



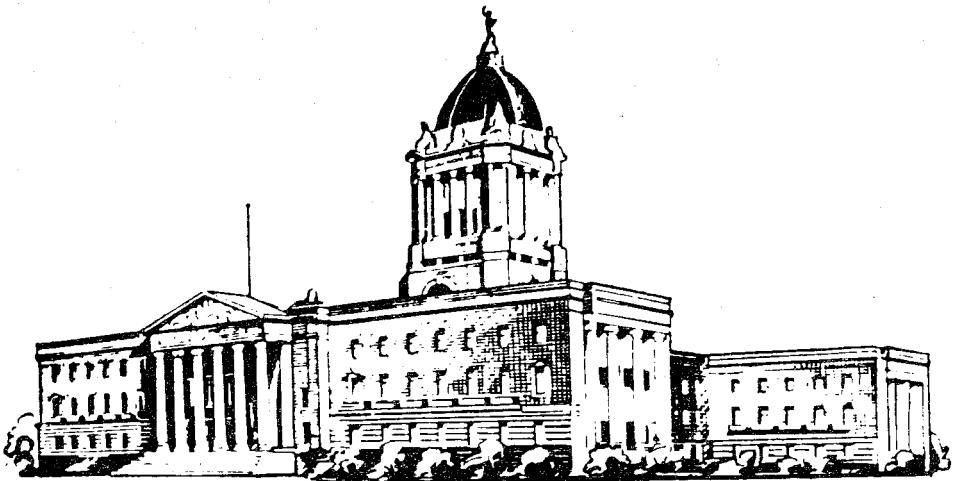
Legislative Assembly of Manitoba

HEARINGS OF THE STANDING COMMITTEE

ON

LAW AMENDMENTS

Chairman
Mr. William Jenkins
Constituency of Logan



10:00 a.m., Wednesday, March 25, 1976.

THE LEGISLATIVE ASSEMBLY OF MANITOBA
STANDING COMMITTEE ON LAW AMENDMENTS
10 a.m., Wednesday, March 25, 1976

CHAIRMAN: Mr. William Jenkins.

MR. CHAIRMAN: Order please. When the committee rose Monday, we were still having Mr. Kushner up front here at the mike, and we had Mr. Axworthy and Mr. Green to ask questions. Mr. Kushner, would you come forward please.

MR. C. KUSHNER: Mr. Chairman, before the questions start, there was something brought to my attention by Mr. Cherniack the other day that I had made a statement that wasn't quite correct. I checked it and he is right. I had stated that the leader of the opposition in Ontario, Mr. Lewis, had said that he had no objection to a 12 percent return on equity. That wasn't quite correct. What he did say was he had no objection to a 12 percent increase in rent and I apologize for that mistake.

I was also asked by Mr. Cherniack whom I represented, and I told him that I had met with the executives of two associations, and I've now filed with Mr. Reeves a list of those two associations so any member who wants it can know who my clients are.

There were also questions asked both by Mr. Green and by Mr. Cherniack about some financial aspects of the whole thing and I admitted I knew very little about it but I have asked my clients to let someone come here, he's here today, and if the committee wants, is interested in any financial aspects, they can call this fellow up and he'll answer any questions that you want.

And lastly, Mr. Chairman, just before I closed the other day, I told you that I didn't have a chance to prepare, to add on my brief, the suggestion that you consider a rent freeze and the appeal by the tenant. I've now put it in writing and if I have your permission, Mr. Chairman, I'd like to read just a few short pages and I've left copies with the clerk, if you'd allow me to add that to that brief.

MR. CHAIRMAN: Agreed? (Agreed.)

MR. KUSHNER: Mr. Reeve has the copies for you, Mr. Chairman.

MR. CHAIRMAN: I think you can proceed now, Mr. Kushner.

MR. KUSHNER: Now, Mr. Chairman, when we last met I told you that at my last meeting with my clients we discussed alternatives to Bill 19, especially with regard to the size of a bureaucracy that will have to be set up to administer the Act.

I also suggested that you could achieve the same intent of Bill 19, with a minimum number of staff members if you froze the current rents to October 1, 1976 and gave the tenants a forum to which they could appeal if their rent was raised by more than 10 percent over the period preceding October 1, 1975.

Now, if you reflect for a moment and direct your attention to the root of the problem, the merits of allowing the tenant to appeal will become obvious. What is the problem?

When tenants began complaining to the Minister that their rent was getting beyond their means the Minister decided to act. For this the Minister is to be commended, but in his anxiety to help those who claimed they needed help, the Minister brought in Bill 19.

Somehow the impression got around that all the landlords were "gougers" - and Bill 19, before the amendment, said in effect - "O.K. - you landlords who raised rent during a certain period above 10 percent will have to make a refund." With the amendment that the Minister is going to bring in, Bill 19 gives each landlord an opportunity to justify the increase but it still leaves the implication that the landlords were trying to be excessive.

But remember - this was not the problem - the increase in rent may be justified, the the inability of some tenants to pay that rent will still remain even after the justification.

Then there may be situations where the raise in rent was more than 10 percent and the tenants did not complain - why subject that landlord to a rent review procedure?

If we keep that problem in mind - those tenants who complained - the solution is obvious.

(MR. KUSHNER cont'd)

The tenants complained to the Minister and so the Minister provides the mechanics of checking the excess rent where complaints are lodged and the Board can order a refund if the excess was not justified.

In other words, the Minister will then be helping those who claim they need help, and I'm sure that for this we commend him.

My clients are ready to co-operate because they want the air cleared once and for all that if they raise the rent above 10 percent they were compelled to do so for reasons beyond their control.

Now if you accept our suggestion, a tenant who feels the increase in rent was excessive could fill out a form from a newspaper advertisement, setting out the address of the building, set out the rent paid from October 1, 1975 to date, and the rent paid prior to October 1, 1975.

He doesn't even have to sign his name and the Board can then call in the landlord and expect him to justify the increase.

There is provision now in Bill 19 for the Board to initiate an investigation on its own, so the Board can follow up any complaint, and if it finds the rent increase more than 10 percent not justified it can order a refund.

Now the advantages are as follows:

1. In those rental premises where the tenants are not complaining the Board would not be concerned, and the landlord in that case, even if rent were increased by more than 10 percent would not have to appear before the Board to justify the increase, thereby cutting down the work of the Board and its staff, which is going to be extremely difficult in any event, especially in the initial period.
2. The rent freeze to October 1, 1976 would give everyone six months in which
 - a) the Board could use the time to organize and commence to hear your appeals, and
 - b) the landlords could use the first three months (April - June) to answer complaints, and to prepare appeals for an increase of a larger percentage, and still leave them three months (July - September) to give the notice to their tenants as provided in the Landlord and Tenants Act.
3. The whole spirit of the Act will then appear, as I am sure the Minister intended -
 - a) the Bill is part of an overall anti-inflation program
 - b) landlords are not presumed to be "gougers"
 - c) tenants will be given an opportunity to have their situation reviewed.
4. The investment community both in and out of the Province will understand the intent of the legislation and this can only result in more confidence in Manitoba.
5. Last, but not least - Manitoba will then approach the whole rent control problem in a constructive way - with the co-operation of the landlords - and lead the country, instead of copying other programs which in almost all cases have proven to be counter productive.

Mr. Chairman, this piece of legislation can have very serious consequences for all of Manitoba, and if you do not deal with it in a way that will prove to everyone that you are interested in the welfare of both landlord and tenant, may not only result in severe economic set backs for many individuals, it may also serve to bring about conflict and distrust in many situations where the relationship between landlord and tenant up to date has been very friendly and amiable.

The other day I urged the members of the committee to approach this problem in a co-operative way, and I am certain, Mr. Chairman, that if you do, that we may still come up with a piece of legislation that will not disrupt our community and will be a source of pride and credit to the members of the Legislature. That's all I have to add, Mr. Chairman.

MR. CHAIRMAN: Thank you, Mr. Kushner. I have two members that wish to ask questions from yesterday, they may wish to ask some further questions on your addition of today's brief. Mr. Axworthy.

MR. AXWORTHY: Thank you Mr. Chairman. I would like to address really I guess two sets of questions to Mr. Kushner. In one case, he presented comments pertinent to the bill we have before us, and secondly, he presented in a sense, an

(MR. AXWORTHY cont'd) alternative formula for going about it. I wonder if we might pursue both those lines, maybe do so in reverse order. When you talk about really a different concept of the bill, you're really referring to the rent review procedure based upon a fixed freeze that's established now?

MR. KUSHNER: That's correct.

MR. AXWORTHY: Perhaps you could tell me, in this case how would the rent review be initiated, the similarity of this and the model that's used in Quebec, the problems they find there is that most tenants don't know about it. What kind of mechanism would you have to ensure that there would be full information about it?

MR. KUSHNER: Mr. Chairman, I think that what should happen, if you accept the concept of a rent freeze, is that the tenant should be alerted by way of an advertisement, if you like, a coupon in the paper. If you have complaints, if you're not happy, if the rent was more than ten percent and so on, here's your opportunity, fill in this coupon and mail it in, you don't have to sign it. Now that gives a tenant an opportunity - in other words, the tenant that complained to the Minister wants some relief, and the Minister provides it; here you are, go to that board, they'll help you out, then the board acts as a review committee. Now it may be difficult to reach all the tenants but I think this will get around with sufficient publicity and I suggest to you that you should put the onus on the man who's complaining. Don't put the onus on the landlord, he may be able to justify it. Now surely to goodness if a tenant saw fit to write or to phone the Minister or somebody in his department, he'll be anxious to go to that board and he'll see that in the paper.

MR. AXWORTHY: Well, Mr. Chairman, I'd like to ask Mr. Kushner. You're saying that you would freeze the rents as they presently are now?

MR. KUSHNER: Under contract, under a lease, yes.

MR. AXWORTHY: Under contract, and would this include any notification of future increases that are now being established let's say for April 1 deadline or for new leases coming up this spring?

MR. KUSHNER: Well, Mr. Chairman, I said October 1, 1976, because most leases come up about that time, and whatever the leases say today, whatever they are, leave them alone, freeze them.

MR. AXWORTHY: Freeze them.

MR. KUSHNER: And then you have a period of three months, April, May and June during which the tenant can apply to the board and say, my rent is too high, I want it to be reviewed and the Board as expeditiously as they can - and lord knows they're going to have plenty to do - they can get a hold of the landlord immediately, let me see your books, what goes on here.

Now the mechanics, we don't have to go into it here, but the time element is important because under the Landlord and Tenant Act the landlord has to give three months notice of any increase in rent. April, May and June will be the period during which he can tussle with the board if you like and so on and then he can give notice to whatever the board will allow him to do. There's ample time if you do it that way and you don't disrupt anything, because if the board orders a refund they can go back, let them go back to the period before the rent was excessive, before 1975.

MR. AXWORTHY: Well, Mr. Chairman, that's the question I wanted to ask Mr. Kushner. Would you see that once the rents were frozen and you established this review procedure, would you see that review procedure having the right to rescind rent back to a former level if it wasn't based upon some fair assessment of cost or would it just be simply in terms of future rent increases?

MR. KUSHNER: No, no, no, no. The bill at present provides that if rent from July, following July 1, I believe, to September 30 of this year, if the rent during that period was more than ten percent for the period before that, then there should be a refund or the landlord can appeal. I leave that period alone, but if the tenant comes in and complains and the rent during that period October '76 a year was more than ten percent for the period before, that refund should be made. As I say . . .

MR. AXWORTHY: You mean it would be made if that couldn't be justified by some estimate of cost?

MR. KUSHNER: Oh yes, the landlord will have to prove it.

MR. AXWORTHY: It would have to be justified ?

MR. KUSHNER: Oh definitely, definitely. If the landlord cannot satisfy the board that the excess over the ten percent was justified, then the board should order a refund to the tenant or the bill follow the way it is now. In other words, go back, but all I'm saying is this, but only deal with those cases where there are complaints.

MR. AXWORTHY: Mr. Chairman, I think that that review procedure not only sounds reasonable but familiar and I think that it's something that the committee will have to look at.

On your comments on the bill that we have before us, putting this alternate suggestion aside, could you answer for me, Mr. Kushner, what - you advocate a change of date from the July 1 to an October date - could you describe what particular problems your clients that you represent would occasion as a result of the July 1st date compared to an October date, what's the difference between the two dates ?

MR. KUSHNER: Well first of all, Mr. Chairman, I try to stress that the October date, especially October 14th will once and for all make certain that what the Minister has in mind, what the government has in mind, I hope what the Legislature as a whole has in mind, is that this is part and parcel of a total anti-inflation program. You don't pick a date out of the air, July 1, '75. You say October 14, '75 is the date that our agreement with Ottawa goes into effect, we will tie that in with that date, and as long as that program goes on this is part of it. So that's one reason for the October 14th date. Another one is that the July 1st date in effect means that the rent that the landlord set on April 1st of 1975, because they had to give three months notice based on the economics that existed at that time, are now being questioned as of July 1st, which makes no sense because the leases come up in October. Because even if you gave notice, the new rent was payable in October, not in July, and the economics, I'm informed, it will be chaos, they just won't be able to relate it; whereas if you take the date of October, you've at least got a date where the majority of the leases come due and it'll be much easier for them to apply it.

MR. AXWORTHY: Well, Mr. Kushner, don't most of the leases come due on October 1, not October 14th, so it's . . .

MR. KUSHNER: Well they come due October 1. I suggested the 14th so the public will realize that it's part of the anti-inflation program, but for practical purposes maybe October 1 should be the date.

MR. AXWORTHY: All right, then - I was going to ask that if you set October 14th as the date, that in effect would only then apply to this rental new lease period of spring, not to the fall rental period.

MR. KUSHNER: That's correct. Well maybe October 1 would be the better date.

MR. AXWORTHY: Okay. Mr. Chairman, I'd also like to ask Mr. Kushner, he made reference in his remarks to the, really raised the question about the exclusion or inclusion of government-sponsored housing. I wonder, Mr. Kushner, if you could expand upon your comments in that regard as to why you think government housing should be included as part of this rent stabilization package.

MR. KUSHNER: Well, Mr. Chairman, I don't think I said it should be included, all I said was if you're going to include government housing whether federal or provincial as being exempt from this bill, you should include all the housing, treat them exactly the same way; for this reason, that the federal program under CMHC with a limited dividend scheme allows a fixed return to the investor and that if he can prove his costs, they allow him to pass the costs through. All I'm saying to you, apply the same principle, or in reverse, apply the same principle to government housing, because we have instances now - I can produce them for you if you like - where government housing today is paying higher rent than the equivalent housing apartment accommodation. Now I'm not quarreling with that, all I'm saying is this. Let's be uniform here. Either apply it to both or exempt them both, do what you like.

MR. AXWORTHY: Okay. Mr. Chairman, if I might just . . . Mr. Kushner, if you could elaborate then, you're saying that the formula that's applied to LD housing where there is a, I think it's a five or seven percent return on equity.

MR. KUSHNER: It used to be five, it's four now, it used to be five.

MR. AXWORTHY: So the formula is based on a return on equity of the proprietor . . .

MR. KUSHNER: That's frozen for the duration of the agreement.

MR. AXWORTHY: . . . of the agreement, and then all other costs are passed through.

MR. KUSHNER: Passed through as long as they're proven to be legitimate costs.

MR. AXWORTHY: Mr. Kushner, do you have any indication what particular increases are going to be allowed under that formula for this year. Do you have any idea on that?

MR. KUSHNER: I don't, but Mr. Chairman, in the light of questions asked me the other day, by I believe, Mr. Cherniack, I couldn't supply the answers to, I asked my clients to let me have someone here - so-called expert, and I don't like to use that word - and I brought him along today; if the committee wants to ask questions along that line, he's available to give you better answers than . . .

MR. AXWORTHY: Well would he be able to answer that question what the cost of increase would be allowed for LD housing. Would he know, would he have LD housing under his jurisdiction?

MR. KUSHNER: He might be able to answer that, I don't know. I certainly haven't got the answer.

MR. AXWORTHY: Mr. Chairman, do you want to have an additional witness or should we wait until Mr. Kushner is through . . . ask this gentleman . . .

MR. CHAIRMAN: Well I have other people here that wish to ask questions of Mr. Kushner.

MR. AXWORTHY: Fine. Okay. I just have one further question. Then on the procedure, you're suggesting really that if there is to be an appeal procedure that it should be based upon some specified formula rather than just simply the ten percent limit, that that formula should be based upon some estimate of costs that are passed through and some return on equity, is that correct?

MR. KUSHNER: I go beyond that. I say the ten percent that's set out in the bill now, I presume, and I may be wrong, Mr. Chairman, the Minister can certainly correct me, I presume are simply taken as a yardstick because it's used right across the country, with the exception of Ontario I believe.

MR. AXWORTHY: Eight percent in Ontario.

MR. KUSHNER: Is eight percent? Now I don't know why eight or why ten, why not five or 15. All I'm saying is this, that if you put the appeal on the other side, the tenant has to do the appealing, or the landlord wants to appeal for an increase for next year let's say, the onus must be on the landlord to satisfy the board, here are my legitimate costs. And this is the experience of CMHC. They have a staff there that do nothing but that; once they examine those costs, and they're legitimate, then they pass them on. I mean the onus must be on the landlord to justify those costs, naturally.

MR. AXWORTHY: Thank you, Mr. Chairman.

MR. CHAIRMAN: Mr. Green.

MR. GREEN: Mr. Kushner, I want you to go to page, the table, there's no page number, the second last page.

MR. KUSHNER: Oh yes the one at the very back.

MR. GREEN: The table, yes. Mr. Kushner, first I want it established that you are here as a lawyer standing beside your clients, so you're not worried about being subject to an inquisition . . . the lawyer is at the landlord's side now as desired by Mr. Craik?

MR. KUSHNER: Yes, but I would like to clear the air, Mr. Chairman. I don't consider Mr. Green an inquisitor, I consider him as a damn good lawyer.

MR. GREEN: Thank you very much.

MR. KUSHNER: You're welcome.

MR. GREEN: Mr. Kushner, I want to look at this table, I note that there is a tendency for people to present to the public, the oil companies are doing it, the supermarkets do it, the insurance companies do it, rather than a percent return on investment, they are tending to show the public a percent of dollar price that goes to them. In other words, the supermarkets will show you that of every dollar's worth of goods, they make

(MR. GREEN cont'd) two cents; the oil companies will show you that of every dollar's worth of oil, they make six cents - five cents, if they can say a half a cent, they're much happier. And what your organization wishes to show is that of every dollar's worth of rent, they're getting \$2.00. Now they entitle that "investment return" and I have seen numerous feasibility or financial sort of assessments and I have never seen investment return calculated in this way. I want to tell you that I see "investment return" calculated as an investment being the amount that is put in, the revenue less expenses, and the net is a percentage of return over investment.

MR. KUSHNER: Right.

MR. GREEN: And that has nothing to do with cash flow. And the word "investment return" is in no way - I do not think that you will find a chartered accountant in Canada who will say that this two percent of a dollar received from rent is an investment return insofar as that block is concerned. And I'm asking you why, the cash flow I can understand, but if a man, theoretically, if there is no investment and you make a dollar on every suite, then your return is infinite, so that that would not be a correct statement of investment return. What your statement relates to is that two dollars out of every hundred dollars received in rent becomes a cash flow for the landlord.

MR. KUSHNER: Right.

MR. GREEN: Is that right? And would you agree that that is something entirely distinct from what we normally call return on investment?

MR. KUSHNER: Well, Mr. Chairman, if I may, the table that I produced here is an exact copy of a table that the National Association of the Housing and Urban Development Association produced, and that Manitoba Association produced and which was presented to the Federal Government. I thought that the least I could do or the best I could do is give you exactly the same kind of a table that they used. I'm inclined to agree with you, Mr. Green; that what you're saying makes sense because I tried my best not only with a two percent investment return but with a 45 percent of repayment of mortgage that service bothered me. And quite frankly, they lost me . . . in a world all of their own, I don't understand it, that's why I brought Mr. Goldberg along, let him talk . . . I don't know.

MR. GREEN: Well I would like to talk to the lawyer at the landlord's side rather than the landlord, because I think that that will protect the landlord.

MR. KUSHNER: No, no, Mr. Green, I'm sorry. Mr. Goldberg is not here to present a brief, he's here to answer questions. He may have the answers that I haven't got.

MR. GREEN: I kind of like your answers.

MR. KUSHNER: I think it's because I agree with you.

MR. GREEN: Well I always say it's the intelligent person who agrees with me, Mr. Chairman.

MR. KUSHNER: In this case, I'll accept it.

MR. GREEN: I'm with Bob Edwards of the Calgary Eyeopener.

Now I'd like to take it from a little different point of view. You know, the average person, he's not engaged in global rentals, in management and in mass financing. I want to look at it from the point of view of let's say that there was a working man who could handle it himself, and he decided that he's going to devote his full time, let's say he was a handyman, he could do maintenance, he could collect his own rent, I want to figure out what he would get out of this block that you are talking about. And I just want to take the figures, Mr. Chairman; he's not going to get anything out of the real property taxes, he's not going to get anything out of the natural gas, he's not going to get anything out of the water and sewer, but I would assume that if a man had full time to devote to a 20-suite apartment building and was willing to work, he could do the caretaking work, so that that means that at four percent if there was a \$200 suite, he would make \$8.00 month on that suite.

MR. KUSHNER: That's right.

MR. GREEN: And over a year, he would make \$96 a year on that suite. Now this is a man who decides that I want to own an apartment block, it's not an agency that is going to sort of manage 50 of them, it's a man who wants to run his own apartment block, so he will get \$96 as the caretaker, for every suite. Assuming that he has paid

(MR. GREEN cont'd) for the block, and I know that that's an assumption that nobody wants to make, but if you will carry me that far, assuming that he wants to pay for the block, he will make \$90 on each suite on the fact that he will not have a debt charge of principle and interest on the mortgage, \$45 for every \$100 is for debt services so if he paid for the block, he will have \$90 per suite per month for that \$45. He will have management which means collection of rent and dealing with tenants, he will have \$8 a month or \$96 a year for that suite. For maintenance, I am suggesting that he can't do all the maintenance but if he's got eight hours a day, he can do 5/9ths of the maintenance, he can do the painting, he can do some of the other things, and a lot of that is labour, that he could make \$10 or \$5 per hundred, or \$10 per suite on maintenance which is \$120 a year. That if he doesn't have cablevision, and I suggest that some do not, that his cash flow would then be \$3 per suite or \$6 per month or \$72 per year. Now if we ignore the debt charges, he will make \$384 per year for his work times 20 suites, which is \$7,680 without the debt charges. If we add the debt charges, we have 12 times 90 times 20 is \$20,600 which means that if this man could own and operate his own block, he would make \$28,280 per year. Now that's quite a bit of money on \$2 per 100 per suite which is what you are showing as a cash flow.

MR. KUSHNER: Right. Now may I answer that, Mr. Chairman. No. 1, there is a fallacy in this reasoning and that is that first of all, if in all the rental accommodation, I could depend on the man who could . . . and do the work, you'd have a desperate shortage of housing, that's number one. No. 2, he's earning what did I say, \$30,000 a year or whatever it is there.

MR. GREEN: \$28,000.

MR. KUSHNER: \$28,000 a year. Now remember, he's putting in labour, he's working, he's entitled to get paid for that - just a moment now - now if you take his investment in that building, which you could buy a bond for, he'd probably be better off than owning it. But I'm going to tell you something, Mr. Green, that man is your problem, it isn't the big fellow, that man is your problem and I'll tell you why. He reasons exactly the way you're reasoning it, at putting him at work, but he finds as a result of costs going up, his own living costs are going up, he's got to charge more rent, he's not relating it to income. He's relating it to his daily living expenses so he's compelled to raise the rent to tenants who can't afford to pay it, not talking about this fancy bookkeeping. And so to relate a high-rise apartment to a man who's got his own little building is not a true relationship at all.

MR. GREEN: Yes. Well, Mr. Kushner, I'm really not arguing with you because I happen to think that a man should be entitled to be paid for his labour and he should be entitled to be paid for his money.

MR. KUSHNER: Right.

MR. GREEN: I agree with both of those things. All I am saying is that out of that block, to people who are working, that means to the management fee, to the caretaking fee, that it's not \$2 per hundred that is being taken out, but that if you figure the figures a little differently, \$28,200 is going out to the various people who are working and really, I have no objection to that. I want to make it quite clear that as a matter of fact, I find a controlled program to be a problem and I have said so. I also find it a problem for people who are trying to create the impression that there's two percent being made. Now I agree with you that this block, first of all, would cost over \$200,000 and that the return may only be ten percent, and that in addition, he is getting nothing for his labour. But you people are also ignoring that over the years there have been in addition to this amount, capital gains being made on the block which have not been calculated and nobody wishes to acknowledge that they are there and that in the previous years, people were loaning money for seven, and collecting a return of ten which means they were making not only ten percent on their return, but they were making three percent on every dollar that they borrowed and that is a fact. So I am not trying to exclude all of those things, I am merely saying that it offends my sense of perspective to have it suggested by the real property community that they are making two percent on the money and that is what this kind of table is intended to do.

Now you will also agree, Mr. Kushner, because you are well aware of it, that there are many people who buy their own jobs, that there are numerous small businesses

(MR. GREEN cont'd) on Main Street, and on Portage Avenue where \$200,000 is invested, where the return is \$25,000, that really what the person has done is not earned money for his investment but bought himself a job so that he can be a little capitalist. He is not making a return on his investment, he has bought himself a job, and there are numerous people who invest money in order to have a job as a boss rather than a job as an employee and that is a factor that is not included here.

MR. KUSHNER: Right. Now, Mr. Chairman, as I stated earlier, this statement is a statement that is used by the real estate people across Canada and I would suggest that maybe even Mr. Goldberg who may follow me, maybe even he shouldn't be questioned too much because what Mr. Green is really doing now is the kind of work that I see the board will have to do, really get their teeth into it and break it down the way it should be broken down. I haven't got the answers. All I'm saying to you is simply this, this is the way they've been operating all these years, there was a capital loss, a capital gain situation under the Federal Act. Would I as a lawyer earning X thousand dollars a year invest money in a building? I write it off against my gains, my earnings, then the Federal Government cut that out and you'll notice, Mr. Green, that when they cut that out, construction stopped, now they've brought it back again. Now whether that's good or bad I don't know, that's a philosophical notion, I can't argue with.

MR. GREEN: Well, Mr. Kushner, even in the days that the lawyers were buying the blocks, and the doctors were buying the blocks, --(Interjection)-- Well I'll tell you why they did it, because a doctor or a lawyer - now there's nothing wrong with it - a doctor or a lawyer could be making \$50,000 on his returns. In practising as a lawyer, if he could show a \$50,000 loss on an apartment block, he pays no income tax, and the fact is that it was never a real loss on the apartment block, otherwise he wouldn't buy it, nobody buys a loss. What they were entitled to is to depreciate that building, and therefore hold the money until they sold it, then they would recapture the money. What they were really doing is financing an equity and a capital gain at the expense of the public and if the Federal Government allowed them to do it, they would do it, it's not immoral.

MR. KUSHNER: It's perfectly legal.

MR. GREEN: But it was never a loss, it was never a loss.

Now the only point that I am making here, Mr. Kushner, is that the person who looks at this block, and I assume that the small landlord operating a 20-suite block is, if anything, and I'm not suggesting that he is less efficient than somebody who's operating 50 blocks, and therefore this \$28,280 by a small landlord is much more money by somebody who is handling it on a global basis except that the money doesn't all go to him, it goes to different people, it goes to a caretaker, it goes to a maintenance man, etc. I am merely trying to point out, Mr. Kushner, that it is asking the public to stretch its imagination for the landlords to tell us that they are making \$2 for every \$100 in rent . . .

MR. KUSHNER: Mr. Chairman, again, I don't want to prolong this argument because it's not an argument. Frankly, this table was presented to the Federal Government, the former Minister of Finance, Mr. Turner saw it, they accepted it, Central Mortgage and Housing have accepted it, don't ask me why . . .

MR. GREEN: I won't accept it, boy, I'll tell you I won't accept it, nor will I accept it from the oil companies, nor will I accept it from the insurance companies.

MR. CHAIRMAN: Order please.

MR. KUSHNER: Now, Mr. Chairman, Mr. Green is in a position of responsibility and I think he's entitled to say what he is saying and I'm not even saying that he's wrong. All I'm suggesting to you is this, that the arguments he's presenting and they may be valid, should be presented to the board in detail, let each fellow explain his case with whatever formula they want to come up with. I'm simply giving you a statement that was used nationally.

MR. GREEN: Mr. Kushner, I wanted to deal with the other subject. You are aware that every worker's wages in this country has been said, by the Government of Canada, to be frozen as at October 14th, that they cannot, unless they go through various appeals, etc., get an increase of more than ten percent.

MR. KUSHNER: Ten plus two or something, yes.

MR. GREEN: Yes. And that 7,000 representatives of these workers, it's more

(MR. GREEN cont'd) than that are in this room, went down to the Prime Minister of this country yesterday, and raised hell with him and the Prime Minister told them in no uncertain terms, well I'm trying to, I think I'd have to use the words that the Prime Minister would normally use . . .

MR. KUSHNER: Fuddle-duddle.

MR. GREEN: Fuddle-duddle. That's right.

MR. KUSHNER: Mr. Chairman, I agree with Mr. Green. I agree with him, but the point is this and what we're talking about now is really a detail that should go before another body and I'm not happy with this whole thing, Mr. Green. But I gave the Minister a complimentary copy of a book this morning which is a real study of the whole problem of rent control and I was surprised when I read in that book, the tables they produced to show that the increases since 1961, the increases in cost of living, increases and other costs, increases in incomes, have gone up by a much greater percentage than increases in rent. Now I don't know what that means but I suggest you study that book, maybe it will help you.

MR. GREEN: I will read the book, I promise you, because I have not yet found a reasonable justification . . .

MR. KUSHNER: I'll see that you get a copy.

MR. GREEN: . . . for controls really affecting anything in the long run, and I feel that way, and if your book says so, then that'll confirm again my opinion, probably written by an intelligent person.

I'd like to deal with one other item and that is public housing. You say that the same rules should apply. You are aware that on the public housing, the rents do not go up to reflect current values of the housing, they go up to reflect costs. They do not go up to reflect current values of the housing. Private housing, the rents do go up to reflect current values of the housing so they are not in the same position.

MR. KUSHNER: No they're not excepting one thing, Mr. Green.

MR. GREEN: There is no capital gain being made on the sale of any public housing?

MR. KUSHNER: Yes, but Mr. Green, wait a minute. Don't forget that the people who are building private housing are contributing to the public housing through their taxes. They're not complaining about that.

MR. GREEN: When you say that the people are contributing through their taxes, you know, we are all contributing to everything. The money that is being made by the person who is renting private housing is being made off somebody else who is making money, so that nobody in the last analysis creates money by himself. It's created as a result of all of our efforts but it is a fact that the rents in public housing do not go up to reflect the current value of the housing.

MR. KUSHNER: No. Just costs.

MR. GREEN: And that is not true of private housing. That in private housing if I have a house that I paid \$10,000 but which I can sell today for \$20,000, then I must make the rent reflect my investment which is \$20,000.

MR. KUSHNER: That is right.

MR. GREEN: And if I have a house, that I have for \$20,000 and I can get \$30,000 for it and I want to re-invest it, I will make a \$10,000 capital gain on the private housing. That is also not true of public housing. The rents in public housing have not gone up to reflect capital gains or to reflect current values. They have gone up only to reflect costs.

MR. KUSHNER: That is true. That is true. And I don't quarrel with that principle. I don't quarrel with that, the community has accepted that, all I'm saying to you is this. Just treat us the same way that Central Mortgage treats us, no other way.

MR. GREEN: So then you should have no capital gains and you should not increase rents beyond the original cost of the house.

MR. KUSHNER: Well . . .

MR. CHAIRMAN: Mr. Johnston.

MR. F. JOHNSTON: Mr. Kushner, I have a couple of questions that I'd like to just pursue something Mr. Green was saying, I'm not arguing with Mr. Green on the two percent at the present time but you mentioned that the person who had decided to buy an

(MR. F. JOHNSTON cont'd) . . . apartment block and he basically becomes a businessman, he becomes his own boss, and in other words, that's his job, he has gone into business and he is operating and working at it himself, and you mentioned that man is the problem. Now I'd like possibly to clear something up. Are you saying that this man has now, working to have an income from his investment, that's his job, he's the manager, he's the president . . .

MR. KUSHNER: \$28,000.

MR. JOHNSTON: Now his costs have been going up very steadily in the area of hydro and the ones that are fixed here. Therefore his income is starting to drop, and I'm asking you this, drop possibly lower than ten percent at the present time, so therefore he's in the position of having to raise his rent, so he still has an income because of the investment on his money. Now am I following you along right, that that's the reason that little fellow, not little fellow, but the man who has built one apartment is in this problem.

MR. KUSHNER: Yes, but you see it becomes a problem, he has his rent fixed, his costs are going up, his personal standard of living is becoming affected because they've got less cash flow, to use that phrase, he's then compelled to raise the rent, and usually the people living there are also on fixed incomes or limited incomes, then it becomes a problem, they can't afford to pay that kind of rent. He is trapped as they are trapped. That's what I meant when I said he is the problem.

I'm sure that behind me there are many widows who have inherited a small little apartment building who now find they have to raise the rent just to keep up their own standard of living. They are on good terms with all their tenants and they don't know what to do. Now the problem isn't so much whether there's enough housing, there's a five percent vacancy in Manitoba, in greater Winnipeg I am told, the problem is that the tenant hasn't got a choice of apartments to go to now. That's the real problem. So I say to you that the committee should direct its mind, what do you do with a tenant who can't afford to be there. Don't penalize this businessman - owner if you like, the small. . . don't penalize him, try and help the tenant. But before you do that, make sure that this fellow, this small capitalist can satisfy the board he's got a legitimate increase, he's entitled to that. When I said that he's going to be the problem - you're going to find the emotional issue on this whole problem will be with the small apartment owner, with the fellow who's got a building that's been paid for, that's an old building, they're going to be more of a problem than the new buildings because with the new buildings even the present bill allows an exemption of five years, it's recognized you have to have that length of time to make economic sense. So I didn't suggest for a minute that the little fellow is a problem because he's a little fellow, it's a problem because he has nowhere to turn and he's got to penalize, if you want to use that phrase, the tenants who may not be able to afford to give him the rent he is entitled to. And it's a legitimate problem and frankly, I'm trying to find a way by saying, let the Board deal with each case on its own merits.

MR. F. JOHNSTON: Mr. Kushner, you mentioned something else that was the next question I was going to follow into, and I take it from reading through your brief, the words, the landlords definitely have a very touchy feeling about being called gougers when they feel that they're not.

MR. KUSHNER: Right.

MR. F. JOHNSTON: And you mentioned that there's a five percent vacancy rate at the present time, and I have heard the figure's not quite that high for Winnipeg. Now on the basis of five percent vacancy rate, the only possible reason that suites could be going up is because of increased costs of utilities, etc., because the man isn't making enough money, but where do we get into this situation we're in at the present time of the increased costs when there is a five percent vacancy rate. I can't really see - you know increased costs follow when there's no vacancy rate. If there's a five percent vacancy rate at the present time, what is the problem?

MR. KUSHNER: It doesn't necessarily follow, Mr. Chairman. The exact figure, Mr. Johnston, is 4.4 percent as given to me by Price Waterhouse. Now the way they have it, is that under \$200 a month rent there's a vacancy rate of 4.5 in greater Winnipeg. Over \$200, there's a vacancy rate of 4.2. But the problem is simply this, that you haven't got the choice now. A fellow may want to live right down town here whereas the

(MR. KUSHNER cont'd) vacancy occurs somewhere in East Kildonan. I mean he hasn't got the choice any more. Now we always had a choice when there was an over building, I think it was 1969 when there was an excessive build-up of apartments, people were being invited to come in with two months free rent and so on in order to get occupancy in, but once the oversupply disappeared and you get down to anywhere from one to two or three percent, the tenant hasn't got the choice anymore so he's in effect trapped. Now although there may be a four percent vacancy rate, it may not be suitable to any particular tenant. So that we're talking generalities here but in practical terms, unless there's going to be a sufficient supply of housing of all kinds - and don't forget, Mr. Johnston, we have trained our people, including ourselves, that each one of us has to have his own little castle and his own 40-foot lot, for many years this was the build-up. Provincial, Federal governments were giving us money, build single family units, so we did. The market was good and you know the investment dollar will go where it sees a good rate of return. It went into single family housing. All of a sudden the costs of single family housing begin to escalate and as a result the market slowed down so the investment dollar slowed up, then they found all of a sudden that apartments would be in demand. In Winnipeg alone, I understand they built over 6,000 units in one year. There was a tremendous oversupply. Everybody was happy, the tenants moved in. Before too long the costs there went all to hell, with a result that the landlord was compelled to raise rents, and now, you've got a lack of supply in private and single family units, you've almost got a lack of supply in rental accomodation and you've got a problem. It's as simple as that, and I'm saying to you, there's no simple answer to it, so I'm asking you please be careful with this bill because the other provinces have nothing to gloat about. Let Manitoba be a little different.

MR. CHAIRMAN: Mr. Craik.

MR. CRAIK: Mr. Chairman, I think Mr. Kushner offered here to have one of his people outline how the limited dividend housing works under the CMHC program. I think it might be worthwhile if we might just get an indication. I was asking about it the other day when Mr. Kushner was up. He said at that time he would get the information, so I wonder if the committee would be amenable to having a brief outline of how this operates.

MR. KUSHNER: Whatever you want. Want me to call somebody who can answer these questions?

MR. CRAIK: Yes, please.

MR. KUSHNER: Frank.

MR. CHAIRMAN: Will you give your name please sir?

MR. GOLDBERG: Frank Goldberg. Could you repeat the question?

MR. CRAIK: Yes. The question, Mr. Goldberg, was to get a little more detail on how the CMHC limited dividend housing program works by way of the returns that it allows on investment in return for the different categories that are allowed to a person who puts up limited LD housing.

MR. GOLDBERG: Well, I wasn't prepared with that data. I do know that they allow a five percent return on equity invested and I understand there's a cash flow through procedure which has been published by CMHC. I wasn't prepared for that question.

MR. CRAIK: There's five percent return on equity, isn't there also an additional five percent for one other category, whether it's capital improvement and there's four percent on maintenance or something . . .

MR. GOLDBERG: I believe they allow a four or five percent reserve for capital improvements. This data has been published by CMHC, I have it back at the office, I could provide it to the committee if you wanted to . . .

MR. CRAIK: Mr. Chairman, the purpose of the question was to try and find some basis for allowing a return under the legislation to people who own buildings and it would appear that the CMHC program is at least one where that is being done and the question was to whether this might be a procedure that could be used during this period of rent control, procedures similar to what is used in the CMHC program. I think maybe if Mr. Goldberg doesn't have all this here it might be worthwhile if he was to come back at another time or maybe someone else could present that information, I think it would be valuable for us to have.

MR. GOLDBERG: I can now find the principle involved. The principle involved is that the investor is allowed a pre-determined return on the capital invested and that there is a review procedure for increases in costs which are agreed upon between CMHC and the investor.

MR. CRAIK: Do they take capital cost allowance depreciation on those . . . That's not allowed in there, you know, there's something . . .

MR. GOLDBERG: They do a cash flow through. They allow the capital cost of course to be taken by the investors because a five percent return would normally not be attractive enough for any investor. However, combined with the depreciation that that's allowed and the net cash flow after taxes to an investor becomes attractive, or at least became attractive under the old limited dividend program.

MR. CRAIK: Mr. Chairman, we might come back to this on another occasion. That's all I have for now.

MR. CHAIRMAN: Mr. Axworthy.

MR. AXWORTHY: Mr. Chairman, I have some questions for Mr. Goldberg, but just before that, the previous questioning I think it's on the vacancy rate, there was a mention of five percent. I have in front of me, if I might clear the record, a survey done by Central Mortgage and Housing in October 1975, where they sampled 6,000 units in what they call the public universe, which is publicly sponsored housing, and 36,000 units out of 45,000 in the private sector and they indicated that the vacancy rate had increased to 1.9 percent from 1.5, and in units over 200 apartments the vacancy rate was about 5.3, but in all others it was less than two percent, in the downtown zone less than two percent, and the outlook that they say concerning there was only 900 completions of apartment units from April to September that the market is about to tighten, so I think at least on that fairly objective sampling it doesn't quite correspond with the figures that were supplied of five percent.

Mr. Goldberg, I wanted to ask you this question. Mr. Green took objection to the kind of ideal model that was brought forward in Mr. Kushner's paper and said that it wasn't a fair depiction of the return that was being experienced and he set up this kind of strawman or ideal person who had owned all his apartment, did all the work, sort of spent all his time and said that that probably was a fair return for the effort that was going into it. What I would like to ask is based upon your records, is that a real picture, I mean how many people are in that ideal situation or in fact how many people in fact carry mortgages of 12 percent or have had to refinance and what kind of costs and loads are they therefore bearing. I think the question, Mr. Speaker, is that we're not here to argue an abstract point, we're here to argue to what degree will this legislation affect the housing market, particularly those that supply the market in the future. I think we've got to make sure that we defend against any severe depression on the market. So could you comment on the degree to which there is that small entrepreneur who has debt-free apartment blocks, how many there may be and what percentage or to what degree. A more typical case might be someone who's carrying a larger mortgage and what kind of costs they're experiencing.

MR. GOLDBERG: That's a lot of questions. I can't give you exact percentages on how many people own their own blocks and carry them debt-free and do their own janitorial services, but I would say for the most part that that would be an easy thing to document or to verify. By far, the majority of our housing is provided by the larger investor who produce the high-rise apartment blocks and large housing developments and that the model that Mr. Green presented before, you know, I'm sure it exists but isn't really representative of those people who supply housing to the province. However, I think that his model served one important point, that not everybody is in the same situation, that there are situations where there is blocks taken over by widows who inherited them and there's large real estate companies that manage hundreds and thousands of units and there's large real estate companies that produce high-rise apartment buildings for a profit for themselves or their investors and that each situation is different and that by having one set rigid rule, which I think Mr. Kushner is trying to bring up, would take into consideration all the variances that occur in a marketplace.

MR. AXWORTHY: Mr. Chairman, if I might ask this question then. If what you're saying is that the rental apartment market is really dominated by large private

(MR. AXWORTHY cont'd) organizations but that there are many small ones and in-between ones and middle ones in between, maybe I could ask the question two ways. One, is it possible for a rent control legislation that sets out a ten percent across the board standard to apply equally and affect them equally or is it preferable to try and provide some gradations or some formula that would take into account different financial positions because you've got elephants and chickens working in the same market.

MR. GOLDBERG: That's right. There are elephants and chickens. There is a way possibly. That would be to ignore the financing of the apartment blocks, to ignore how much money was put up at the beginning by the investor and let the question of how much was put up by mortgage companies, if any, because there are some blocks that are free and clear, be ignored, but that the total investment, in other words, the value of the entire entity be considered and that the owner be allowed some fair return on that total investment. I would suggest that that would be somewhere in the range of, well at least what the mortgage company was charging, or would charge if there was a mortgage on it, and to reflect the fact that an owner of an apartment block has more risk than say one of the most safest investments in the marketplace like bond, allow a two percent factor such as provincial savings bonds plus two percent, or mortgage rates, they would pretty well be the same, and then allow a cost flow through based upon justifiable increases. For instance, if the hydro would go up, the rent would go up, no more, no less, and if maintenance was required, I think if there was a board set up that would review these expenditures and rent increases, if owners could pass through these costs and get a fair return on investment, and I put that in quotation marks, whatever that fair return is agreed upon. I don't think it would drastically affect the investor's decisions to the extent that it has in other areas where rental controls have been put in and not allowed a return on investment to the investor. There's lots of documentation on that in other cities.

MR. AXWORTHY: Mr. Chairman, that would be the question. You're saying then that if we could, rather than taking a flat ten percent, establish a formula that would have a basic component to cover utility costs and maintenance costs, a second part to cover the question of property taxes which vary from area to area, and then a third component that would cover a fair return on the total capitalization of the apartment block. That you could arrive at a formula, it could be administered fairly without a great deal of encumbrance or bureaucracy or anything else, is that . . . you say experience in other cities could indicate that that's possible and could you . . .

MR. GOLDBERG: Well the way I see it, it would work quite simply. The allowed return on investment hasn't been arbitrarily determined at two percent. That was based upon an average lifespan of a building . . .

MR. AXWORTHY: Excuse me. I didn't hear that. Two percent . . .

MR. GOLDBERG: Based upon an average lifespan of a building of 50 years, and based upon the premise that just as in any investment the investor is entitled to his original capital back, as in the case of a provincial bond, for instance, that would be, 50 years into a 100 percent is two percent a year, and taking the assumption that an apartment block investment is slightly more risky than provincial bond, that would be provincial bond rate plus two percent, would be the rate of return allowed on total investment . . .

MR. AXWORTHY: Around 12 percent.

MR. GOLDBERG: Yes, around 11 3/4 to 12 percent. As to the administration, it would be a fairly simple matter as Mr. Kushner suggested, that there be a set format for disclosure of operating expenses, and I'm sure with an administrative board it wouldn't be just a matter of time before operational guidelines would be determined, such that there would be a range allowed, so that, you know, if an apartment block roof or furnace went, a major expenditure occurred in a year, that it would be properly taken care of by the landlord, not as in other cities where these were never fixed, and cost flow through would be passed on through the tenant and the investor's return would be maintained. Is that the detail that you wanted?

MR. AXWORTHY: Thank you, Mr. Chairman.

MR. CHAIRMAN: Mr. Turnbull.

HON. IAN TURNBULL, (Minister of Consumer, Corporate and Internal Services) (Osborne): Thank you, Mr. Chairman. I just had one initial question for Mr. Goldberg,

(MR. TURNBULL cont'd) is it, and then I'd like to question Mr. Kushner. You stated quite pointedly that not everyone who holds out accommodation for rent is in the same financial position. Yet while you recognize that various landlords are in different positions financially, you seem to follow Mr. Axworthy's questioning and accept the idea that a formula should be established. Is that correct?

MR. GOLDBERG: No, I said guidelines. I don't think there's one formula that you could apply to any two apartment blocks.

MR. TURNBULL: Well then, just let me ask you this. Do you see that these guidelines should be drawn into the legislation or should they be something that is left to the board to administer with practical experience from talking to landlords?

MR. GOLDBERG: Good question. Well, I think, I could stand to be corrected on this, but guidelines by definition are less rigid than rules and . . .

MR. TURNBULL: And much less rigid than statutes.

MR. GOLDBERG: Right. I think guidelines - the question was, who should administer them?

MR. TURNBULL: No. Should the formulas or the guidelines be drawn into the legislation, that is embodied in statute, written in stone, or should they be left to the practical experience and in administration of the board as they go through the process of reviewing rents.

MR. GOLDBERG: No. You see, I think just like the principle should be embodied into the statute and that there be a degree of flexibility and he didn't cede me that. --(Interjection)-- No I was thinking of income tax. No, it's once the principle is set forth, because through the passage of time and change in economic conditions, changes can occur such as the legislation could be lagging behind, and it would put the landlords in a bad position, they would always be catching up.

MR. TURNBULL: What's the principle that you want to put into the bill then? It seems to me that the more principles or guidelines that you put into the bill the greater the likelihood of the bill falling behind what's happening in the marketplace.

MR. GOLDBERG: I propose a very simple one; that landlords be allowed cost pass through plus a fair return on their total investment.

MR. TURNBULL: You want to get into the question of a fair return in the bill?

MR. GOLDBERG: No, set that return not as fair but set that to some benchmarks such as mortgage rates or provincial bond rates, set it in relationship to something that fluctuates with the economy. Cost of living . . .

MR. TURNBULL: I see. And the return would apply regardless of . . . Let us assume that the Federal Government does nothing to control interest rates as they haven't in the past since the guidelines were introduced, interest rates continue to rise and hit, you know, 13, 14 percent, something like that. Now you are suggesting that the bill be drawn in such a way that the return that the landlord will be able to earn will be based on those rising mortgage interest rates and that that amount of return will be applied even to those rental accommodations that have long since been paid off, let us assume that that happens.

MR. GOLDBERG: Yes, I would because if the Federal Government, taking your scenario, like if bond rates rose to 15 percent, I think that an investor would be hard-pressed, I certainly wouldn't advise him to invest in an apartment block to make two percent when he could get 15 percent from Canada Savings Bonds or alternatively, if interest rates dropped the rents would drop accordingly, because vis-a-vis bonds, for instance, apartments would become that much more attractive. I think we agree on that point. I think we agree that if the rate of return allows the landlord fluctuated with some index that is representative of the state of the economy at the time, such as Canada Savings Bonds or Provincial Savings Bonds, or bank's prime rates, or mortgage rates . . .

MR. TURNBULL: What about the cost of living?

MR. GOLDBERG: Well, I'd want to think about the cost of living for a while because you might get into a bit of a problem there because of regional differences and the methods by which it's calculated. But, you know, there's no argument about what's the bank prime rate. You can ask any bank, they'll tell you.

MR. TURNBULL: My other questions were really for Mr. Kushner.

MR. CHAIRMAN: Mr. Kushner, would you come back to the mike, please?

MR. TURNBULL: You indicated, Mr. Kushner, that you felt that a freeze of rent should be imposed. You suggested that rather than there be 10 percent amounts that rents should rise to in the initial period, you suggest instead a freeze starting, I gather, with the rent as of October 1.

MR. KUSHNER: Frozen till October 1, 1976.

MR. TURNBULL: Yes, but you would freeze them for the twelve month period, October '75 - October '76.

MR. KUSHNER: Correct.

MR. TURNBULL: Okay. You represent primarily what? - the very large large operator. It would seem that anyone who's got a lot, thousands of units, or hundreds of units out for rent, that they would be, presumably they're really good managers, I mean, that's their business, their whole time occupation, and is it not conceivable that such people would be able to forecast more accurately what their costs would be in the future. I mean they would put forward budgets, that's what really I'm getting at, and that they would consequently raise their rents to accommodate their anticipated rising costs over the next lease period, be it twelve months or whatever, and that those people that you represent, if the rent was frozen, they would be relatively in a good position. But you've admitted and your assistant admitted that not all landlords are in the same position. So there will be some landlords who will not be forward budgeting, will not have anticipated costs increases and will not have raised their rents sufficiently to cover for this current twelve month period that we're in. But for them, too, you want to freeze the rent, and I'm wondering what equity you see in that kind of situation.

MR. KUSHNER: Mr. Chairman, as a general statement I can tell you this, that in spite of the fact that most of the clients that I represent that have to do forward budgeting, almost without exception at the end of the year they wind up in the red, in many many cases they just haven't got enough cash flow, because the costs creep up on them. For example, the rents that have been set now till October 1, 1975, we know now that what the City of Winnipeg is going to impose with hydro and the others that the rent for the current year is not going to pick up those costs. They too are always working back. They try to work forward, but they can't, because the costs keep on going beyond their control. So although in theory you would think that big business with good managerial staff can project the costs and try to project the costs, the facts of life are such that even they have found it impossible to carry on.

MR. TURNBULL: As good as they are, and with all the help that they've got like Mr. Goldberg . . .

MR. KUSHNER: Right, as good as they are, and the problem is probably worse for the fellow who hasn't got that kind of staff. So that's the problem. It's hard to project, they try to project, but almost in all cases they haven't been able to come up with a correct figure.

MR. TURNBULL: But a freeze, nonetheless, would be really more of a difficulty for the small landlord who doesn't have all that . . .

MR. KUSHNER: Not necessarily, Mr. Chairman.

MR. TURNBULL: If they haven't forecast the rising costs, you know, with even the accuracy of the big operators, isn't it just conceivable, as many landlords have told me, that they have not increased their rents to cover rising costs at all . . .

MR. KUSHNER: That's right, and many landlords who have not increased the rent . . .

MR. TURNBULL: Well isn't it more equitable to allow them to get their ten rather than nothing at all?

MR. KUSHNER: All right. But Mr. Chairman, there are many landlords, small landlords, a fact Mr. Green gave you before, who can probably live with those costs, are simply taking less than \$28,000 a year. I mean, we're getting down to details now, in talking in principle, the theory is to try and project your costs. I'm sure there are many landlords who are on excellent terms with their tenants, especially the small ones, who have left their rent alone just to get along with the tenants and they do with less, so they don't take the cut a year and all the rest of it. That's a small landlord. But I think that Mr. Goldberg made it clear, and I think you yourself, Mr. Chairman, asked the pointed question whether you can apply a yardstick right across the board. We already

(MR. KUSHNER cont'd) have the example, and the Premier of Manitoba made a statement, he doesn't favour across the board controls. I suggest to you, that situation that you're contemplating of the landlord who was not able to project his costs as against the landlords who were able to project costs will be taken care of by the board during that freeze period. Now the board can come up with a formula for block "A", and say, "look buddy, you had your costs projected, you're getting your returns, you're not entitled to any more," but the other fellow will be entitled to more and make a refund. So put a principle into the bill that this should be looked at by the board and let the board work out a formula and regulations in each particular case. I think you'll find in the long run your going to get better equity that way, Mr. Chairman.

MR. TURNBULL: Well, to let the board work out the formula and apply it in each particular case is certainly what I would like to achieve, because I think it's not very practical to try to draft everything into a bill when we're dealing with such a varied rental situation. But look, there is a problem and obviously there will be a problem seeing as landlords did want appeal during this initial period, there will be a problem with just workload, I mean there will be a terrific number of applicants.

What do you think would reduce the number of applicants - to allow no increase at all during this period, or to allow ten percent? Obviously from the question, you know, it's my conclusion that if you allow a certain percentage increase, be it 8 or 10 or 15, or whatever, that you eliminate all those people whose costs are coming in below that percentage amount set in the legislation, whereas if we follow your suggestion and impose a freeze, then all those people who might have got by, you know, underneath the allowable percentage amount will then have to make an application. So, it seems to me that your proposal for a freeze really lays out the groundwork for even greater numbers of applicants for increases in rent.

MR. KUSHNER: Mr. Chairman, the legislation now says that any landlord who wants to apply for an increase after October 1, '76, has to apply to the board, and there's no percentage set there at all.

MR. TURNBULL: Yes, but there's an amount to be determined by regulation.

MR. KUSHNER: That's right. So the percentage doesn't apply . . .

MR. TURNBULL: We're not talking about that, we're talking about the initial period.

MR. KUSHNER: All right. Now the initial period, let's talk about that for a minute. The bill says if you had an increase of more than ten percent over the previous period, the landlord will have the chance to appeal. Right?

MR. TURNBULL: Yes.

MR. KUSHNER: That's what you're saying now.

MR. TURNBULL: Yes.

MR. KUSHNER: All I'm saying to you is this; if you freeze it, you can leave the ten percent if you like, but freeze the rent the way it is, and then any tenant who feels that the increase over and above the ten percent was excessive in his case, let him appeal and not the landlord. So you automatically eliminate, a lot of landlords may have raised by 15 percent, but his tenants are satisfied. I mean, you eliminate that group immediately. The board has less to deal with the initial period. They've got control over the future. That's all I'm saying to you, leave the 10 percent.

MR. TURNBULL: It seems to me that we come to the same conclusions with a different start.

MR. KUSHNER: It may be the same difference, I don't know, but it seems to me that's the better one of the two.

MR. TURNBULL: But you do agree the board's should have the flexibility as possible?

MR. KUSHNER: The board will have to look at costs, and the board is going to have a tremendous job to do, I'm afraid.

MR. TURNBULL: You mentioned the Price Waterhouse Survey which has already been criticized by comparing it to CMAC figures. You mentioned a vacancy rate of just under five, and CMAC are talking in terms of under two, basically. The Price Waterhouse figures that you cite were based on what kind of rental accommodation, I mean, was it high-rise, above four stories, or . . .

MR. KUSHNER: Well, I've got this under the \$200 a month, they talked about 6,800 units; over \$200, 7,300 units, for a total of 14,100 units that they looked at. Now I don't know where they are, Mr. Chairman. These units filed reports with Price Waterhouse as to the number of vacancies in each high-rise.

MR. TURNBULL: I see. So those are the units that filed with Price Waterhouse. Why would they file with Price Waterhouse?

MR. KUSHNER: Why with Price Waterhouse?

MR. TURNBULL: Yes.

MR. KUSHNER: Why with Price Waterhouse? Why not with C.N. Kushner. I don't know. Why pick on Price Waterhouse? --(Interjection)-- Okay. Now, Mr. Chairman, I get information as you see as late as now. Price Waterhouse has been doing work for the industry as a whole on a confidential basis. Each owner reports the vacancies, he wants to make sure the other owner doesn't know how many vacancies he's got, so between themselves they want to keep it secret and use Price Waterhouse as a funnel. This is the information that they give.

MR. TURNBULL: So it's from your clients then that this information comes to Price Waterhouse?

MR. KUSHNER: Yes. Some of them. They're only 14,000 units and they operate more than 50,000.

MR. TURNBULL: Okay. That's all, Mr. Chairman.

MR. CHAIRMAN: You have no more questions? Thank you, Mr. Kushner.

MR. KUSHNER: Thank you.

MR. CHAIRMAN: I have a Mr. Henry Carroll of Brandon who is here today and I believe he has to go back. Is it the will of the committee to hear Mr. Carroll?

MR. . . .: Yes we are, Mr. Chairman.

MR. CHAIRMAN: Mr. Carroll, do you have copies of your brief?

MR. CARROLL: No, I haven't, Mr. Chairman.

MR. CHAIRMAN: Fine. Then would you proceed.

MR. CARROLL: Mr. Chairman, Mr. Minister, gentlemen, I am Henry Carroll. I represent a group of Brandon landlords. I had the opportunity on Monday of listening to the first three presentations and I'd like to comment briefly on those presentations. Mr. Bergen presented and represented the good old fashioned entrepreneur free enterprising builder who put up an awful lot of units in Manitoba over many years. He worked hard, he took the risks, he made a return on his dollar and with this new proposed legislation he is concerned about the return, as he should be. He's done a lot of work, he's risked a lot and got a lot at stake. He feels threatened and he came before this committee and indicated his concerns.

Immediately after Mr. Bergen, we had Mr. Blair, and he represented the very opposite extreme. He was the hard working tenant that held a job all his life, paid rent all of his life and now in this retirement years he's caught in an inflationary spiral. He's done nothing wrong, he's done everything properly and inflation hits him in terms of what his rent is. He can't afford any higher rent. I think we're very fortunate that the two first speakers represented the broad spectrum. We have both ends very very clearly represented. Then I think that we are fortunate to have Mr. Kushner who brought forward I thought an excellent brief. It was excellent Mr. Green was here because he agreed with an awful lot of things that I was going to present and he did a lot of the work for me and I'm not going to say an awful lot of things that I would otherwise have said because Mr. Kushner said it so much better than I would have.

I was very interested in the approach Mr. Kushner took, the instructions that his clients gave to him were virtually the same as instructions that I received in Brandon from my clients. My instructions were to work with this committee, not to oppose the bill, to see if there was some middle ground that would be fair to both landlords and tenants and to do all possible to arrive at this middle ground.

I should say that my instructions were received before I was notified of the amendment to the original bill. My clients were mightily relieved, Mr. Minister, when the amendment was announced. There were an awful lot of them that were going to be in a very very desperate position if they were to be limited to 10 percent.

In Brandon alone we have had a total reassessment over the past two years. The

(MR. CARROLL cont'd) Provincial Assessors office has reassessed all property. The tax notices for '75 didn't come out till July of 1975 and there were, some whopping increases.

I am not going to go into detail on the increased costs, Mr. Kushner has mentioned them, Mr. Bergen has mentioned them. I think there's going to be 40 other briefs that are going to mention all these increased costs. I think the committee is very well aware of what the increased costs are. But really, Mr. Chairman, my prime function in presenting my brief today is to indicate that there is a concern over this bill in Brandon and other parts of Manitoba and not just in Winnipeg. The bill affects all of Manitoba and my people wanted the people in Winnipeg to know that they are very very concerned.

As I said, some of the concern was as it was when you indicated that there would be amendments but there are still some concerns. The major concern that we have right now with respect to what guidelines the appeal authority will have. I imagine that the bill itself will have very limited guidelines and that other guidelines will come in the regulations and that there might even be some other guidelines directly from the Minister in some form or other. My concern is that the guidelines be reasonable.

There appears to be, believe it or not, some sweetness and light in the whole circumstances. I'm surprised that there hasn't been more bitterness than there has been and I would hope this could continue. And this could be destroyed if the guidelines that were set up weren't fair. Costs have to be looked at; on the other hand, the tenants concerns have to be looked at as well, and I would think more important than what the bill says is going to be what the guidelines set up for the appeal authority. And I would like to stress my concern about this in the strongest terms.

I have one last concern that I would like to express, and that's with the whole concept of rent controls. Very little has been said about this. Historically they haven't worked. We are told that they have a chance of working in Manitoba because they are part of a whole program of anti-inflation methods. Mr. Minister, I sincerely hope that they will work. Thank you very kindly for listening to me.

MR. CHAIRMAN: Any questions?

MR. CRAIK: Mr. Chairman, I find Mr. Carroll's observation's interesting but as the old saying goes, what are the conclusions to be drawn from it? You know, you've presented sort of overview concerns that every member of this committee is concerned about but we're not specialists in this business, and you're representing a group of landlords here. Now it's not going to be much help to us unless you get a little more specific about what the answers are on this rent control.

Mr. Kushner, for instance, has come to his conclusion that the best method is on a tenant appeal type of system rather than across-the-board review or control of each and every landlord and every building. Are your observations from what you have seen, have you reached conclusions such as he has reached along these lines?

MR. CARROLL: No, I haven't, Mr. Craik. The conclusion that I have reached is that firstly, I would think we need an appeal procedure from Day One as is indicated. I would think that we have to have guidelines that set out precisely what costs are going to be automatically added on to a rental situation. I would think that we can perhaps avoid an awful lot of bureaucracy and red tape by saying, perhaps a form prepared, the taxes in the City of Brandon have gone up by 10 percent and just a question of a quick approval automatic that the taxes on the unit can be increased by the actual increase, actual gas increases, actual heat increases. On those points I would think that perhaps we could have a form that could be signed by both landlord and tenants, say we accept these increases are justifiable. We then get into the situation where I think the Board would have to come in and that's in return on equity and then we get into a whole new ballgame. I can go into that if you want to go into that too.

MR. CRAIK: Well on return on return on equity, it seems to me that there's a tremendous variation in equities. A new building may have a very small equity but an older building, a person may in fact have a very large equity if the building is paid off and you revalue it at market value. Is there a situation going to arise when you're determining what equity is where you have someone that has owned the building for a period of time, that the mortgage is quite small on it or non existent as the case may be, and

(MR. CRAIK cont'd) he has in fact been taking a return on his investment that is related to his original investment more than it is to market value.

What would happen, for instance, if you were to say a person should get a bond rate of return on his equity and his equity was determined by market value? Would not this create a case where the rent in fact may go up by 50 percent because you have people who have owned buildings for a long time who've just gone along with the thing, taking an acceptable return and waiting for the day they sell it and make a capital gain rather than taking it out of the rent. Do you have cases like that? What I'm trying to get at is what is equity and what is fair return on that equity? How do we define it? I don't know that we can leave all this to a board to decide. I think some decisions have to be made at the legislative level to define this sort of thing.

MR. CARROLL: Well Mr. Goldberg brought up this point and I think that the only way there can be any kind of a rationale is, you have to disregard the fact that there's a mortgage or there's not a mortgage against the property in determining what a return should be. You would have to, I would think, set a value on the property, today's fair market value would have to be set on all properties. That is the only way you could have a universal application of the thing.

You say, I think, a unit was described at \$10,000, it's now worth \$20,000.00. The return would have to be based on that \$20,000 value. That's the only way it can be fair to everybody. Some people are going to have 14 percent mortgages, some people have no mortgages at all on their property. So the return can't be based on the financing. I think Mr. Green used the other term, that's buying and selling money in terms of mortgage. We're not interested in the buying and the selling of the money, what we're interested in is what return on equity there is and I think we'd have to devise a formula perhaps based on tax assessments, perhaps based on other things. But that would be the only fair way of doing that.

MR. CRAIK: On tax assessment?

MR. CARROLL: Yes.

MR. CRAIK: Of the people you represent, do you know in their individual cases what their financing or equity arrangements are in each individual building? Roughly or

. . . . MR. CARROLL: No, I don't. I know that of the ones that were presented to me, some were clear title, some were mortgage laid up to the hilt, some were mortgaged for more than the buildings were worth. There's no real rationale. I should say I represent only two or three people that own more than 200 units. The vast majority of people I represent own eight or fewer units, so they're basically small business people, working people that own one unit or two units. Some of them own it because they got a loan at the bank, some of them own it just out of savings and some of them got it mortgaged 100 percent. So there's no way we can generalize on that.

MR. CHAIRMAN: Mr. McKenzie.

MR. McKENZIE: Mr. Carroll, the repeal section of the Act, do you agree with the comment of Mr. Kushner that the Act should follow, the repeal of it, the Federal guidelines and their appeal?

MR. CARROLL: I feel that appeal as set out in the Act is I would think the approach that I would like to see, only I would like that appeal to start on Day One not 17 months or 15 months down the line.

MR. McKENZIE: How about the repeal of it?

MR. CARROLL: I think I indicated that I don't particularly like controls in a vacuum. I don't think, historically they don't work. So I would be in favour of a repeal period tied in very much as Mr. Kushner said.

MR. McKENZIE: One other question, Mr. Chairman. Have you any idea what the vacancy rate is in Brandon at this time?

MR. CARROLL: Very small. I don't know, but it's a very small vacancy rate.

MR. McKENZIE: Thank you, Mr. Chairman.

MR. CHAIRMAN: Mr. Axworthy.

MR. AXWORTHY: Mr. Chairman, I have two questions for Mr. Carroll, one is going back to his issue of, if we are able to establish guidelines or principles related to what cost should be allowed. I gather you believe these should be included in the

(MR. AXWORTHY cont'd) statutes as opposed to the regulations. Is that right?

MR. CARROLL: The certain basic ones I would think, you know, certain things that aren't equivocal, that if taxes go up, heat goes up, these things I would think we should include those in the statutes.

MR. AXWORTHY: These wouldn't have to be the exact formulas but the recognition that the board should take into account certain basic parameters in defining what costs are and what particular things would be allowed as exceptions to the 10 percent or whatever . . . And you agree that should be written in the legislation.

MR. CARROLL: It wouldn't hurt it. I don't think . . .

MR. AXWORTHY: Well would it help it? That's what we're trying to do here is help the bill not hurt it. So would it help it?

MR. CARROLL: As long as we're not restricting everything else by putting, for instance, these four items or five items in the bill and then as time drags on they say well, that restricts the use of anything else being brought in. But I'd have no objection to seeing them in the Act. I think the Acts usually say without restricting the generality, so we've protected ourselves in that way. I'd have no objection to seeing them in.

MR. AXWORTHY: Mr. Chairman, I have another question. You say that you feel that we shouldn't just view this bill from the perspective of the Winnipeg housing market. It's my understanding that in both British Columbia and Ontario the Rent Review Boards have really set up regional variations because they assess that there are different costs, property taxes, etc., from one region to the other. Do you think one of these principles or guidelines that should be established would be to take account of regional variations, is there enough difference between the market in Brandon say and in Winnipeg that that should be a principle taken into account.

MR. CARROLL: I would think so. I would think that in the guidelines regional-ity has to be taken into account.

MR. AXWORTHY: Thank you, Mr. Chairman.

MR. CHAIRMAN: No further questions? Mr. Turnbull.

MR. TURNBULL: I hadn't initially any questions but some of the points Mr. Carroll made in his response to the last two questions certainly raises questions in my mind.

I gather you agree with the AIB appeal procedure as being appropriate. Would you also agree that some of the guidelines that are set out in the Federal Anti-Inflation Program should be incorporated in this bill? For example, when determining a rate of return, the return to be calculated on 95 percent of the average return over the previous five years, what do you think of that as a guideline if it could be written into our bill?

MR. CARROLL: I have no strong feelings in opposition to that.

MR. TURNBULL: The factors that you want drawn into the bill, you didn't really elaborate on them a great deal, obviously there will be, in any sensible board is going to pass through certain costs, taxes, utilities that are paid for by the landlord and other such things clearly are going to have to be passed through.

You envisage that these pass throughs should occur and the board should approve the increase in the rent automatically, immediately?

MR. CARROLL: Yes.

MR. TURNBULL: Even though today the landlord if he's got his accommodation out on 12 month lease he either forwards budgets and covers them that way or he recoups them after the increases have occurred. You wouldn't want to change, by the legislation, the normal process that is now followed by landlords in setting their rents and covering costs?

MR. CARROLL: Well what I'm saying is that we've got a freeze now as of July 1st, 1975 and what I'm saying is that my clients are going to be seriously out of pocket as a result of the freeze on that date and that - I used taxes before as . . .

MR. TURNBULL: As a result of the freeze, you are saying that they are now going to be out of pocket. In other words, they've structured their rents in such a way that they are in fact going to be out of pocket regardless of the legislation?

MR. CARROLL: I would think that an awful lot of the rents were, some of them were geared to go up on July 1st, others were geared to go up on October 1st and if they can't get these increases, especially with the tax increase, that they're going to be

(MR. CARROLL cont'd) seriously out of pocket, yes.

MR. TURNBULL: Mr. Carroll, I have some concerns about the legislation, obviously, I think anyone must. One of my concerns is that if we put on a control program, such as this one, that some landlords, obviously, will find what means they can to circumvent the legislation.

MR. CARROLL: Right.

MR. TURNBULL: Just like taxes, I mean, we all do that in taxes. And if we put in some of the guideline factors that you and I could likely agree on in putting in, what about putting in guidelines in the legislation that would prevent certain things from occurring. For example, one of the rather simplistic points that had occurred to me was that two fellows could get together, despite the control system, and just sell their property one to the other and capitalize their costs and recover it in cost pass through. It's obvious that that will happen. Do you think that with that circumvention of the bill that we should attempt to draft into the bill some guideline factor that would put a restraint on that occurring?

MR. CARROLL: I don't really think that that would be necessary, Mr. Minister, the example you've used. The tax ramifications with just the legal costs alone of transferring apartment blocks from one voter owner to the other, they alone could eat up a good portion of . . .

MR. TURNBULL: But could they draw the same agreement, couldn't they, they could each follow the same agreement.

MR. CARROLL: I think that that isn't necessary. I read the Act over fairly carefully and you've closed loopholes that I haven't even thought of yet.

MR. TURNBULL: Well that's encouraging. I hadn't realized there were because in drafting the bill I'm convinced that there are many problems in terms of what landlords could do to circumvent the legislation. Well, Mr. Carroll, thanks very much.

MR. CARROLL: Thank you.

MR. CHAIRMAN: No further questions? Thank you, Mr. Carroll.

MR. CARROLL: Thank you, Mr. Chairman.

MR. CHAIRMAN: Mr. Robert Cheyne, Property Investment Manager Confederation Life.

MR. He had to leave, Mr. Chairman.

MR. CHAIRMAN: Mr. T.H. Smith, Smith Agencies.

MR. T.H. SMITH: Thank you, Mr. Chairman. Mr. Chairman and Members of the Law Amendments Committee.

MR. CHAIRMAN: Do you have copies of your brief?

MR. SMITH: Yes I do, they're with the rest.

MR. CHAIRMAN: Just wait until they're distributed and then start please.

MR. SMITH: My name is Tom Smith. I am Vice-President of The Smith Agency Limited. We have been in the Property Management business here in Winnipeg for over 60 years, and are responsible for the management of approximately 2,000 units at the present time. It is our duty to both owner and tenant that I appear here today to comment on several facets of this proposed legislation, and to encourage the Committee to make changes in the legislation before it is put to a final vote - changes that will make the legislation more equitable and that will benefit both owner and tenant alike, while at the same time maintaining the paramount reason for the legislation - to lead the fight against inflation in the province.

I will not bore you with the detailed statistics on costs of apartment house operations and how they have spiralled in the last few years. The resource team of the Consumers Department spent several weeks in our office last June examining our books at our invitation, so that they could see firsthand the justification and necessity for the 20 percent increase in rents that went into effect in our new leases in the fall of 1975. I will try to impress on you the pitfalls of roll-backs and rebates of rents which are arbitrarily based upon unjust allowable percentage increases and commencement dates. The proposed legislation may seriously jeopardize the ownership of apartment buildings and the ability of some owners to provide for their own basic needs. I will try to show why the primary period should be no longer than 12 months and to stress the need for a self-destruction clause in the legislation.

(MR. SMITH cont'd)

During our meetings with the Hon. Mr. Turnbull over the past months - they started in May 1975 - we assured him of our basic desire to co-operate with anyone in authority to put the brakes on inflation and to control unjustified rent raises. Tenants certainly don't want ever-increasing rents, and I tell you in all seriousness that no reasonable owner wants ever-increasing rents either - unless they are necessary to meet ever-increasing costs. Tenants and owners alike were much happier in the 1950's and 1960's when they both could look forward to stable rent for years. It was far easier to run a building management business then. We told Mr. Turnbull that we believe we could achieve our common goals of inflation fighting and the control of excessive rents by rolling back the rents to the level of those in effect in October 1975, but that if the rollback was to a date earlier than October 1975, the action would be unfair to the building owners and unfortunate for the tenants. Here is the logic for that statement:

Our rents are primarily based on costs - on a "how much do I have to get" basis rather than on a "how much can I get" basis. Owners we represent have reacted to inflation - they haven't caused it! In the Spring of 1974, when the rents that were in effect on July 1, 1975 were set, inflation was just beginning to make itself felt seriously in the rental market. We at The Smith Agency increased our rents approximately 8% for the lease year 1974-1975. This was by a great margin the biggest general increase in rents in any year up until that time. It was not long, however, before we knew we hadn't been strong enough - but how could we ask more of tenants who were used to raises measured in dollars rather than percentages? Consequently, almost all of our buildings, and I understand, the vast majority of buildings in Winnipeg, had a disastrous experience in 1974-75. In order to recoup some of the losses and to provide more realistically for the ever-increasing costs of real estate taxes, public utilities, heat, maintenance, etc., the 1975-76 rents were set at an increase of 20%, with justification. The owners did not take this increase and bank it as one of the local telecasters has suggested. They paid on their back debts, met the second consecutive 20% increase in real estate taxes, and paid for the doubling of costs in some utilities. We found that in general the tenants understood the reason for the 1975 increase in rent, and they still do. They weren't happy with the increase but they understood and accepted it knowing that it was a reasonable increase under the circumstances - not a question of an owner lining his pockets unfairly. We have even had telephone calls and letters this week from tenants supporting our point of view regarding this proposed legislation.

Now, gentlemen, if you rollback to the rents in effect in June, 1975, to set our base for the rents to be allowed during the term of this legislation, you are selecting a base at a disastrously low level. To compound a problem, the 10% rent increase allowed to coincide with the new leases in the Fall of 1975 is only about half enough to be fair to the building owners and the tenants alike. Why to the tenant? Even though the proposed legislation calls for no decrease in service under the controlled rent rate, an owner can only provide services if he has revenue to pay for them. Owners couldn't maintain their standard of service or the condition of their buildings in early 1975 in the manner to which they and the tenants had become accustomed. Old fridges were kept in service, worn floor coverings were not replaced, exterior painting was put off for another year. If rents are to be rolled back to June 1975 levels, and the percentage of increase permitted is only 10%, the maintenance of buildings and equipment will again suffer and the tenants as a consequence will suffer too. Basically you get what you pay for, and if your rent is geared too low for the circumstances, the owner and tenant both suffer.

By using rents in effect in October 1975 as the base for rents to be allowed, the Government can avoid this pitfall. After all, the Federal guidelines to control inflation, which have inspired this Rent Stabilization Act, use October 14, 1975 as its base date, after which prices and wages are controlled. In the Free Press of March 3, 1976, Mr. Turnbull said owners should try to recoup losses of one year in the next lease term. This we did by adjusting the inadequate rent schedule of June 1975 to a fair one in the Fall of 1975.

Here is a major problem we foresee. The proposed legislation calls for a Rent Review Board to handle any appeals regarding rent raises. The proposed legislation originally called for no appeals until the beginning of the second period - after October 1976.

(MR. SMITH cont'd) We now understand, however, that immediate appeal will be granted to be fair to all concerned. We are glad to see this, but it is in no way a cure-all. If rollbacks are based on June, 1975 rents, and allowable increase remains at only 10%, the Review Officers will be facing a tremendous onslaught of appeals. Case in point, the Anti-Inflation Board's present predicament. An automatic tremendous backlog will occur tying up approvals on rent raises for months. Imagine the large addition to the Civil Service that will be required to handle these appeals. You have two alternatives which could, by and large, prevent this chaotic situation from occurring:

Firstly, the base date for rentals can be set at October, 1975 rather than July 1, 1975. If this is not acceptable then, secondly, the allowed increment in rent raise must at least be doubled, 10% just won't cover the increases in costs. A survey has been made that indicates a raise in rent of 20.9% would just cover the cost increases experienced by our industry over the current lease term. Anyone who read last week's Winnipeg daily newspapers has seen the most recent increases in water and hydro rates. Our office's action of increasing our rents by 20% has already been more than justified. Immediate appeal for raises over 10% in the initial period can help, but why not set a realistic figure now for allowable rent increases, one that is based on actual cost increase experienced by our industry? This action will vindicate reputable owners and penalize those who have overcharged. The number of necessary appeals in the initial period would almost be wiped out. Consider the savings in Civil Service salaries by the reduction of these necessary appeal hearings. Please remember this same Review Board, which must handle any appeals on the initial rent raise period, must be ready to give owners approval for allowable rent raises for the period beginning October, 1976, in the very near future. Under present law a tenant must receive at least three months' notice of any rent raise. This dictates that the Review Board must decide how great a percentage increase it will allow on October, 1976, and handle all and any appeals regarding that increase well before the 30th of June, 1976. Gentlemen, that date is not very far in the future! How can all this be accomplished if the Rent Stabilization Act is left in its present proposed form?

Hopefully before this legislation goes up for third reading, the current period will be defined as one year, from October 1975 to October 1976. No matter what date is finally adopted for the start of the current period, the period should not extend over 12 months. The proposed legislation, with a 15 month current period, would put all owners who have leases expiring between the 12th and 15th month in a position of double jeopardy, because under laws now in effect, if the current period should start on July 1, 1975 and expire on October 1st, 1976, the leases coming up for renewal say on the first of August, 1976 would have to be renewed at the current period level, so that the owners and the tenants involved in those leases could get no relief from the inadequate rent, which provided inadequate service and maintenance, until August 1977. Ask Mr. Mason about this and try to avoid embarrassment not foreseen by the architect of this legislation as it now stands. Leaving the current period at 12 months would result in more equity for both tenants and owners.

I say to you, Members of the Legislative Assembly, be fair to all your constituents - the people who live in apartment buildings and the people who have added to the development of the community by putting their time, their talents and their resources into the building of the apartment buildings. I remind you that the prime assets of a building owner are contented tenants. The right thinking owner does not want to upset, short change, or over-charge his tenants, let alone gouge them. Now by setting the rents in effect in October 1975 as a base from which to fight inflation, and even allowing for no increase in rent until October 1976, you will provide protection from the inflationary spiral, and will curb the activities of any owners who have been unreasonable enough to demand excessive raises in rent since then. You will help the tenant by allowing the owner to maintain his building and equipment properly, and to do those things normally considered good business practices in the operation of apartment buildings - none of which can be done if you do not permit the owner to cover his costs and recoup his losses from the 1974-1975 lease term.

One last point. This type of legislation requires a self-destructing clause. I urge you to insert a definite date for termination of rent control. Owners and tenants should not go on indefinitely counting on the Government to set the rents on an overall

(MR. SMITH cont'd) broad basis when individual circumstances deserve individual attention and often require special solutions for special problems. This is still a free country. To keep it free we must control inflation and eliminate it. By giving this legislation a termination date you will provide us all with a target date for the defeat of inflation, as well as a return to a free market in Manitoba rents, thereby eliminating the threat of permanent rent control which has proven so disastrous in free enterprise and socialist countries alike. Let's be sure this legislation is restricted for what it was proposed for - to control rent raises in order to curb inflation - and that it is not allowed to turn our City into a community of depressed buildings by eliminating all incentives for proper maintenance and happy owner-tenant relationships.

Thank you.

MR. CHAIRMAN: Thank you, Mr. Smith. Order please. I would ask the members of the delegation not to applause please. Mr. Turnbull.

MR. TURNBULL: Yes, Mr. Smith. You sent me a copy of the brief a while back which I was following until you departed from it with your new brief. And your new brief, the one you've given us today, does mention the amendment that will be made in the legislation to allow . . .

MR. SMITH: That's why I changed it at the time.

MR. TURNBULL: Yes. You changed it to account for that particular amendment, but you didn't change a lot of the points that you made about declining maintenance and I was wondering why not, because surely the application process that will be allowed in the initial period will allow you to pass through your maintenance and increased maintenance costs. I mean that's the whole purpose of that application process. So I was rather curious as to why, even though in the brief you've given us you've taken account of the amendment process, you haven't said that that process will enable you to recover your maintenance costs. I mean it's still there as a criticism of the bill.

MR. SMITH: Right. Well if indeed the immediate appeal works as it is designed to give you absolutely every dollar of additional cost that you put out, this is fine, but I have a worry and a concern that the board will look more exactly toward gas increases, hydro increases and those kind of increases, not so much at subjective decisions such as, do I replace the carpet in a hallway this year and so forth and so on.

I don't know whether this kind of costs you're going to allow to be passed through, and if so who is going to make that decision - you know is the board going to say it's okay to change carpet once every five years or is it going to leave it up to me to make that decision?

MR. TURNBULL: Could I tell you that costs, the normal operating costs for operating the building, in my mind, would be costs that would have to be passed through. But clearly if all of a sudden a client wanted - you know a \$100 a month management fee becomes \$1,000 a month for the same property, you know, that strikes me as being somewhat of a departure from what would be normal. That's why I asked the previous person making a brief if he would like to see all of the factors included as guidelines in the bill?

MR. SMITH: I think a point that I would have would be that I don't think - at least I know in our office - if we do a major replacement such as a roof, after 15-20 years, we in no way hope to recapture the cost in one year, in one lease term of that, it's averaged over a length of time and that's what goes into the setting of our rents; is not so much to recapture every dollar, it's to look at a project over a long run and that's the kind of operation that we have in our office.

MR. TURNBULL: The question of amortization of capital obviously is going to be a big one and trying to draw that into legislation strikes me as being an almost impossible task. I have had your brief and I have spoken to representatives of your firm and I think I've got your point of view very clearly in mind. However, you did mention in your brief today that tenants have been writing you and supporting your particular position. This brief was the basis of press reports and when you talk about 8 percent increases being charged by Smith Agency, of course, I immediately started getting letters and calls saying that tenants lived in your apartments and that their rent increases over the last two rental periods had approached 50 percent.

MR. SMITH: No, in no way, shape or form. You can go through every one, the '74-75 lease term was 8 percent, the '75-76 which we're in now, 20 percent. Fifty

(MR. SMITH cont'd) percent, by no way, shape or form has been raised in any one of our apartments. And your people were in to see our books and I think they saw that.

MR. TURNBULL: Not even over two years, not even over two years?

MR. SMITH: Not even over two years. Twenty-eight percent.

MR. TURNBULL: This one particular person, that wrote is clearly, in your opinion, lying then, eh!

MR. SMITH: Well they may come in and see me and show me where, because to my knowledge there hasn't been one case such as that,

MR. TURNBULL: That's all.

MR. CHAIRMAN: Mr. Axworthy.

MR. AXWORTHY: Mr. Chairman, just on that point, I'd like to point out to the committee that last evening I had a call from some constituents who live in an apartment block managed by Smith Agencies who asked that the present legislation would permit them to return the rebates back to the agency because they feel that the agency has been so good to them it would be illegal if they turn the rebates back. I probably indicated to them that I didn't think it would be, they could probably work out a deal to return the rebates, so I think, in part at least one group of tenants are quite . . .

MR. TURNBULL: They're geriatric tenants, Mr. Chairman.

MR. AXWORTHY: That's right.

MR. SMITH: Most of them have been with us for many many years.

MR. AXWORTHY: Well actually, Mr. Chairman, that's quite true. This group of tenants is in one of the older blocks and indicated that for the past eight or ten years they had received good service and they felt the rent increases they had been asked were justified in relationship - I would like to point that out.

I have two questions for you, Mr. Smith. One is, you talked about the necessity of returning to a 12-month period, October to October, then you said there should be a realistic figure set. I'd like to ask you, would you say that if we were able to change the legislation to go from October would a ten percent figure be realistic in that period, or would you like to see some other percentage figure in mind that you would say would be realistic; or thirdly, shall we take the option of trying to work out a formula or set of guidelines that would deal with costs and then let that be adjusted according to what the board would see according to those guidelines? Which would be preferable from your point of view?

MR. SMITH: I think the thing which has concerned us most is the fact that the ten percent which was originally envisioned from July 1st on was going back into history, increases in costs that were over and above that ten percent had already been experienced. I speak strictly for myself and our office when I say that if you allow the present leases to stand that any increase - that is in our case, leases that go from fall to fall - that we could live with a ten percent increase, at least for an initial period, to see whether the other areas of inflation control which are obviously going to be brought in along with this in future, will bring us down to a ten percent increase in cost situation. That would not bother me.

MR. AXWORTHY: So that if the legislation was brought forward to an October starting date and a ten percent figure was applied, that, from your agency's point of view would be a fair procedure?

MR. SMITH: Yes.

MR. AXWORTHY: Thank you. Mr. Chairman, I have one further question. You said in the last part of your brief that there had to be a self-destructing clause, a very clear define within 18 months or two years. Now in some of the rent control legislation in American cities, the so-called "second generation" rent control that are operating in four or five American states, they indicate that one of the problems by having a very strict termination date is that it deters investment during that period, that investors, money people primarily, not necessarily owners but money people will wait to see if in fact it will end up and therefore won't invest for that period. Now would that be solved if we - rather than setting a strict termination date, say that after a period of 18 months the legislature would review the bill to determine whether it's applicable, would that be acceptable rather than a straight cut-off at that point?

MR. SMITH: Yes, or I've also heard the suggestion that the ending of the Federal guidelines, which I trust will not be cut off until inflation is controlled. And that's what this whole bill is all about really I think, is to control increases. That if you use that as a date by which this bill is terminated, and that really I don't think is defined as any one particular point in time now, is it, or is it. . .

MR. AXWORTHY: Keeps getting a little longer . . .

MR. SMITH: Yes and it probably will until inflation is controlled.

MR. AXWORTHY: So you think if we were to bring in an amendment that simply tied this program to the National Anti-Inflation Program, again that would be acceptable from your agency's point of view? Okay. Thank you, Mr. Chairman.

MR. CHAIRMAN: Mr. Craik.

MR. CRAIK: Mr. Chairman, to Mr. Smith. I wonder if you could give some more light on this question that we were talking about to previous people that appeared here on rate of return. It seems that there's still a grey area here in how you determine . . . if controls are to spell out a fair rate of return what do you base it on? Do you have buildings that you would manage where if rate of return was based on market value say - current market value or market value that it would have been 12 months ago or whatever it may be - would you find that you had buildings where people are actually taking a rate of return that is substantially less than, say, what might be ten percent of market value?

MR. SMITH: We try to look into this and a number of the buildings that we look after are clear title, they've been in various family's hands for years and we have been entrusted with that management over those years, and it's difficult to say in each individual case, as I say in one case there's a roof that might be repaired this year which may drive that return down substantially. But on a pretty well average basis - we took evaluations of all the properties that we manage as of the V-Day date back in 1971 for future reference - I went back to those figures that we took in 1971 for evaluation then of buildings and on the basis of a return on that value they were showing anywhere between six and seven percent at the present time. That was for the year end 1975. And certain ones naturally were lower because they did have a major expense within the building in that year. But by and large there were none that were any larger.

MR. CRAIK: Why do people accept what would appear to be low rates of return when they could make ten in bonds, why do they . . . ?

MR. SMITH: I really can't answer that for today's situation, but you know you go back into previous years that when perhaps the buildings were purchased back in the - well in some cases were built back in the 1920s or whatnot - at that stage the dollar input was smaller and over the years they have kept the building up and put money back into it and naturally capital appreciation has occurred. Now I can say that through the heavy inflation time, which to me has been 1970-75 or thereabouts and has gotten out of control, we have found that the actual market value of older buildings really hasn't appreciated very much.

MR. CRAIK: Has not?

MR. SMITH: No, because the rents really have been running pretty well parallel with costs. The only way that you can really sell an older building logically for more money than what you purchased it, is if you can show that you're making a greater return on your investment, and we haven't been able to do that.

MR. CRAIK: In that event then your figures of six, seven percent, around the seven percent level in 1975 was based on the evaluation as of 1971 - it would have probably gone up in value from 1971 to 1975 even on older buildings by . . .

MR. SMITH: You mean the market value of them?

MR. CRAIK: Yes, the market value.

MR. SMITH: No. As a matter of fact, we've had one case just recently where a fellow died who owned a building and we were asked for an opinion of value for his estate purposes and there was no question but that the value was no greater than it was in 1971. I mean how can you say that it's worth more now than it was in 1971 if the building does not generate any more dollars at the end of the year, regardless of replacement costs.

MR. CRAIK: If a person's willing to take a seven percent return on a building

(MR. CRAIK cont'd)does it mean that he's picking up the remainder of capital cost allowance or depreciation?

MR. SMITH: That to a certain extent, plus, in many cases I can tell you that a lot of owners that have had a building for, and as I say, I speak from my own personal position that own a building for 30-35 years - there's one family that live in the Netherlands that have owned a building over on Kennedy Street for a number of years - it wouldn't even cross their mind to sell, unless we had to write them every month and ask them for money to put into the building, but they're quite happy or willing, obviously, to accept a six or seven percent return. It's a family heirloom if nothing else. They hang on to it for that purpose.

That isn't quite as analytical as you find a lot of new investors coming into the market, they demand and wish to have a fair return on the basis of a bond market. If anybody would give me a bond return on these things, guaranteed.

MR. CRAIK: Supposing then, that's the one end of the scale, you go to the other end on a new building and there you wouldn't be able to put up with a return that low.

MR. SMITH: By and large I think you look for a minimum and historically, at least, to my knowledge, a minimum which you'd like to get is 10 percent on your invested capital at the outset of a project.

MR. CRAIK: But there is an extreme difference here between an old building and a new building. In some cases your older buildings have no mortgages and people are willing to take a six or seven percent return for maybe some personal reasons, whereas in a brand new building the person has no alternative but to get the high return.

MR. SMITH: Naturally. His alternative investment is bonds and if he can do better in bonds why should he take the chance in real estate.

MR. CRAIK: I don't want to put words in your mouth by any extent, but it would appear that there may be no simple solution such as saying that there will be a fixed return and that is it, it may in fact turn out that sort of fixed return you might set would be too high. It would in fact cause rent increases rather than . . .

MR. SMITH: Well, if you set a return that was lower than what a fellow was receiving at the present time he probably wouldn't complain about it.

MR. CRAIK: The point I'm trying to . . .

MR. SMITH: I know what you mean, I know what you mean. Yes.

MR. CRAIK: . . . we seem to be drifting around trying to say that the way to handle this is to put a lid on the return somebody can get but putting that lid on may in fact jack rents away up rather than. . .

MR. SMITH: In certain cases, yes.

MR. CHAIRMAN: Mr. Axworthy.

MR. AXWORTHY: Mr. Chairman, the last line just prompted me to ask one question. There have been reported cases, and perhaps you could comment whether you know of any or have seen the instances where in an older apartment block that was held debt free or was held at very low interest mortgage, has there been refinancing to a higher ratio loan, at a higher interest rate, the cost passed on to the tenant and the capital used for other investment purposes?

MR. SMITH: No, but I can see that happening, if you allow a certain percentage on equity, it would pay an owner, I would think, to go out and mortgage his property and spread the money along and put the proceeds of the mortgage into a bond interest and hang on to the building at a guaranteed rate of return.

MR. AXWORTHY: You mean you see that happening now as a . . .

MR. SMITH: I haven't seen it happening, I haven't seen anybody do it at this time but I can see it as a worry, a concern in future.

MR. AXWORTHY: Because of this legislation or just because of the market and everything else?

MR. SMITH: Well depends on how the legislation is written I would think.

MR. AXWORTHY: Okay, thank you.

MR. CHAIRMAN: Mr. Boyce.

MR. BOYCE: Yes, Mr. Smith, Smith Agency probably manages more property in my constituency than any other group and they're one of the better groups in the community. I have never had a serious complaint, in fact, the one that was drawn to my

(MR. BOYCE cont'd)attention the agency was right. But I just wanted one question. I'm a renter myself, I personally don't believe in owning property. The fellow that owns my house, I've lived there 17 years, and he's never increased my rent, I've always increased it myself, because he's willing to accept a lower return on the few dollars I have than I am. But in managing property, I'm sorry I'm not familiar with this at all, do you charge a fee for . . .

MR. SMITH: Yes.

MR. BOYCE: And how does it work, is it based on individual contracts, is there a set fee or what?

MR. SMITH: Well, you know, it's a fee which is based on percentage of the collected rents.

MR. BOYCE: Is it extended to the industry or is this by arrangement . . .

MR. SMITH: No it's not. You make your own individual deal with the owner of the apartment building.

MR. BOYCE: Thanks, Mr. Smith.

MR. CHAIRMAN: Mr. McKenzie.

MR. McKENZIE: In the meantime, Mr. Smith, do you have a formula like for exterior decorator painting or interior, or the carpets in the hall. You renew them every so often.

MR. SMITH: It's just by the eye, when it needs it you do it.

MR. McKENZIE: But you don't have no basic formula.

MR. SMITH: You can't. Very often a tenant will say, "gee you know it's been four years since you've done my apartment" and you go over and look at and it's perfect. Well, you know, you don't do something just for the sake of doing it every four years and yet in certain cases, there's a leak or whatever, six months after you've done it last time, and as badly as you might feel about it you have to go in and do it again. Or you have a tenant who moves out on you and leaves a mess. You do it again then.

MR. CHAIRMAN: Have no other questioners. Thank you, Mr. Smith. The hour of adjournment having arrived, the hour being 12:30, Committee rise.