[Chairman: Mr. Musgrove] [1:30 p.m.]

MR. CHAIRMAN: Could we call the meeting to order. First on the agenda is the approval of the minutes dated December 17, 1984. You all have copies. Are there any errors or omissions or concerns in the minutes?

MR. R. MOORE: I move approval.

MR. CHAIRMAN: Thank you. All in favour? It's carried.

You have a handout in front of you entitled Consideration of Reports of the Institute of Law Research and Reform. It lists the options that are available to the committee as they are presented by the institute. In order for the committee to report back and make some comment on each report, the committee should consider one of the four comments on each report. Is there any discussion on that? Everyone has a copy, I presume.

MR. LYSONS: You're still dealing with this report, are you?

MR. CHAIRMAN: Yes, we're dealing with those.

MR. LYSONS: Do you want a motion on that?

MR. CHAIRMAN: Yes, I think this would be a motion we could use. Actually, there are five; a resolution on one of the five, to report on each topic we deal with.

MR. LYSONS: Okay, I'll move that we accept this form and use it accordingly.

MR. CHAIRMAN: All in favour?

HON. MEMBERS: Agreed.

MR. CHAIRMAN: Okay. Next is a discussion on Debt Collection Practices. We also have a handout on the proposed changes to the Collection Practices Act. This is a summary of the green pages in the green book we have. I think we should go through these four pages and have Mr. Hurlburt briefly outline the proposed changes.

I will now turn the meeting over to Mr. Hurlburt. Would you like to introduce the other people here?

MR. HURLBURT: Thank you, Mr. Chairman. On my right is Dick Dunlop. He is a professor on the Faculty of Law who has been with our institute for two years and is the one who actually knows something about the subject we'll be dealing with today. The report is largely based on his work. To my left is Mr. Don Bence, the Administrator of Collection Practices in the Department of Consumer and Corporate Affairs. He is the official whose work is involved in the area covered by this report. To the far end is Clark Dalton, the director of research and analysis for the Attorney General's department, who is also a member of the board of the Institute of Law Research and Reform.

Dick Dunlop will be at liberty to interrupt me, pick up any points I don't pick up, and answer any questions I can't answer. There is part of the area that he would probably speak to originally.

Mr. Chairman, I think I should give some background. You can tell me any time that I'm going on too long, or what have you. The Institute of Law Research and Reform has undertaken to look at the whole area of creditors' remedies; that is, how you collect your money once you've got your judgment. That is unsecured creditors' remedies; we're not talking about chattel mortgages and things. We hope to make recommendations that will make the whole thing more efficient.

We thought it logical to start with a look at private debt collection; that is, debt collection not involving the use of court facilities. This report is concerned primarily with debt collection agencies and debt collectors; that is, people who are in the business of collecting debts for other people. It also deals with some other kinds of third-party collectors — lawyers, real estate agents, and so on — and with creditors collecting their own debts.

First, I'd like to deal with the subject of debt collection agencies. We start with the proposition that private debt collection is a perfectly legitimate private business activity. Secondly, an efficient system of private debt collection is in the public interest. It keeps people out of the courts, and it's the people, generally, who pay for the courts. It enables people to settle their own affairs; it keeps costs

down. So generally speaking, it's a good thing. It is possible, however, for people collecting debts to go outside the limits of what you'd normally consider civilized conduct, in business or outside it. The debtor, though he owes money, is not an outlaw and should be protected against criminal activities, fraudulent activities, some kinds of intimidation, and against the loss of his job, if that's going to be a result of the activity. Further, if creditors are overly abusive, they will probably get paid first. That leaves less for the others, who are behaving reasonably decently, and it may even bring about the financial collapse of the debtor, which is not to anyone's benefit.

At the present time, collection agencies — and that's what I'm talking about now; not anybody else but collection agencies and their employees who collect debts — are regulated, really, through the licensing power of the Administrator of Collection Practices. Now, I should make one thing clear. Administrators shouldn't have discretion that isn't confined by law, and so on. That is not in any way a reflection upon Mr. Bence, who does what he can with what he's got. We think he should have something different and better, but that's the only proposition we're making.

The Administrator has the power to refuse a licence to a debt collector or a debt collection agency, to cancel a licence, and to refuse to renew a licence. There's almost nothing in the Act that tells him when he should do any of these things and on what grounds he should do them. So you have a situation where there is a very vague sort of regulatory power there. He's got a sort of atomic bomb that he can drop if his assessment tells him it's appropriate to do so, but there's very little else he can do. There is an appeal from him to a board set up for the purpose by the minister which includes an independent person and some industry people.

There are some minimal rules in the Debt Collection Practices Act, which is the statute we're talking about, that regulate the collection agency/debtor relationship. There's a good deal about the creditor/collection agency relationship: getting money, keeping it in trust, and so on. The only things the Act says about the way collection agencies and collectors should conduct themselves with debtors is that there is a prohibition against calling the debtor between 10 in the evening and 7 in the morning; there is a prohibition against collecting or trying to collect money unless the collector believes in good faith that the money is owing; and there is a prohibition against carrying on business in any name other than your licensed name. But those are the only prohibitions. There can be prosecution for any of those things.

Finally, there is one other area which is a great nuisance to everybody. It's a great nuisance to the Administrator; it's a great nuisance to the debt collection agencies. Every time they apply for a licence, which means annually, they must send in all the form letters they use for collecting debts, and the Administrator has to pick over them and decide whether or not they're proper. If he decides they're not proper — and, again, the Act doesn't tell him how to do this — he says they can't be used; otherwise he approves them. That is, as we understand it, a very great mass of paperwork every year which we think can be dispensed with if the other things we have to say come in.

The Administrator, by the way, can also issue a cease and desist order for something that is contrary to the Act, but that's a very narrow area, as I've indicated.

We've come to the conclusion that there are some problems with the existing law. The major one really is that there is no set of standards that tells anybody what the right kind of conduct is. There is an Administrator. He's under a duty to administer, which means considering licences, among other things. There's nothing that tells him what is right and what is wrong; there's nothing that tells the debt collection agencies what is right and what is wrong, except for the few things I've mentioned; and there's nothing that really deals with the kind of thing where there are sometimes abuses. Debt collectors have been known to threaten to have a debtor deported or to take some sort of illegal action. They've been known to fake municipal traffic tickets to get people to pay them for parking charges. There's no real set of standards which says where the limits of civilized conduct are.

Secondly, the sanctions, the things that can be done, are inappropriate. If somebody has misconducted himself or abused his position, usually the only thing the Administrator can do is cancel his licence or refuse to renew it, and again that's a very heavy club for conduct which may not be deserving of it. So we think there

should be lesser sanctions available. We think there should be a clear set of standards which should set up a minimum set of standards, that there should be sanctions that are appropriate for breaches of whatever is right, and not the present very difficult situation where there's only basically one sanction, and that one a very heavy one. We also think that this sending in of form letters every year for approval is just unnecessary paper pushing.

So what the institute proposes is summarized — I'm sorry, Mr. Chairman. Has this Proposed Changes to the Collection Practices Act gone around?

There you will see 12 items, which we suggest might usefully be legislated. When or if they are legislated, they will stop unreasonable conduct but will not stop appropriate conduct. They will be much clearer and simpler. The intention is that somebody can look at it and say, "Is this right or is it wrong?" or "Is what I am about to do right or wrong?" so that people will know where they stand. You'll notice that the first two items deal with conduct that's really criminal: violence and false accusations of crime, fraud, or disgraceful conduct. Those are quite minimal standards.

MR. LYSONS: Can we interrupt for questions?

MR. CHAIRMAN: Yes.

MR. LYSONS: On this one that you say is criminal, about "reputation", wouldn't one of a collector's prime terms normally be a credit rating? Would that not affect your reputation?

MR. HURLBURT: Let's see: "violent or other criminal means to harm the person, reputation or property . . ." Telling somebody you haven't paid your debts isn't a crime.

MR. LYSONS: It would have to be violent or criminal. Okay.

MR. HURLBURT: As we go along, I think you'll want to look at some of the others closely too.

MR. DUNLOP: In fact, Mr. Chairman, a truthful statement to, say, the Edmonton Credit Bureau that a debt has not been paid is not prohibited by the present Act and would not be prohibited by our proposals. What is being struck at is the false statement to the credit bureau or, alternatively, the threat to blacken the reputation when the collector knows it's false.

MR. CHAIRMAN: What about a threat to garnishee? Is that considered a threat?

MR. HURLBURT: There's nothing wrong with threatening to take civil remedies which you have a right to take. There's absolutely nothing wrong with that, nor do we strike at that. Later on, in number 5, we do say that debt collectors should not threaten the debtor with arrest or criminal proceedings. The reason for that is that such conduct is very close to a crime now — that's the crime of extortion — and there's no reason it ought not to be picked up in a provincial statute dealing with debt collection. But certainly the implication is that you can certainly threaten civil proceedings: garnishees, a suit leading to judgment, execution, and all of that sort of thing.

MR. CHAIRMAN: I believe I heard Mr. Hurlburt say that collection practices should not allow anyone to take any action, and one of the actions was to cause them to lose their job. Quite often some employers — if there is a garnishee or civil action against the employee, that's part of the contract; you're automatically disqualified for a job. How does that fit this?

MR. HURLBURT: There is nothing in here that would stop a debt collector from issuing a garnishee if he's authorized by his creditor to do so. There's nothing to stop him actually issuing and serving it. Anything I have said went too far if it suggested that a creditor or a debt collector would be stopped in any way from exercising or threatening to exercise any civil collection remedy. In the Employment Standards Act there is of course a provision that firing an employee for being garnisheed is prohibited, but I'm afraid that isn't the strongest prohibition that's around. It is quite possible for a debtor to lose his job.

MR. SHRAKE: If a person disputes these debts and somebody dumps it over to the collection agency, and then they go through this whole pile of form letters, each one getting more threatening than the last one — is there no system where they can send a registered letter or do something to say, "Take me to court, but I

don't want any more of your letters or phone calls"?

MR. DUNLOP: There are some statutes, in both Canada and the United States, particularly a statute passed by the United States Congress, which provide that where a collection agency is attempting to collect a debt from a debtor, the debtor can do exactly as you suggested. He can write a letter to the collection agency saying, "Sue me or not, but shut up." The effect of the letter is that the collection agency must do that. It must report back to the creditor that he must sue, but in any event, the collection agency must shut up.

MR. SHRAKE: We don't have that?

MR. DUNLOP: We don't have that in the present Act. We considered it as a possible recommendation to you but rejected it. Our reason was this: we thought it wrong ever to prevent a creditor or his agent from saying to a debtor what is often the truth, "You owe me money and you haven't paid me." We thought it wrong to enable the debtor to say, "I don't want to talk about that." So our decision was not to recommend that kind of absolute bar on communication between the creditor or his agent and the debtor. Clearly the United States Congress thought the other way, though.

MR. SHRAKE: I tend to go along with the American Congress on that one, because there are times you get some mix-up on something or when you phone and phone and phone, and they say, "yeah, yeah". They're a big system. They lose your little phone calls and messages. It all falls by the wayside and they say, "Oops, this is now 90 days," or whatever the system is of this company. They just throw it out; automatically it goes over. It's part of a process. There are no human beings involved. It's all a system. So it goes over to the collection agency and the agency says, "Well this guy works; we probably could go after him and shake him up and get him to pay that $500." "Even if he doesn't owe it, we'll keep after him because we get our 40 percent or whatever it is."

So they keep pursuing the guy, and the guy has phoned and explained, "This is paid; I've got my receipt," or whatever. There should be a point where he can say: "Sue me. Put up or shut up." Frankly, I can see why the American Congress would go for that. There should be a system. If you send them a registered letter stating: "This debt is not owed. I dispute the debt. Either sue me and we'll settle it in court or forget about it."

Frankly, I would like to see that system. It wasn't that big a problem here a few years ago, but it's a problem now. So much is computerized, and there are such complicated systems, and some of the companies are so far behind in their bookkeeping and book work, that this is occurring often now. The little collection agencies don't really care. It only costs them 30-some cents to crank out those form letters, and they'll pour them out. Then they hire some guys very cheap. These guys are not skilled credit managers or collection people. They say, "Phone and you get a percentage." They just phone and phone and harass people.

I would like to see a system here in Alberta where you can finally say: "I don't owe it. If you really think I owe it — I've phoned you so many times, and you've ignored everything I've said — sue me, or quit phoning me at the job."

MR. HURLBURT: I think I can say we're sympathetic to that view. We can certainly supply precedents if the committee wants. As Dick said, we didn't think we would go that far. The farthest we've recommended is the next item on the list.

> Do not make telephone calls or personal calls with such frequency as to constitute abuse or oppression.

But what you're talking about wouldn't fall within that.

MR. SHRAKE: What is "too frequent"?

MR. HURLBURT: There is a problem in that one that we have to . . . Pardon?

MR. SHRAKE: That would sound like it's a motherhood statement. But is six times at the job too frequent?

MR. HURLBURT: We come to "at the job" later, but this would involve something that would clearly be recognized as being quite unreasonable. I'm not saying that it meets your point, because it doesn't. It's not intended to.

MR. SHRAKE: The other question is: as I

understand what you're saying just now, you're thinking of dropping the system of having form letters sent to your department for approval?

MR. HURLBURT: Yes, that is correct. If the form letters conform to this list, we think that should be enough and that if somebody receives a form letter which is so abusive or so bad that something should be done about it, no doubt he would give it to the Administrator, who would consider whether charges should be laid. You would then have a rule which letters or conduct or telephone calls or anything else would have to conform to, rather than the sort of policies that Mr. Bence has had to work out for himself.

MR. SHRAKE: Mr. Chairman, I think the process is excellent, because as long as they know they must submit these letters for approval with the government, they're going to keep them within reason. If not, the letters will get wilder and wilder, and eventually there'll be one guy somewhere, somehow, who will send one in and complain. But it puts the onus back on the public to get our system to follow up on the letters they get that are too abusive. I'm very much opposed to dropping the approval process for these form letters, because I think that has kept things down a little bit and kept them reasonable. With the number of collection agencies out there, each one is going to try to outdo the other for results in order to get the business from some of these companies. If we drop this, it will evolve, in a period of a year, a year and a half, or two years, that we will have problems. I frankly don't want the problem.

MR. HURLBURT: Mr. Chairman, that sort of assumes that the system will necessarily stop the collection agencies from doing what they shouldn't. It's true that once the Administrator has said something, it doesn't follow that that's what is going to happen. We think it will be just as easy to get the letter in and show that it does something it shouldn't, as to show that it's different from the letters which he approved.

MR. R. MOORE: Mr. Chairman, I am supplementing the question Mr. Shrake brought up. Wouldn't there be merit in limiting the time a creditor or the collection agency has to go after a debtor? I'm saying that after a while, it gets to the point where the debtor should say, "I've had enough; either shut up or take me to court," as has been stated here previously. I think there should be a limitation. I don't think we should limit it from square one, but after, say, 60 days, if that collection agency hasn't been able to get his point across and the debtor hasn't been able to state his case, that should end. Leaving it open-ended, it goes on.

In so many cases I think it happens that some of these collection agencies have a slow day, and they look back at some of these cases three or four months ago. "Well, we haven't hit him for a while", so they send out another raft of letters, which is not necessary. They've both stated their cases to a point, and after that point it just becomes repetitious or a form of harassment.

Is there merit, Mr. Chairman, in having a limitation and saying that the debtor then has the right to say — by registered letter or whatever — "Enough is enough; take me to court and we'll decide it there"?

MR. HURLBURT: If you're tying it to the registered letter, it would be practicable. I thought you were just talking about a time limit for going after a debtor; I don't think that would be practicable. If what you're saying is that after a given time the debtor can write a letter, that could be worked all right.

MR. CHAIRMAN: That would legally force them to quit harassing the debtor, to take them to court or drop it.

MR. DUNLOP: There's no question that one could create a time limit of that sort. My understanding from the collection agents I talked to — and I did a fair amount of consultation with the industry before and during the writing of successive drafts of the report — is that what is more likely is a short, sharp series of letters and phone calls, and then turn the file back to the customer and say, "We can't collect." Bear in mind that collection agencies are usually paid on a no-collect/no-pay basis. If they don't collect some dollars, they get no dollars. If they have a stale file, an old file, their tendency is to get it back to the creditor and let him take care of it. In a sense, one of the reasons we didn't go for the harsher rule — time limit or debtor can stop communication — was that there's a kind of built-in control on this process, which is that the collection agency is just not going to pursue after a while because

it won't make any money.

There's one other point. When a collection agency is told by a debtor, "I don't owe the money," they told me that their usual practice is to go back to the creditor and check the facts. The reason, again, is that there's no point in pursuing a fellow who doesn't pay, because quite literally there's no percentage in it.

MR. HURLBURT: Mr. Chairman, there's one thing I'm very remiss about. I should have mentioned that Mr. Bence is here. He hasn't suggested that he speak to the standing committee, but he's certainly said that if there's anything they would like to ask him, he's quite happy to answer. I'm not trying to shove the questions over to him, but I should have pointed that out.

MR. WOO: Mr. Chairman, I do have a question for Mr. Bence. It follows up on a number of statements made in terms of examination of form letters and the desire to do away with that procedure. I wonder if Mr. Bence might advise the committee as to the present method that is being utilized by him and his officials in terms of the process that is undertaken from the time, let us say, a member of the public makes a complaint to him. How does he in fact assess the validity of the complaint in terms of his office, and how do you handle it from that point? Could you also give an indication of the track record of your particular office in terms of the number of complaints that have occurred to you, say, over the past 12 months?

MR. BENCE: Maybe I could just get some clarification. Initially you were talking about the form letters, and then you mentioned the complaints.

MR. CHAIRMAN: Pardon me. I believe that Mr. Bence has to be put under oath.

MR. CLEGG: Mr. Chairman, it's the practice of the Legislature committees that where witnesses give material testimony before the committee, as opposed to cases where lawyers are making legal argument, they be put on oath. In this case, I believe that Mr. Bence is going to be giving answers about the material facts as to his office. I recommend that he be treated as a witness.

[Mr. Bence was sworn in]

MR. BENCE: As I was saying, I just want a little clarification on whether you were asking about the form letters or about the complaint process or about both.

MR. WOO: Actually, it's a two-part question. The form letters in themselves — at the present moment I'm neither here nor there in terms of the suggested recommendation put forward. In terms of the form letters I would like to know how you come about, in terms of the process, making a judgment as to whether or not they fit a specific criterion — if you have no set standards, for example. I understand that the current practice is that this is an ongoing function of your office. But over and above that, do you receive specific complaints from members of the general public?

MR. BENCE: First off, as far as the form letters go, it is an annual requirement, with the renewal of the agency licence, to submit any forms and contracts which they're going to be using during the coming year. As has been pointed out, there are no written guidelines other than a general phrase within the Act that talks about potentially misleading the public. Internally, those letters are approved over my signature. So they are individually reviewed. That usually is anywhere between 1,000 and 2,000 letters per year.

The general guideline is trying to put yourself in the seat of the debtor's perception on receiving that letter. What we're really looking for, as far as offensive statements within the documents, are adamant statements or statements which may not be based on fact, potential threats regarding legal action or the results of legal action. For instance, when I took over a number of years ago, we dealt with the industry as a whole to correct some phraseology that had kind of evolved which took it past the point of, "If you don't pay this — you've been ignoring this — you're going to be sued, and it's going to cost you more money." Basically what they're doing is prejudging that debt and taking it out of the hands of the court and trying to intimidate the debtor by saying, "Pay up now or it's going to cost you more in the future." So we've been able to work around that.

The concern of the industry — and I don't

blame them — is that for a number of years now, they've worked with the same Administrator, so we do have a reasonable understanding. But next year there may be a different Administrator, who has his own notions about what is acceptable and what isn't. Really, this does come down to the personal opinion of whoever is in this position at that particular time.

As far as individual complaints from consumers, because of the process on letters, we get very few that are direct complaints about the letter involved. We do get some that are kind of offshoots of the complaint, where we become aware that a letter that was not approved was in fact sent to the debtor.

The process for complaints is that all the complaints are directed to the nearest regional office of the department. There are eight of them throughout the province. They are evaluated by a supervisor and assigned to an investigator. Each complaint is investigated. Contact is made with the debtor as well as the company, in order to get the background of it. When they are satisfied that they have all the relevant information, it is forwarded to my attention for review. Then a decision is made whether or not further action is necessary.

As far as the number of complaints, during the 1984 calendar year 114 complaints were investigated, against the 65 agencies that were licensed in the province. Those complaints probably centred on 10 companies in total. I'm sorry; there were 134 against collection agencies. There were 114 that were directly collection practice matters — areas that would be addressed through these types of proposal.

MR. WOO: Just a further question, Mr. Bence, and it will be my last. In your capacity as Administrator, have you had occasion in the past 12 months, for example, to revoke the licence of a collection agency? If so, could you give some indication to demonstrate the reasons for the disqualification? What were the most common complaints that caused revocation of those licences?

MR. BENCE: There are two types of licence the Act deals with: one is the agency licence, and the other is the individual collector's licence. Normally, on collection practice matters, cancellation of an agency licence isn't considered. I've had one instance when I suspended an agency licence because it was a practice that was actively condoned by the management and in which all employees were a part. But normally, if it's a collection practice — and by "collection practice" I mean contact with the debtor — which runs contrary to the public good, we are looking specifically at the collector or collectors involved. In the last 12 months we've had one cancellation of an agency, but that had to do with misuse of trust funds. The normal cause of cancellation of an agency licence has to do with accounting.

As far as the collectors' licensing, I guess we've had one cancellation that I can recall during the last 12 months. We've had a number of suspensions. I tend to use the suspension as a penalty, again with no direction out of the Act other than the ability to suspend. It's done as part of the process, I guess. No action is taken without a hearing. Usually on the first instance — and this is as a result of one or two or maybe more complaints — a warning will be given. If we have further instances, then depending on what the circumstances are, I'll look at suspension. If that still doesn't work, then it's cancellation. But the fact is that that type of remedy is extremely serious because, in effect, it is telling that individual, "You can't earn your livelihood in that type of business within this province again." So it is done with a fair amount of caution.

MR. R. SPEAKER: Were you finished making your presentation in terms of all the . . .

MR. HURLBURT: I've finished in general, and we're coming down to this list you have.

MR. R. SPEAKER: I'm sure my question is appropriate here, then. In terms of the standards being set, I can certainly see why we should have some of the "do not"s here and the reasons for them. That seems to be the obvious thing you'd like to do.

But I'm wondering if, in developing the recommendations to us, you also took into consideration the process. You have in terms of the letters we've just discussed, but who initiates the complaint? Does the Act place more responsibility on the debtor to bring the concern to the administration, or is there a direction to say, "Look, the Administrator of the Act should initiate more surveillance over what happens between the collection agents or

the agency and the debtor"? Was there a thought in terms of trying to shift the process in some way?

MR. HURLBURT: I think the answer is no, Mr. Chairman. I think the Administrator will have to be reactive; that is, I don't think he can be out in the field listening to what people are saying or supervising it directly. About all he can do, I think, is to await a complaint, deal with it and see whether or not it deals with something serious, and no doubt try to put it right.

In the sanctions we propose, there would still be the licence cancelling or suspending power. There would also be the possibility of prosecution for any of these things, which we think is a more appropriate way of dealing with an isolated thing. If anything, we think his task should be made easier, because he now has a little list of specifics and can look at that to see whether or not the conduct fits in one of those slots.

MR. R. SPEAKER: I raised the question in terms of the letter. That was a kind of tool of surveillance whereby you had continual contact with the various groups. Now we break that contact — and I'd be in favour of that. I see it in terms of the Administrator taking less of a role of surveillance. The debtors, knowing they have legislation to protect them, can make presentation of the problem through the Administrator, who in turn can initiate certain actions. That was why I was asking if there was a shift. I think there has been a shift in the process just by eliminating the letters, but my question was if you had thought of other things.

MR. DUNLOP: I think it's fair to say that we had thought of questions of process, although some thoughts come to mind, such as the Department of Consumer and Corporate Affairs extending their efforts at public education of this kind of legislation, making sure people know about it.

MR. R. SPEAKER: Maybe I could relate the same question to Mr. Bence. In terms of the process, do you see the Act as it presently stands requesting you to take certain actions to be out in the field? Does it obligate you in that way, or can you as an administrator wait and be the recipient of a complaint?

MR. BENCE: The onus right now is that I have to wait for complaints to come in, because otherwise I don't know exactly what is happening out there. The benefit I can see as far as a shift in this is that if there were some specifics to which I could refer — I have a great deal of contact with the various companies as well as with the association, on a professional level, I guess, not just reviewing their letters. But at least it gives me something to point to.

The comment was made earlier about the type of individual that is hired as a collector: low pay or base plus commission and very little training. And yes, there is very little training. It's a very transient group. There are some very limited skills. I find it very ineffective right now to try to lecture companies about the behaviour of their employees and say: "Just remember, I've got that big provision that says that if it's against the public good, I'm going to take away their licence." They don't know what to pass on to their collectors.

MR. HURLBURT: Mr. Bence's point is that he would now be able to say to them: "Here is what it is that you don't do." There may still be the odd judgment area, but it's a lot more precise.

MR. R. SPEAKER: I'm not sure whether this next question is necessary or not, but what about in the reverse: the abuse from the debtor? Is that the way it is?

MR. BENCE: It comes, and I get this all the time, especially at hearings when a collector says, "Well, you should have heard what the guy called me." Yes, I guess it comes with the turf. If you want to be a professional collector, then you've got to expect that. You're not being a PR person for your local retailer. You're collecting a debt.

MR. R. MOORE: Mr. Chairman, if we're considering doing away with the process of reviewing form letters, there are a few questions I'd like to direct to Mr. Bence, just to clarify what we're doing away with before we recommend that decision.

First of all, Mr. Bence, it must be quite a chore to review all these form letters coming in from all these various sources. When you review, have you a set of standards, or do you look at each on its own merits? Do you have a

set of standards you review it by? We're talking standards and setting up minimum standards on our recommendations. Do you have a set standards of in this particular area?

MR. BENCE: I think I mentioned earlier that the standard used internally with our review is that we attempt to put ourselves in the seat of the debtor, so to speak, see how that would be viewed, and to look for statements that are adamant or could be misinterpreted as being false. That's our general standard. I guess it isn't that difficult once you get into the process. One of the reasons is that 85 percent of the letters that are used probably originated — and this is just my guess — from the same source, because they're all the same. Somebody leaves an agency and takes along a form letter. The next thing you know, they've started up their own agency and they use the same form with their own heading on it. So those aren't the problem ones. It's the guy who decides, "Jeez, I want to give an extra little twist; I want to give it an extra shove." Those are the ones that become judgment calls. Really, it becomes a gut feeling. You say, "How does that read? What does it really say?"

MR. R. MOORE: Mr. Chairman, if I might supplement that. What is the time period you're holding up a business process while you review this? What is the holdup to the public, the collection agency, while you review their letters? Would that take 30 days, two months?

MR. BENCE: No, it never takes that long, mainly because most of the companies are resubmitting letters that have been submitted in the past. We do maintain a file, and if it's been okayed in the past, it really doesn't take a lot of reading to review it. Because of the standardized nature of their operations, even the largest agency, which may submit over 100 documents, may have only five or 10 which are new documents for that year. That portion of their licensing process may be delayed a day at the most.

MR. R. MOORE: Another supplementary, Mr. Chairman. In the process we're looking at, it takes the time of your staff. How many man-years do you think are tied up in this process that we're looking at eliminating?

MR. BENCE: Simply of the review, or the policing of the form letters?

MR. R. MOORE: The form letters: getting answers out, and correcting those form letters.

MR. BENCE: I've never broken it down on that basis, that aspect of the job. As a guesstimate, I would say slightly less than half a man-year.

MR. R. MOORE: Mr. Chairman, if we were to do away with it, we couldn't look for a very large cut in your staff.

MR. BENCE: I'm afraid I don't have much staff to cut at that level.

MR. WOO: A supplementary question to Mr. Hurlburt. Do I understand from your initial remarks regarding the form letters that it would be the recommendation of your particular body to dispense with that examination?

MR. HURLBURT: That is correct, Mr. Chairman. When we went through this process, everything we heard from both sides suggested that it's a lot of paperwork with not much behind it, particularly if we get to the point where there is a set of standards for conduct, whether written conduct or oral conduct. It seemed to us that vetting one part of it really wouldn't be worth that much; that is, you can't pre-vet phone calls. So if you can't pre-vet all conduct, are you accomplishing anything by pre-vetting this one part of the conduct? Our answer is that we don't think so.

MR. DUNLOP: The other point is that the bulk of collection by collection agencies and collectors is done on the telephone. You get form letters, but the tough talk is going to occur on the telephone. Tough but reasonable talk is okay, but tough but abusive talk is what we're trying to get at. The vetting process, of course, doesn't touch that.

MR. WOO: With respect to the examination of form letters, I've listened to both Mr. Bence and you, Mr. Hurlburt, and Professor Dunlop, and I can appreciate what you're saying. At the same time, I feel very strongly — I think I've taken a position on this now, after hearing both sides — that the examination of the form letters should be a prerequisite in terms of an agency

obtaining a licence. I don't know whether you've given this any consideration in your deliberations, but I would make the suggestion that this procedure remain but on the basis that it take this form: following the initial review of the form letters, any other changes and alterations to ensuing or new form letters should be submitted for an examination, without having to review the original, but there should be a penalty attached to it if such is not the case. I'm not sure whether this is practical, but at least it would ensure some protection for the public and, at the same time, give some very concrete guidelines for Mr. Bence and his office to operate from.

MR. HURLBURT: If the suggestion is that the letter be submitted only the first time it's going to be used rather than annually — I think that's what you're saying, more or less.

MR. WOO: Yes, submitted the first time. But if that same company wishes to alter or modify or introduce a new one, then under penalty it should be resubmitted. If it isn't, that company should be penalized.

MR. HURLBURT: Each form would be submitted once, when it's going to be used, and when it's a change from a previous one or what have you. I imagine that would lighten the load considerably, if you wish to retain the process.

MR. WOO: It's just a suggestion I make, and certainly I think the committee has to consider that too.

MR. CHAIRMAN: Would you want to comment on that, Mr. Bence?

MR. BENCE: I guess it certainly is worth consideration. There are two things that come to mind, and one is that it means an awful lot of document retention. We have agencies that have been in the business for 40 years. Presumably there may be a letter which was submitted 40 years ago, which would have to be maintained. That's one concern. The other is that times do change. The whole scheme of collections has changed over, say, the last 10 or 15 years. What may be acceptable today may not be acceptable five or six years down the line. It may place a new onus on the Administrator as far as prior approval.

MR. CLEGG: Mr. Chairman, I'd like to ask Mr. Bence just to complete the possibilities as I see them: whether consideration has been given to your office, as Administrator, issuing a series of model letters, using the scope of correspondence which you see to be currently necessary in the business of debt collection. This would reduce the approval system to a one-way transfer of information. It would give the collectors the ability to know the kind of letter that would be acceptable to you. They could adapt it minimally to the circumstances, and they would know that if they adapt it more than a certain amount, they would be going into an area where there might be some problem. It would seem that that would cut down the amount of approval you would have to do, and it would give them some kind of standard to go by. They may tend to do this anyway. If you stop approving, maybe they will just stick with their own forms.

MR. BENCE: There is certainly that point. I believe that most of them would basically stick with the same forms. Personally, I would feel a little uncomfortable coming out with formats to private industry saying, "This is the format you must use, and you shan't vary it or you're going to run the penalty." I think that's going a step backwards. If there are clear guidelines and they're made aware of them, then I think they should be able to operate within those guidelines on their own, without having to say, "Oh, I've got to copy the way this letter is formatted."

MR. CHAIRMAN: As I understand it, the proposal here is that they will drop your having to review all form letters but they will be given a set of guidelines. If they break those guidelines, they will be subject to prosecution. Is that what is intended with this?

MR. HURLBURT: Yes, and the licence sanction would still be there too. We also propose — and this is now true — that the Administrator, upon perceiving a line of conduct which he thinks is in contravention of this, would be able to issue a cease and desist order. That would be the full scale.

MR. ALGER: Mr. Bence, if people who owe or have owed money are threatened by any of these that we're trying to react to today and

they're sick and tired of it, how do they know to come to your department for protection or guidance? I've never been in this position, although I've owed a lot of money. How would I know that you folks exist and that I could go to you for certain legal counselling and protection, if you like?

MR. BENCE: That's a question that's been posed to us many times, and usually it's by somebody who phones us up for the first time and says, "Jeez, I didn't know you guys existed." We have attempted in numerous ways to try to publicize our services. We have extensive educational services. We have various pamphlets outlining the types of matters we would become involved in, what our functions are. We have a very good relationship with, as an example, the weekly newspapers and various rural papers in particular. The Edmonton Sun is an example; some of our staff members submit regular columns that are run. We work very closely with the media. We get television and radio time. There's word of mouth. We discuss things with various agencies that might come in contact with complaints. We're always looking for ways to make it known that if somebody feels they've been abused in this manner, they should at least contact us to discuss it. I don't know how you guarantee that everybody will hear about it.

MR. ALGER: You can't do much more, Mr. Bence. I personally didn't realize it existed, but I guess I've never really worried about it.

MR. CHAIRMAN: Any other questions or comments?

MR. WOO: One additional question. If these changes are accepted and put in force, is this binding only with respect to collection agencies that presently operate within the province of Alberta, or is there any implication in terms of the interprovincial network of collection agencies?

MR. DUNLOP: We addressed the problem of the application of this set of minimum standards, who it would apply to. As far as collection agencies and collectors are concerned — that is, people employed by collection agencies — we think these standards would apply to all collection agencies and collectors operating in Alberta. We can't legislate for the collectors in Saskatchewan or B.C. unless they come to Alberta to do business. The question, then, is whether you want these standards to apply not only to collection agencies and collectors but to other people who collect debts for third persons. The second step: do you want these standards to apply to creditors collecting their own debts?

Let me take it one step at a time; first of all, people who collect debts for other people but are not collection agencies. The best example is the lawyer who collects debts for other people and sometimes for himself. Should he be caught by this legislation? The present Collection Practices Act does not apply to lawyers at all; nothing in it applies to lawyers. As to licensing, that's sensible. They're licensed under the Legal Profession Act; there's no point in their being licensed under this Act too. But we couldn't see any reason why the standards ought not to apply to lawyers collecting debts for their clients: "Don't make telephone calls with such frequency as to constitute abuse. Don't threaten to accuse a person falsely of fraud. Don't threaten to take legal action." There's no reason why a lawyer, as well as anybody else, shouldn't be caught by those standards.

So we recommend that the set of minimum standards, not the licensing stuff, should apply generally to people collecting debts for other people, including real estate agents, insurance agents, who sometimes do this kind of work, trustees, receivers, and lawyers. There are some limitations to that proposal. We think that a couple of items in the list ought not to apply to those people, because they're really technical proposals which ought to apply to collection agencies only. But our general position is that if you're collecting debts for somebody else, whether you're a collection agency or not, you ought to be caught.

I concede that the more difficult question is whether this set of standards should apply as well to creditors collecting their own debts. Legislatures in Canada have had trouble with that. I think there are four or five provinces which say that the list applies to creditors. The rest of the provinces say that no, it doesn't. We're currently one of the latter provinces. We propose that we should be one of the former provinces; that is, the list should apply to creditors collecting their own debts. There is

some evidence of abuse in the case of creditors collecting debts directly, but I think the stronger argument is that we can't see any logical, rational reason why a creditor should be able to use practices which are abusive and unacceptable: threatening to use violent means, threatening to accuse a person falsely of fraud, saying that, failing payment, the debtor is subject to arrest, using documents which purport falsely to be authorized by a court. That sort of stuff is unacceptable whether it's a collection agency, a lawyer acting for a client, a real estate agent collecting rent, or a creditor collecting his own debt.

Our proposal as to scope is that the list applies to a greater or lesser extent to everyone collecting either his own debt or someone else's.

MR. CHAIRMAN: Has the Alberta Bar Association had a look at this as far as lawyers go?

MR. HURLBURT: The Law Society of Alberta, Mr. Chairman. I think their reaction is that they're not overjoyed. That is, there's an Act that presently doesn't apply to lawyers, and we're suggesting an Act that does apply to lawyers. They say, "We regulate our own people" and all this sort of thing. There's a good deal in that, but we can't really see that you can say that only a lawyer can abuse somebody over the telephone, or something like that. It doesn't quite seem to us to be the right approach.

MR. ALGER: Mr. Chairman, there is a style of debt where, I presume, the man who has the money coming to him would like to keep you in debt to him. By that I mean Imperial Oil, for instance, and Shell and Chargex and Mastercharge — those folks. They get you pretty good sometimes, and you can't pay it all. So all of a sudden you're paying about 18.5 to 24 percent on your money. They're making more money on you than they are on their product, if you know what I mean. If they had enough of that out, they wouldn't need to worry about selling product again.

I don't know whether this is on the subject per se, but they have a collection system of their own which is actually quite pleasant in most cases. Any that I've read — to me, anyway — haven't been that bad. Reader's Digest, for instance, would like to keep you on the hook forever. If you get behind with them, they just write pleasant letters and send you more books and it goes on and on. I wonder how any of you learned gentlemen would react with regard to actually making money on the debtor.

MR. DUNLOP: I'm not sure I understand the question. I thought I did.

MR. ALGER: I was saying that if I owed Chargex, for instance, $1,000 and I pay $200 or whatever is allowed, they make money on the rest of that debt by charging me at least 18 percent on their money. I can get the money anywhere for 10 or 11 percent and pay the bill. But instead of paying it, I react to the way they do things, and all of a sudden I'm paying about twice as much as I should. I wonder if they really have that benefit. Can they actually charge that much for the use of their money?

MR. HURLBURT: As part of the original contract under which you took the credit card, I think you'd have to be going a long way before you interfered with that. If in fact it's just because you and I are both very dilatory that this happens to us, I don't know that we can complain. It's probably true that there are a good many people who are granted credit much too freely, who don't know how to use it and shouldn't be having it and can't really afford the 18.5 percent. That isn't our project, anyway, and even if it were, I'm not sure that I see an easy answer to it.

MR. WOO: One last question. Supposing that Mr. Jack Campbell owes me a bona fide debt and I'm trying to collect it, but it so happens that the collection agency I use is headquartered in Regina, Saskatchewan. I guess my question to either Mr. Hurlburt or Mr. Dunlop has relevance to Mr. Bence's office: is that particular agency, who may or may not use a collector per se, subject to these regulations when he tries to collect from Mr. Campbell, who is a resident of Alberta? What relevance has that in terms of Mr. Bence's office?

MR. HURLBURT: Mr. Chairman, once he sets foot in Alberta or starts operating in Alberta, he's subject to the existing Act and would be subject to the proposed Act and to Mr. Bence's jurisdiction. He's got to be licensed. If he's only writing letters or even making telephone

calls from Regina, my inclination is that he's not operating in Alberta, but that's a legal opinion and isn't worth a damn. But the answer to that question would determine ... You'd still have to catch him somehow, and Alberta law really doesn't go beyond the boundary. That's the trouble.

MR. FISCHER: Mr. Chairman, do you see these proposed changes protecting the debtor to the point that it's going to be harder to collect?

MR. HURLBURT: Mr. Chairman, I think my answer is a categorical no. Maybe we should look at these things in detail. I'm prepared to say about almost all of them, I think, that the prohibitions are prohibiting conduct that simply is outside the standard of normal, reasonable conduct. There's probably one in here — you're not to lean on him through the employer, number 10 — that is a bit of a balancing act. I don't know what Mr. Bence's standards are at the moment. Maybe we should ask him whether going to the employer is a bad practice. We thought that protecting the debtor in his job was extremely important. It's important to the debtor; it's important to any other creditors he has. People shouldn't be exercising what really is extortion: "I will go to your employer if you don't pay." It makes it very difficult for the debtor to assert a defence, because the employer is probably going to believe the other side. It puts him at extreme risk, and we think that's a practice that should be prohibited.

I don't think there are any others of these that would inhibit good, vigorous, and even conduct that I might not admire in the collection of debts. There's nothing else here that I think would really stop anybody from doing anything reasonable to collect a debt.

MR. FISCHER: Are you talking more of individuals that are owing or of companies that are owing? I'm just having a little bit of trouble with why we feel we should give so much protection to these debtors. If you happen to be on the other end of it, it costs a lot of money to collect these debts, which in most cases are legitimate debts. I don't know how we value that, but usually when you owe somebody something, you're supposed to pay it.

MR. DUNLOP: That's absolutely right, and as you rightly point out, it is a balancing. There are interests to be balanced here. On the one hand, the creditor undoubtedly has a right not only to collect his debt but to do it himself, or through an agent, without initially having to go to court. The worst thing in the world would be to funnel all these disputes into court, and we don't want that. On the other hand, an American judge said that the right to pursue the debtor is not a licence to outrage the debtor. Collection is fine; abuse isn't. That principle is easy enough to say. The issue is how you draw the line between the two.

We chose the route of setting out specific things, specific acts, which we wished to say were beyond the line. Some other provinces have simply said, "Be good, don't be bad." They have legislation which says something like: the collection agency must not harass. What does harassment mean? Harassment to the creditor may mean something different from harassment to the debtor. We chose to reject that kind of statutory drafting and make it specific. That was what the collection agencies wanted. They said, "If you're going to do this kind of legislation, for goodness' sake make it clear so we know what to do, what the rules are."

MR. HURLBURT: Mr. Chairman, may I speak to that just for a moment?

There are very extreme pressures on the debt collector. If he doesn't collect, he doesn't eat. He's there with very poor weapons in the form of training. He's very likely to go beyond the pale. I don't know if you noticed a month or two ago the story of the Ontario debt collector who phoned the widow and said he was going to go out and dig up the body and take the suit off it to collect his debt. One that Dick came across was a threat to have the debtor deported if he didn't pay. This is the kind of thing we've been talking about.

MR. DUNLOP: That happened in Calgary.

MR. HURLBURT: Again, a debt collector is under a quota system. You remember what we were reading about quota systems and the Department of National Revenue, where they don't actually have to collect to eat; they can probably keep their jobs. That is, we're only talking about conduct which really is the way you wouldn't conduct yourself and, if you saw it happen, you would say nobody else should be conducting themselves — not inhibiting even

vigorous pursuit.

MR. FISCHER: I guess there are a certain number of people you will never collect money from as long as you protect them. If you're going to take the rights away from the person who is collecting or the people they owe money to, you're not going to collect nearly as much on your debt.

MR. DUNLOP: How much more are you going to collect by permitting the collection agency to threaten murder? Probably quite a bit more, but that's forbidden by the Criminal Code now. In other words, there are rules to the game. It's like any game. There are rules to it, and the issue is how to define them sufficiently clearly that the creditors and collection agencies can pursue the debtors vigorously but are not free to abuse.

MR. CHAIRMAN: Mr. Bence, did you have a comment?

MR. BENCE: Yes, there are a couple of points I want to make. One is that the provision regarding the contact with the employer was in place in the legislation up to 1979. As a result of an amendment in which a section was deleted prior to third reading in the House, it was removed. What we're saying is that it did have some benefit and really should be there. The fact of the matter is that, fortunately, the industry isn't well-read and they still think it's there. So we don't have much problem. We have sporadic problems. The tendency of collectors — and we've kind of run the circle on the thing. These are people who sit at a desk and make hundreds of phone calls a day, whose sole purpose is to generate the money into the coffers so that they can have their take. They will take the easiest possible way available. If a collector finds that the easiest possible way is always to contact the employer, not to ascertain salary, not to lay any groundwork for legal action, not to confirm that the employee actually works there, but solely to say, "Mr. Employer, you'd better talk to that employee and get him to pay me," then we run into potential problems.

The difficulty may not be as great for the many legitimate debts out there. The difficulty with collection agencies is that the collector is dealing with a piece of paper which is self-generated, usually a follow-up card of some sort. There's no proof of debt. They have no information other than the original amount and who their client is. So they don't have any basis on which to make an opinion on whether or not the debt is legitimate, and there are a lot of situations in which the debt is not legitimate: the person is the wrong one or it's been paid or whatever — the slow accounting system. To jeopardize somebody's employment in a situation like that is really unfair. That's not playing by the rules. In talking to the industry, the legitimate players in the industry acknowledge that.

MR. CAMPBELL: Mr. Chairman, to the gentlemen. What happens in the case of loan-sharking? They have a different way of collecting money, and I just wonder if anybody has ever touched on that or discussed it.

MR. DUNLOP: The Criminal Code deals with a lot of their methods of collection.

MR. CAMPBELL: This would usually be after the fact.

MR. DUNLOP: That's true enough.

MR. BENCE: What we're really talking about is a piece of provincial legislation in the regulation of normal collections within the marketplace. As soon as you get into loan-sharking, the Criminal Code addresses it as far as the initial lending, the charging in excess of 60 percent per annum. If there is any physical violence used in the collection of the debt because of non-repayment, again it's a Criminal Code matter. They don't fall into the hands of the provincial government. It becomes a police matter. We do occasionally get information that leads us to believe there may be a criminal rate involved or that there may be some sort of strong-arm tactics. That's not for us to investigate in order to try to mediate a resolution between the debtor and the creditor. That becomes strictly a police matter.

MR. SHRAKE: Could I go back one more time to your idea of dropping the approval process for those form letters? As I understand, right now you're getting very few complaints. So I think that's good. You're talking about 1,000

letters, or thereabouts, a year that you have to review. That is a lot of letters. I guess it would probably take a staff person a decent month to go through 1,000 letters. But if you drop that, you throw the onus on the public to respond. Well, the public doesn't contact the department all the time. A lot of the public don't write letters and make phone calls. But most of those that do, phone their MLA. Some will write letters, but in my case, coming from the city of Calgary, a lot more phone me. I'm in a lower income area, and most of my people are in debt about this time, the way the process has been going. I really don't want those phone calls. So I'm trying to offer a compromise on your suggestion that we just drop that process of approving those form letters.

I used to work for Interstate Finance — I worked in the States — and that was a real rough and tough company. I worked for Fairway Finance Company in Edmonton in years gone by. I worked for Laurentide Financial Corporation, and I once worked for Sears, Roebuck. Sears probably has more form letters than any company in the works — a form letter for all occasions, and the old computer can really fire them out. But they do not change; not even 10 percent of those letters per year.

So why don't you just go and approve whatever letters they send in this year, and then drop that system of having to approve all their form letters? Once they're approved, leave those on hold. They can keep using those that are approved till doomsday, unless we change the law or something, and only approve the new ones. If Sears wants to bring in a new tougher, tougher form letter, that's a new one; they have to send it to you. You would probably get less than 10 percent of those letters. That's only 100 new letters a year, and your one staff person could probably handle those quite easily in about a week or so.

What would you think of that idea as a compromise on completely dropping the approval process for form letters? I do know that if I've got to send all my form letters to the provincial government and get approval of the darned things, I'm going to watch carefully what they are. But if I don't have to get approval of them, then in times when collections are down and we're not really getting the bucks coming in, I'm going to crank those letters up meaner and tougher till, finally, you can get them where they sizzle. You put the letter in the mailbox, and as soon as the lady takes it out of the mailbox, she feels a shock from the darned thing. You open it, and it just rips and tears. She gets a letter that will really upset her badly. It will get worse and worse and worse, and then finally they're going to come back to us and we're going to go back to you. Then we're going to spend more staff time trying to pursue the complaints.

So what would be your reaction to just dropping approval of the existing letters, and only when they're going to bring out a brand-new form letter do they have to send it to you for your approval?

MR. BENCE: The only comment was the one I offered before: it's certainly worth considering. Really, I guess it's up to the committee to make a recommendation in that area. My two concerns are the letter that sits in the file for years and years and I end up with a 40-year-old file because a particular form letter is never altered, and changes in the marketplace or in administration.

MR. SHRAKE: You didn't have to shuffle those papers, though.

MR. HURLBURT: I think our judgment call was "drop it". If the committee would like to ask us to produce a scheme for doing it, we would be very happy to do so; no problem. I think we have tried to meet the kind of concern that came from the other end of the row; namely, that we don't think we should go too far in the direction of inhibiting business people carrying on their business. So we may have drawn the margin a little too far over to the right; I don't know.

MR. CHAIRMAN: I think what we have to consider here is: to keep people from abusing their rights in collection, is it severe enough to have a regulation that says they'll have guidelines on what kind of form letters they shall write, and if they break those guidelines, they will automatically lose their licence or be charged and prosecuted for that. Or the other side of the story: is it necessary that we keep reviewing these form letters and disallowing certain letters that we consider are beyond what is acceptable in the way of threats or whatever? That's really what we're talking about here, isn't it?

MR. DUNLOP: Mr. Chairman, we're talking about that and one other thing, which is methods of debt collection other than letters. The prior vetting, of course, only helps on the letters, and certainly people in the industry told me that most of their time is spent on the telephone. Personal visits are too expensive; it's too expensive to get the collector out of the office and over and then back. And letters are thrown away. So the real method of collection is to get the chap on the phone; hence the need for a set of standards which apply not only to letters but to any kind of collection activity.

MR. CHAIRMAN: Quite often when there is a problem collecting a debt, it's because there is some dispute about whether that debt is actually owed. Do you feel that by restricting the type of action that collectors can take when they go to collect these debts will either put that debt into court or have it dropped more quickly than by more relaxed debt collection?

You see, I keep hearing today — and I can agree with that. You'll have collection agencies that will write someone a letter every three months saying, "You owe this much money, and if you don't pay it, we're going to take court proceedings in so many days." Then three months later another letter will come. Most of the time in those cases that debt is not actually owed. Quite often part of it is owed. The debtor is not able to go to the debt collection agency and say, "I don't owe all this," because the agency doesn't know how much he owes and could care less.

So with those kinds of cases, you'd be better to get them in court and get them settled rather than the collection agency working on them, or else get the person the debt is actually owed to to take part in it.

MR. BENCE: If I could just offer a couple of comments. I catch a grain through your comment and a couple of other points that were made earlier. One was: what types of debts are we referring to here, commercial or debtor? If there's a dispute on a debt, then let it go to court; fine. If there is a valid dispute, I don't think anybody is going to argue that, including the business itself. It becomes a business decision: is it worth pursuing it through court?

The fact of the matter is that what we're referring to is usually smaller amounts of consumer debt, noncommercial debt. Usually the debtors are, I guess, not well-equipped to handle the pressures of somebody on the other end of a telephone. There are extreme pressures that come through these telephone calls, and that is kind of the end of the process as far as the collection agency is concerned. We've spent a lot of time talking about the pre-vetting of letters, and I think we've hashed around some other ways of doing it. The letters are not the problem, because the letters are generally the softening blows. The true collection comes with the phone call, in which the gloves are off. With some of these people there are no holds barred; they become personally involved in the debt. Generally, they're talking about a debt which, because of its size, would probably not be approved for legal action by the creditor. So you're really talking about the final action by the collection agency.

What we've discovered now is that in the majority of debts where there is an extended period involved — and earlier we discussed a two-month limitation on these; an agency can be involved for two months — it is generally not an unwillingness to pay; it's an inability because of the economic situation. We're also finding that in a majority of cases — and I gave you a figure on the number of complaints, but keep in mind the volume of collections. We're talking about an industry that generated $45 million worth of collections last year, just within the licensed portion of the industry. It's a very, very small part, and many of them are bending over backwards in their efforts to maintain a good business climate. They will hang on to an account for six months, and in some cases the debtor will freely contact them every two months just to update them on the circumstances.

What we're really looking for are guidelines of nonacceptable behaviour. We're not talking about the good guys in the industry. We're talking about the creeps, and there are a bunch of them in there. The only weapon we have right now is this general phrase of "in the public good", which is a very uncomfortable weapon to wield from an administrator's point of view.

MR. ALGER: Mr. Chairman, we're laying a wonderful base, I think, for further conversation today and tomorrow. In that vein I'd like to have this story resolved, if I could. It was a

Polish man, I believe, in Manitoba. His dog bit the neighbour's kid. You've read this story or seen it on television. The neighbour sued for $300, and he couldn't pay. They went to work on him legally and sold his car for $25. That didn't make up the $300, so they sold his house for $5,000. The deal now is that the lady, having heard this story, would be quite tickled to death to give him back the house for $17,000.

Where were you people, the Institute of Law Research and Reform, then? At that point in time there was a man who needed protection, in my estimation. The hair on my neck just bristled every time I heard the story. I've heard it twice now, on television. Unlike you, Donald, I haven't seen your ads, but I did see this one. I can't believe that we can legally do that to a man. This is a debt collection of another style, Mr. Hurlburt, but it was a legal one.

MR. HURLBURT: Mr. Chairman, there are some legal differences here. If the car was seized, the debtor here would be handed an envelope addressed to the sheriff and told, "If you don't want it sold, just put down something on this piece of paper, put the paper in this envelope, and put the envelope in the mail." It would then be necessary to go to court. The debtor could go to court and say whatever he had to say.

The sale of land or the house: for one thing there would be an exemption, which I think you put up to $40,000 at the last session. Besides that, it would be sold through court process. I'm not saying Alberta is necessarily ahead of Manitoba or that something like that couldn't happen, but there are some legal protections against it. Actually, we will be looking later at the question of enforcement of unsecured claims generally.

MR. DUNLOP: I was going to say that that will be part of the next step of this project. One of the real problems with seizing and selling goods is that they don't get near their value at the sheriff sale — exactly the problem the man had. I read the same item. It's a very real problem, which we'll have to wrestle with.

MR. ALGER: But presently it's as legal as all get out. They can do it. It was a sheriff seizure style of thing, Mr. Hurlburt, and took place so fast this poor old man didn't even know what happened to him.

MR. HURLBURT: Mr. Chairman, we probably are getting into the other topic. Injustices are probably going to happen whatever your system does. If you set up your system so you stop all injustice, you're probably going to stop everything. I have grave problems with the legal system. It does grind on, and very often ... I could probably tell you another terrible story that did happen in Alberta, on a different legal aspect but just about as bad. I don't know how to stop it. You can design the laws as best you can, but that doesn't mean they're going to operate that way. I don't know.

MR. R. MOORE: Mr. Chairman, getting back to this area of exemption of lawyers, did I understand the gentlemen to say that in their proposed changes lawyers were exempt from licensing? I accept that; double licensing isn't necessary. But did I understand you to say that, other than that, they were subject to the changes? I read in the green book that "lawyers would be exempted from the Administrator's power to issue cease and desist orders." I don't see why lawyers should be exempt from that area. If they are breaching any of these standards, the Administrator should be able to do that, because lawyers are a big portion of this collection process. They're there, and the very fact that you get a letter from a lawyer implies in the public's mind that, gee, all sorts of bad things are going to happen — I'm going to court; they're going to seize. It's just what it implies because the legal profession is involved. So I think they should very much be subject to it.

Now, if we go by the green book, you say you're going to exempt them. If I understood what you gentlemen said, you aren't. Where are we in that area?

MR. HURLBURT: We weren't as complete in our answer as we should have been. Yes, the recommendation is that the Administrator wouldn't have the power to, say, cease and desist. Actually, at one stage we designed it another way. But when we talked to the Law Society and tried to see where the thing would pinch them unendurably, they said — and I think we accepted this — that if you've got a lawyer who is engaged in conduct which will become unlawful, will clearly be unlawful, then "We are the people to tell him to cease and desist." The Administrator can bring it to the attention of

the Law Society. The Law Society has its own discipline function. Because, coming from the outside, we have this independence of the Bar, which in itself is a very important thing for the client, the fewer outside legal controls on the lawyer, the better. The Law Society has the kind of power to stop it, and therefore we would look to the Law Society to do so.

What I should have been saying is that the rules will apply to lawyers. Lawyers can be charged. Under the proposed statute, under our recommendations, a charge could be laid against a lawyer and the lawyer convicted. I think that would automatically be unprofessional conduct, so he'd get another swipe from the Law Society. I think that is something to remember, that lawyers are under double jeopardy. They can be charged under the law of the land, and they can also be hit for the same thing by their own professional society. That's the only answer I can give you, anyway.

MR. R. MOORE: I have another question related to the area of restricting a creditor from saying, "I'm going to go to your employer." One of the big tools of collecting a debt is garnishee and the threat of garnishee. It's clearly a threat of going to your employer when I say I'm going to garnishee your wages.

MR. HURLBURT: Mr. Chairman, if I may. We would not stop the creditor from saying to the debtor, "I'm going to garnishee your wages," nor would our proposal stop the creditor from actually garnisheeing the wages. What it would stop him from doing is going to the employer and saying, "Lean on that employee and make him pay." Under our proposals he could still follow existing legal process, including garnishment of wages, and he could threaten the employee. It would stop him going personally; it wouldn't stop him sending his garnishee summons.

MR. CHAIRMAN: Any other questions or comments?

MR. LYSONS: There is one other question. In your opening remarks you said that a collection agency couldn't phone a debtor between 10 o'clock and 7 o'clock. I appreciate that there are reasons for that. People must have their rest and sleep. Some of these people can make a bloody nuisance of themselves. On the other hand, being an old debt collector from way back, many times that's the only way I could stir these people. I wonder if section 3 wouldn't have laid claim to preventing the abuse or oppression. If you put in the time, between ten and seven, albeit it's reasonable for most people, with a lot of people you just cannot get them to answer the phone.

MR. HURLBURT: Mr. Chairman, for one thing, it's in the Act now. It wasn't our idea. Do you want to speak to it at all, Dick? We did debate this one.

MR. DUNLOP: We talked about it, and there were proposals to widen it and to narrow it. The proposal to widen it was to say that not only could you not phone a person between ten and seven but you couldn't phone them on Sundays. Some people were talking about holidays. We would have eliminated the whole week by the time we were finished. But we backed off from that. Then there was a proposal the other way. Collectors suggested — not very many. Collection agencies by and large said they could live with the ten to seven limit. They said that occasionally they have a problem because the only time they can get the person is late at night, as you say. We therefore thought about the possibility of creating an exception. Perhaps if you get the permission of the Administrator, you can phone between these hours, or something of that sort. But eventually we gave up on it and said that there has to be some time for rest, as you said. Most of the collectors said they could live with the ten to seven limit, so we left it. We left it applying only to collection agencies. So it wouldn't apply to a creditor collecting his own debt or for that matter any other person, apart from a collection agency, collecting a debt.

MR. LYSONS: I'm sure you've looked at it. It just seemed that it put an extra barrier there. If it's only related to collection agencies and not to the general public, then I guess it's okay.

MR. CHAIRMAN: I guess we've been over the total of the proposed changes. We don't have a quorum, so we can't make a resolution at this time.

MR. CLEGG: Mr. Chairman, I think the

practice has been to leave one item over to the next meeting, anyway. The question we cannot put is on the question of Defences to Provincial Charges.

MR. CHAIRMAN: Yes. That was on the agenda for a decision.

MR. CLEGG: We can do that first thing tomorrow.

MR. CHAIRMAN: Okay.

MR. SHRAKE: Mr. Chairman, if we do this again someday, I wonder, when we're looking at these things, if I could request the Institute of Law Research and Reform to look at and come in — or I might come in with it as a private member's Bill someday — with something to make some sense of the foreclosure of mortgages in this province: when the guy can't keep the house, some businesslike process whereby he can sign a quitclaim and turn the house over in an orderly fashion and so on. We've got chaos in Calgary right now, and I know I'd welcome some words of wisdom from the Institute of Law Research and Reform on this particular matter.

MR. HURLBURT: Mr. Chairman, we certainly are generating words on that one. We're working on it; we appreciate the problem. We agree that things are in dreadful shape. We hope to make some suggestions about it. We have it in hand, for what that's worth. That doesn't mean that other people shouldn't be working on it too.

MR. SHRAKE: If we have another meeting, I'd like to bring a guy named Reg Ryan. He's the president of MICC, the Mortgage Insurance Corporation of Canada. I think they've been taking a bath in Calgary and Edmonton these last two years.

MR. HURLBURT: We've talked to MICC. You run into what becomes a political problem, Mr. Chairman. It's the lack of ability to sue on the covenant. I've read in the newspapers that the Attorney General . . .

MR. SHRAKE: There should be a system that when the person gives the house up, he and the mortgage company sit down and release the thing and go away, so we don't get those dollar companies and all the weird and strange things that happened last year.

MR. COOK: Mr. Chairman, in view of our lack of quorum, I don't think we can make any motions or decisions. I think the only thing we can do is move a motion to adjourn. Having said that, I'd like to move that.

MR. CHAIRMAN: Thank you. Is it agreed?

HON. MEMBERS: Agreed.

MR. CHAIRMAN: Thank you.

[The committee adjourned at 3:22 p.m.]