bereavement Related Statutes, be passed without amendment in the best interest of Ontario consumers.

The Chair: Thank you. One minute and 24 seconds each.

Ms. DiNovo: Thank you for your submission and for the work that you do.

Of course I'm a big fan of Manitoba, being a New Democrat; not a problem there.

A question about the bereavement sector, and again I raise the question that I raised with the gentleman earlier about the open dialogue problems with this section of the act and the fact that they feel it will create an unequal playing field, that those who have, for example, church cemeteries, as you've heard, will be subject to different rules and regulations than those who are in the private sector. Some even deeper concerns were raised, for example, and this would affect consumers, about commissioned salespeople in the funeral business, which is not a spectre that I think any of us would want to imagine. So I just wanted further comment on that section.

Mr. Huzar: To speak to the last one first, on commission sales, the council, in its response for comment on that set of regulations, did not support the commissioning of sales in any part of the sector.

The issue of the level playing field is an interesting one. I'm sure, since we've been so involved in the last seven years, that you're not aware of the work that BSAC, the Bereavement Sector Advisory Committee, undertook. We went through a very, very rigorous facilitated mediation process, basically, by Justice Adams. Fifteen different groups within the bereavement sector played a role in that, and when we left that final day with the agreement with Justice Adams and the recommendations then sent to the government for the implementation, which then resulted in the act itself and the subsequent regulations, everyone had agreed that the playing field had been levelled. That's why we are specifically concerned that at this very late date these parties have come forward and said that the playing field is not level.

The Chair: Thank you. Government members?

Mr. Dhillon: No questions, Chair. Thank you very much.

The Chair: Official opposition?

Mr. Ouellette: Just to follow on the bereavement sector, you're saying there was an agreement that there was a level playing field. Do you have any documentation that indicates or states that and that you can pass on to the committee? Because, quite frankly, this is the issue that I'm hearing quite extensively on from my own riding, that it creates an unlevel playing field, as expressed to me. But if I can find something where these individuals have agreed to this at some point, that certainly kind of counters what they're saying to me.

Mr. Huzar: The only thing I could do is refer you to the report that Justice Adams made, and that would be his final report that was delivered to the Ministry of Consumer and Commercial Relations at that time.

Mr. Ouellette: So the committee that meets doesn't have any resolutions, any commitments, to say that there was full agreement?

Mr. Huzar: No. It was a facilitated mediation process to arrive at a common report.

Mr. Ouellette: One of the areas, as expressed by the one presenter today from the Catholic cemeteries, was that there are all these small locations that are located throughout the province, yet the locations that are being referenced to me by the individuals in my riding are the large locations that could eventually become competitors with them. Do you have any idea of how many are interred in these smaller locations, as opposed to the large ones?

Mr. Huzar: I'm afraid it's not my expertise, but I could make a personal comment. I sit as a member of a board of directors on a family—a private—cemetery. My immediate thought was, perhaps we should raise $2 million and build a crematorium, and then we could have lots of money to look after our private cemetery.

The issue is not one that we wish to engage in. We believe that the recommendations that are brought forward in this legislation represent what was agreed to at that time, and we hold to that.

The Chair: Thank you.

As it is now exactly 6 o'clock, this committee stands adjourned until 3:30 tomorrow afternoon.

The committee adjourned at 1817.

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