



# **STANDING COMMITTEE ON HUMAN SERVICES**

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**STANDING COMMITTEE ON HUMAN SERVICES  
2006**

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Saskatoon Eastview

Mr. Wayne Elhard, Deputy Chair  
Cypress Hills

Mr. Lon Borgerson  
Saskatchewan Rivers

Ms. Joanne Crofford  
Regina Rosemont

Hon. Glenn Hagel  
Moose Jaw North

Mr. Don Toth  
Moosomin

Mr. Milton Wakefield  
Lloydminster

[The committee met at 13:30.]

**The Chair:** — Good afternoon. We're ready to start the hearings, the public hearings, or resume the public hearings before the Human Services Committee on Bill 12, The Consumer Protection Amendment Act, 2005.

My name is Judy Junor. I'm Chair of the Human Services Committee. To my left is Joanne Crofford, Lon Borgerson, Peter Prebble sitting in for Glenn Hagel. On my right is Wayne Elhard, the Vice-Chair of the Committee, Don Morgan sitting in for Don Toth, and Milt Wakefield. Our Clerk is Iris Lang, and our researcher is Justin Messner.

Before we start I just want to briefly say, the purpose of the public hearings is to have input from the public and from stakeholders on Bills that are before the Legislative Assembly.

And we are in an early stage of this Bill, preparing this Bill, and it is not set. The committee will hear presentations. And then we'll deliberate after the hearings are over and decide if anything needs to be changed with recommendations from the committee. The power and the mandate of the committee is to make recommendations to the Legislative Assembly about changes that we see that could have occurred.

So we had public hearings on Monday and did hear some issues. And I'm looking forward to hearing from more presenters today. Our process is that we have half an hour set aside for each presenter. And we'd like you to leave some time at the end of your presentation, so we can have questions from the committee to you.

And I would welcome you here. If you introduce yourself and who is with you, and then you can begin your presentation.

**Ms. Robinson:** — Okay. I'm Ruth Robinson. I'm co-president of the Consumers' Association of Canada, the Saskatchewan branch. And Darrell Noakes is here; he's a board member of CAC [Consumers' Association of Canada] Saskatchewan. And we're very pleased to have this opportunity to give our opinion and make a few suggestions and so on.

The Consumers' Association of Canada thanks you for this opportunity to present our views on Bill No. 12. In the 1990s, CAC Saskatchewan advocated for and supported The Consumer Protection Act. It has helped make the Saskatchewan marketplace fairer and more equitable for both consumers and businesses.

When consumers are victims of unfair business practices, they become distrustful and sometimes associate all businesses with similar unfair dealings. In addition reputable businesses can also suffer unfair competition caused by others that engage in unfair business practices. We welcome these proposed amendments which will further strengthen the Act.

CAC Saskatchewan is a voluntary, non-profit, non-partisan organization whose objectives are to provide consumer information and education on marketplace issues, to represent the consumer interest to government and industry, and to advocate action to improve the quality of life for consumers.

Traditionally CAC has always taken a special interest in vulnerable consumers and those with very limited incomes.

Through our consumer help office, we deal with a number of calls involving contracts, and many of these are contracts for services which are provided over a period of time. Common complaints involve cellphones, alarm systems, home renovations, and fitness centres. Consumers enter into these contracts often in a very trusting manner, not always aware of the consequences down the road if things don't work out. Unfortunately people usually call us after the fact, and we end up trying to fix problems rather than prevent them.

This Bill lays out the rules, making them clear to both consumer and provider. The requirements included in this Bill will ensure that consumers are better informed and, if there are problems, will be better protected. Therefore CAC Saskatchewan supports this Bill which will provide a fairer marketplace which is a benefit to both consumer and provider.

We have a few specific comments and recommendations for your consideration. Some of these issues, we realize, might be dealt with in the regulations. Under the future performance contracts, under definition of services, we assume that having a home-based business would not affect these provisions which we're talking about for consumers in their homes and so on. Membership is mentioned there, and we suggest that perhaps it be defined or clarified as to exactly what membership meant in that context.

In 76.20, cancellation of pre-authorized payments, in this section and the others which are similar, CAC Saskatchewan suggests that there be an obligation requiring the supplier to give notice to the consumer that the cancellation has been completed.

Personal development services contracts, application of part, and in (2)(a)(i) and (ii) these are groups that would be exempted from being part of this. And we recommend that these categories not be exempted. We expect that consumers who purchase services from these corporations, organizations, and government agencies to operate in the same manner that is put forward in this Bill. If consumers are to be protected, it should make no difference if the service provider is a for-profit business, a non-profit organization, or a government agency.

The term of the contract replaces the one-year term included because long-term contracts often present problems and risks for consumers due to business bankruptcies, changes experienced by the business, and/or personal life changes. And we have a similar comment for the one under travel clubs.

Now when it comes to renewals, we think that this section should be strengthened by not allowing renewals until the latter part of a current contract. Otherwise consumers continually face pressure to renew. And when they do, the situation becomes the same as a long-term contract. If after four months into a contract somebody is renewed, then they have 4 plus 12, or 8 remaining and 12 more, so it would be like 20 months remaining on their contract.

It also might mean that, depending on the payment structure,

businesses start relying on the cash being brought in long before they start to deliver the services. Now we realize that monthly payments will relieve some of that.

Cancellation, we think that this is an important part of the consumer protection piece and assume that the regulations will provide more details. And this is cancelling for personal life changes; that's what it was referring to there.

Now under remote contracts, the disclosure of information, this clause is important for consumers because in a supplier-consumer transaction the supplier almost always is more knowledgeable about the rules. However we have some concern about the policing of it.

Under cancellation for remote contracts, CAC Saskatchewan suggests that the period be 10 days, not 7 as suggested here. And that is because the direct sellers and telephone solicitations have a 10-day cooling-off period, and this would be more consistent.

Delivery or commencement day, we're pleased to see a delivery or commencement day required. We think this is really a good step forward that people sort of know it's written down when it's supposed to begin.

One suggestion we have for suppliers of a contract is that they indicate on each contract that it complies with requirements for The Consumer Protection Act. This would give the consumer some confidence just as a CSA [Canadian Standards Association] mark gives confidence. If the contract did not meet the standard prescribed by the Act, it would be false advertising as well as a contravention of the Act.

If The Consumer Protection Act and these amendments are to truly benefit consumers, consumers need to know what protection they have and what requirements there are for business. We wonder what plans there are for consumer education about the existing Act and these changes. One suggestion is an insert into utility bills. CAC Saskatchewan would be pleased to work with the consumer protection branch on increasing consumer awareness and providing education to consumers on these amendments and on the Act as a whole.

Now the penalties for contravention seem strong which we support, but we wonder how these provisions will be enforced. If the enforcement is mainly complaint driven, then it's even more imperative that there be a comprehensive education program on the contents of the Act.

We also suggest that the Saskatchewan government investigate the possibility of establishing a consumer ombudsperson to look into complaints when the usual channels have not worked.

In closing CAC Saskatchewan strongly supports Bill No. 12 and hopes that our suggestions will be considered.

**The Chair:** — Thank you. Questions? Ms. Crofford.

**Ms. Crofford:** — Thank you very much for your presentation. We have heard some similarity between what you're saying today and what some of the providers of the services are saying, but also some differences. So I wanted to ask you a few

questions about those.

One of the things that people pointed out yesterday — who operate particularly fitness businesses — was that in the case of one particular business they have a maximum of a one year that you could pay upfront although they don't particularly encourage that. And then after that it rolls over into a monthly payment.

The other thing that they mentioned is that the additional paperwork that would be created for their businesses to have to go this way, and they wondered why they would be different, for example, than SaskTel or anyone else who continues providing your service unless you specifically ask them not to. And I thought that was a fairly legitimate point.

Is there a reason why we could or couldn't accomplish our goal by perhaps having a maximum amount of time an upfront payment could be paid for in a contractual arrangement rather than putting the onus of this renewal process on the businesses who would then have to be able to notify, quite often a large base of casual customers, that they had already been attending for a certain length of time.

**Ms. Robinson:** — Most of those customers are coming into the facility and so it's not really having to . . . I mean they're coming in and people are seeing them. I guess what we worry about always is the negative option. And we know that we're all lazy and how many of us don't read things that come. And they say, okay if you don't read . . . You send us something saying you don't want to keep on. We're just going to keep you on. And so that's . . . Consumers are lazy.

And that's one of the things that we would not be too pleased and might be worried about. But certainly having a monthly payment so that they were never more than a month . . . I mean you could cancel then at any time. That would certainly be better. But then you're really on a month-by-month contract. But we think after a year people might want to take a look and see if this is really what they want to do. But I mean it certainly would be better than the situation.

**Ms. Crofford:** — Yes I think I did take their point that given that people could join on any day of the year that puts you in a constant process of having to keep track of who started when. And being involved in an organization myself that sells memberships, I know the difficulty that could create. But we won't mention which one.

The next thing that I wanted to ask about was, I thought this was an interesting idea that a contract could indicate that it complies with The Consumer Protection Act. Is that done at all now or is that just . . .

**Ms. Robinson:** — No. Remember I just said, wouldn't that be good if we had something on there that said, like the CSA mark, which you know that it has to meet the standard for that product. This would be something that this contract complies with and it would not, I mean, necessarily be mandatory. And the CSA mark is only mandatory if it's mandated that you have to have it on electrical things. But it might be something that would give people who are more vulnerable and not so knowledgeable about the consumer marketplace some sort of a

confidence that this contract did meet the Act without having to go and read all of this.

**Ms. Crofford:** — And the final thing I noted, you've mentioned here that common complaints involve cellphones, alarm systems, home renovations, and fitness centres and now we have had the majority of our presentation here from fitness centres. What are the nature of the complaints on these other, like, not to go into too much detail.

**Ms. Robinson:** — You mean like cellphones?

**Ms. Crofford:** — Yes. Is it about the length of a contractual . . .

**Ms. Robinson:** — How people get into deals and then it doesn't work, and they can't get their . . . Or it doesn't work and they say oh yes it'll work where you live wherever that is and you know. And they sign themselves up for like three years at a time and it's very, very difficult. Any many are lower income consumers and they think they have a need for this. I mean television tells us we need a cellphone.

And home alarm systems . . . sometimes it's when people move. Sometimes they aren't getting good service and they want to get out of the contract because the service is lousy, and they're into a contract and it takes a lot of work to get themselves out — that kind of thing.

**Ms. Crofford:** — And I think home renovations, everybody's got their own . . .

**Ms. Robinson:** — Everyone has experienced that one.

**Ms. Crofford:** — Their own horror story there. Okay. That would be it. Thanks very much.

**The Chair:** — Mr. Morgan.

**Mr. Morgan:** — We heard from some of the fitness facilities earlier on in the proceedings, and the sense I got from them — and I don't want to speak for them because there's more of them yet to come — was that they wanted to have an initial commitment from their member that they would join for a year.

There's two reasons that they gave for that. One, they felt that if the member was committed for a year that fitness would become a lifestyle. They would buy into it, and there would be a greater chance that the person would stay on an indefinite basis, that it would be beneficial to the member's health and beneficial to the business that they would do it.

The other reason they wanted a one-year initial membership was to ensure that they had appropriate budgeting and financial planning so that the fitness facility could do whatever first year renovations was . . . Most of them when they were speaking yesterday said once they were there through the first year, if the renewal was an automatic renewal that went month-to-month, or that it was a 30-day notice, they weren't too troubled by that. And most of them didn't seem too troubled that they didn't feel that they needed to have three months or six months prepaid. They were reasonably comfortable if they had one month as long they had pre-authorized chequing and that it would be up to the member to opt out.

I'm just wondering whether you feel comfortable, whether your association feels comfortable with an initial one-year commitment. Now I'll ask you next about the rights to counsel under unusual circumstances, but whether you think that's reasonable to . . .

**Ms. Robinson:** — Well it certainly is reasonable from their point of view, and it's good that they realize that these three and five-year contracts — whatever they've been — are not really that good for consumers. But I mean what about if I come to Regina for three months and I want to go to a fitness club? That means I can't get a membership.

**Mr. Morgan:** — No they're not saying that there's a minimum of a year.

**Ms. Robinson:** — Okay. Sorry, I misunderstood you then.

**Mr. Morgan:** — They're saying for a certain rate you would register for a minimum but if you wanted to pay a higher monthly fee . . .

**Ms. Robinson:** — Yes but you could get a three-month membership or a one-month as well. Okay I misunderstood you; I thought you were saying exclusively one year. Okay.

**Mr. Morgan:** — If you wanted to do it for three months, they were fine with that.

**Ms. Robinson:** — Okay I'm sorry; I misunderstood you.

**Mr. Morgan:** — Then you'd probably pay \$10 a month more or something. So you're comfortable with . . . if the consumer knows it, with a one-year minimum, and if there was a renewal of month-to-month beyond that or something.

**Ms. Robinson:** — Well we're certainly supportive of the one-year because it's a change for the better from what the situation has been out there. We aren't . . . And then it was month to month after that. But when we read about the renewals we would not be . . . We were sort of thinking they were going to renew them for another year or a long period, and we wouldn't be comfortable with that unless it occurred at the last part of the contract because then you're into multi-year.

**Mr. Morgan:** — Okay. My understanding, when talking to the presenters earlier, was that their focus was on year one. Beyond year one, they were reasonably comfortable with either a 30- or, you know, a 60-day cancellation provision. If a person was going to cancel during the first year, the way this Bill is drafted right now it talks in terms of a material change in circumstances. One of the objections that I think most people have is that we don't know what a material change or who would have the right . . . And what it does is, it's an invitation to a lawsuit. And I'd rather be selling fitness memberships instead of lawsuits, even though I'm a lawyer.

You know, I don't know what would be appropriate on that, and I guess I wouldn't mind hearing your association's comments on what might be a reason that would allow either the facility or the consumer to cancel at some point prior to the regular expiry date.

**Ms. Robinson:** — Well I don't know why the facility would cancel. But reasons that the consumer might cancel would be if a facility changed location. You know, you were walking there, and all of a sudden it's five miles away. You know, maybe you get more fitness that way, but you know . . . So I think there's things like that. If it was clean when you went in and decided to join this one, and it wasn't being kept up, those kinds of things.

As far as people go, I mean, breaking a leg means that you're certainly probably out of commission for a while, and you may be doing your fitness through a physical therapist rather than at a fitness club for a period anyway. And I think that some fitness clubs are very good about that, and if you have a membership and you're going to be out of commission for a couple months would then add those couple of months. I know there is some that do that — add the couple of months on at the end and so that you can continue. You get your same number of months, but they just wouldn't all be in the sequence. And so I would think things like that would be a material change.

Now we also know that people lose jobs, and they are into contracts and this is often why we get calls to our office. People's personal financial circumstances have changed. And how that is going to be managed, we don't know. It doesn't really say here, and I assume that will be in the regulations.

**Mr. Morgan:** — I don't have an answer for that. You know, I think the facility . . . and I don't want to debate it. I mean the facility has made a commitment. They've built and prepared a facility that they intend to make available. If a person loses a job, whose fault . . . you know, it's not the facility's fault.

**Ms. Robinson:** — We have to come to some resolution that's fair to the business, but also recognizing that if you . . . People in all good faith sign up for a year, and then, well, things happen like that. Their home circumstances change. They lose their job, their health, and they are in a totally different . . . But we also realize the business concern about that, that people have signed a contract with them. And so it'll be interesting to see how this is worked out in the regulations.

**Mr. Morgan:** — The cooling-off period has been increased, and most people sort of regard that as an initial hurdle and not hugely problematic.

But what do you say to a business that says yes, we want to make it available to somebody, but there's still a cooling-off period? We don't want to provide them services during the cooling-off period if they can walk away from the contract, you know.

I mean, how do you start providing services when you're still within a statutory cooling-off period, you know, if somebody walks in on Thursday morning and says I want to take lessons right now?

**Ms. Robinson:** — Yes. Well it is a problem and I know that people who order products, that consumers find it problematic as well because they place an order, for example, for something that's custom-made and the company won't start making it until the cooling-off period is over because the person can cancel the contract up to that point. So the consumer is saying I want this right now, and the company is having to say we can't start

making it.

So I guess it's . . . I think many companies would let the person start at that time and if they do cancel after they've given them 10 days of free fitness and . . . I think generally very few consumers would try to take advantage of that type of situation.

**Mr. Morgan:** — Do you, does the consumers' association have any comments to make regarding travel clubs?

**Ms. Robinson:** — Not really. We've never had any complaints. We've read the news reports, sort of the horrendous type things in the news. But other than that, we don't really have anything to say about them.

**Mr. Morgan:** — Okay. Thank you very much for coming. I appreciate your input a lot.

**The Chair:** — Mr. Borgerson.

**Mr. Borgerson:** — You may have touched on this, but it came out of some of the other presentations that we had, the question of how the cancellation by a customer could be made.

**Ms. Robinson:** — Can you refer me to that section?

**Mr. Borgerson:** — I don't know if I can get you that quickly, but someone can look for it while I explain.

**Ms. Robinson:** — Are you in fitness clubs or contracts?

**Mr. Borgerson:** — With fitness clubs, yes.

And one of the arguments that was made was that if in fact there is a written contract to establish the contract, that there's a written procedure, that that should occur to close off the contract. And so one of the presenters said the customer should have to, in writing — and in fact another person added, and in person — should cancel a contract. They shouldn't be able to do it with a phone call for example.

**Ms. Robinson:** — We would be supportive of that because phone calls become a he-said-he-said affair, you know. People say well I phoned. I left a message and, you know, we all know how these get. We would, I think, be quite in favour of it.

But I assume that that would be covered in the regulations, and we'll have another chance to discuss that issue, exactly how the contracts would be cancelled.

**Mr. Borgerson:** — Yes. It's 76.39 actually, that section.

**Ms. Robinson:** — 76.39.

**Mr. Borgerson:** — It seemed like a reasonable request that it should be done in writing.

**Ms. Robinson:** — Or that it be done, I mean if you are in the centre, it could be done and signed by both. And the centre might find it handy to have a little piece of paper with that on it and just pull it out and they both read it over, agree to it, and sign it. And it's done.

**Mr. Borgerson:** — And you've indicated that you haven't had a lot of complaints in the area of travel agencies. But in terms of personal development services, have you had complaints at all to your agency?

**Ms. Robinson:** — Yes we have. Most ... [inaudible] ... fitness centres, but in Saskatoon there was recently ... sometimes people taking courses, and courses offer a lot of things. And we were ... Well Darrell found this under the Internet, and it was a warning from the Ontario minister of consumer affairs to young people about modelling contracts, and saying — it was more in the type of a press release or a warning — and saying that they had a lot of trouble with that kind of thing.

Maybe Regina and Saskatoon aren't hotbeds of modelling, but, you know, people coming up and approaching young people and saying, my you're beautiful; have you ever considered modelling as a career? And then they get these people into courses where they pay a lot of money with no ... [inaudible interjection] ... it happens to you all the time? Okay. But with no hope of a job at the end.

So there's always, particularly with vulnerable consumers who tend to be people who are illiterate ... Lots of people who, given this, they can't read and understand it. I mean they might pretend to read it, but they don't. And they put their signature at the end and they're ... I mean the literacy rates are really much higher ... their understanding. They might be able to read a little bit, but understanding the ramifications of what they read. And so people who come from other countries, people with different kinds of disabilities, young people, and older people are all vulnerable consumers and get into these kinds of things.

**Mr. Borgerson:** — Thank you.

**The Chair:** — Mr. Wakefield.

**Mr. Wakefield:** — Thank you, Madam Chair, maybe just a couple of questions to follow up.

What you have written here, I appreciate what you have written because I think it's quite explicit. How does this compare? We're talking really about fitness clubs here generally. How does that compare with other areas of consumer protection? Is this kind of going in a different direction than other areas of consumer protection in any way?

**Ms. Robinson:** — Well I've had to say about fitness clubs that we ... I think they've done something to clean up their act a bit, or I don't know what it is. But anyway we don't have the complaints or ... [inaudible] ... had problems hitting the media that there were maybe ten years ago. However we do know that fitness is really ... Some people are advocating that people who join fitness clubs and go should receive tax deductions and all sort of things to encourage people to get fit and to stay healthy.

So we know that when something like that comes, there's going to be an expansion of an industry. All sorts of people who are unqualified and often non-ethical will jump in. Remember the insulation in the early '80s? Everybody, anyone could put up a shingle and say, I can insulate your home. And they didn't

know anything about it. And there were horrendous problems.

And so we looked that there might be an expansion. I mean, people in the fitness area might be glad to hear that there's going to be more business, and I don't know if this will occur or not. But we know that that's a dangerous time, when there is apt to be a big expansion because people wanting to make a fast buck will jump in.

**Mr. Wakefield:** — Thank you. Underneath the section of cancellation you commented that you think this is an important part of consumer protection, and you assume regulations will provide the detail. There's a lot of hope there. How would you suggest, if you could, how would you suggest regulations are formed? Should it be very specific items? Should it be regulations formed on a kind of a direction, a kind of a spirit of how it should be handled? Or should it really be much more open to interpretation? How would you like to see that?

**Ms. Robinson:** — Well I'm not much of an expert on legislation and regulations, but I think it has to be clear enough that there's something to fall back on that everyone understands. And that's one of the things we liked about this, that it sort of laid out what the provider of the service has to do, and so the consumer knows what to expect. It has to be in writing. It has to have a commencement date, you know, all of those things, and how to go about cancelling. So it's laid out. And I think if everyone understands what the situation is, it leads to fewer problems.

And so I think that it would have to be fairly specific, but nothing can cover every situation that might arise, so there has to be a spirit of it as well. And I guess the court gets to decide if someone takes it that far, what the regulation really was saying.

**Mr. Wakefield:** — Thank you. In the area of ... You made a comment here as well; the penalties for contravention seem strong, and we support that. I think the penalties that were being contemplated or referred to, or at least my assumption was, that they're really quite severe. Is that the right thing to do? I mean it seemed to me this was more severe than maybe penalties for other problems with legislation or with law.

**Ms. Robinson:** — Well I have to admit that we didn't research it with looking at other penalties, but we think that they are substantial enough that people would think twice before breaking that law. But we also know that there can be honest mistakes and that these are, you know ... and forgiveness in certain cases and so on.

So we know that some of that would be taken into consideration. But we think if we are going to bother to have an Act and have an Act with teeth, there has to be some sort of a substantial penalty at the end.

**Mr. Wakefield:** — That's all my questions, thanks.

**The Chair:** — Thank you. I just have one quick question. It's the committee that's keeping us behind here obviously with all of our questions, but it's interesting to have a consumer perspective.

I brought this up on Monday when we had the minister here and

asked about minors and the law. And when you are talking about modelling, when people are approached in malls or whatever, most of them would be very young girls because they're not interested in the older type women or don't appear to be. So have you had problems with people signing contracts that are minors? Have you had consumer alertness from that?

**Ms. Robinson:** — I think we had one in the last year. But the person who answers the phone in our office and helps people with their problems is the one who sort of has it on the top of her head, so I don't think it's been a huge problem, but we do get the odd one.

**The Chair:** — Well it was interesting to note that we haven't defined what a consumer is in this Act, but the minor is defined as 18. So no one under 18 can enter into a contract. So that's understood in this Act.

**Ms. Robinson:** — And that's in The Consumer Protection Act.

**The Chair:** — It's understood in this Act that it follows the law for minors and contract law which the minister clarified.

**Ms. Robinson:** — And I believe the contract is invalid if . . . in the existing consumer protection Act that the contract is invalid if a minor was in it.

**The Chair:** — Well thank you very much for your presentation. We appreciate your time and coming down here.

**Ms. Robinson:** — Thank you for your attention.

**The Chair:** — I'd like to welcome our next presenter and have him introduce himself and where he's from and begin your presentation.

**Mr. Hardy:** — Good afternoon. My name is David Hardy. I am the president of Fitness Industry Canada. We are a not-for-profit trade organization which was formed to promote and protect the commercial fitness industry across Canada. Across Canada we have 2,000 fitness clubs with over 2 million members. In the province of Saskatchewan, we represent about 60 clubs with 50,000 members.

I'd like to thank the standing committee members for providing me the opportunity to speak today on Bill 12. As an industry association, we appreciate the new-found openness of the committee process and hope that it yields success for us.

Saskatchewan legislation recently proposed Bill 12 concerning consumer protection legislation pertaining to health and fitness facilities. We have some concerns with the legislation, and I'd like to go through them with you. If you follow through on my letter, we'll be able to go through point by point.

Essentially there's nine sections that we have some concern with. Section 76.31 states that the Act does not apply to a not-for-profit corporation or a charitable or municipal organization, or by the Government of Saskatchewan or any of its agencies.

It's important that you understand who our members are in Saskatchewan. They're primarily small-business owners.

They've invested their life savings. They're typically small clubs — 2 to 5,000 square feet — and they are competing against . . . their largest competitors are the YMCA [Young Men's Christian Association] and the municipal recreation centres. These centres are funded by government. They tend to operate at a substantial loss, and they don't pay any taxes. And for the most part, they tend not to have to recover any of their capital investment or sustaining capital costs.

By excluding these competitors, we believe it creates an uneven playing field in what is a fiercely competitive industry. We also believe that if this legislation is to be extended to cover commercial fitness facilities, then the entire industry — including the not-for-profits and charitable and municipal organizations — should also be included. It's really a form of unfair competition and creates an unequal playing field. Our position is if the legislation is good enough for the private sector, then it should be good enough for the public sector.

Our second issue is with the term of contract, 76.35. It states that a contract should be made for a term no longer than one year. And essentially our position is that if we restrict agreements to a maximum of one year, we essentially reduce consumers' choice.

Now there was a concern many years ago that people would sign three-year, five-year, or lifetime memberships. And that's not the way our industry is going today. The vast majority of our members realize that this is a recipe for failure. If you sell a lifetime membership or a long-term membership, you don't have the ability to collect ongoing fees to keep the operations going. And that isn't happening in Saskatchewan today, and I think we heard that with the consumers' association. That isn't their concern. But by restricting it to only one year, it also restricts people who want to commit to a longer term and get substantial savings; it restricts them from being able to do that.

Eliminating the ability to offer an agreement beyond one year will raise membership fees and result in reduced sales. The cost of tracking memberships, expirations, and obtaining new agreements and payments will yield higher operating, sales, marketing, and thus increase membership costs.

These higher prices for consumers would then result in decreased clientele. And for many owners, we feel ultimately impact their ability to meet operating costs. It's our concern that eliminating the ability of fitness operators to keep prices lower by providing members the option to commit longer will have a negative impact on our industry, and we would like to propose that this be extended to a term of two years.

Now again remember when you're doing this, you may offer a membership that is, just for example, you may pay \$50 down and \$30 a month for a two-year period. The alternative might be paying \$40 a month for a one-year period. Why should we not give the consumers who wish to commit for a longer period of time the savings and allow them to take advantage of those reduced costs that the facilities have by not having to have additional staff, marketing, sales, and other costs?

Next issue was with section 76.36 which prohibits "the renewal or extension of the contract beyond the original term of one year". We're a little unsure about the definition of prescribed



requirements that is outlined in the Act to extend the agreement beyond one year.

As an association we do not support agreements that roll over at the expiration for the length of the original term. For example, you buy a one-year membership. At the end of the one-year membership, it automatically renews for another full one year. We don't support that. We think that is bad, and I think we heard that from the consumers' association today. They also disagree with that.

We however do support term agreements. So for example, you sign up for a year and you pay monthly, but you commit for that one year. That includes a clause providing for the continuation of services for a month-to-month period providing the consumer is given the opportunity to cancel with 30-days notice.

The continuation of service provision is convenient for both the club owners and the consumers as it maintains consumer protection by limiting the length of time for which the agreement between the buyer and seller can continue without a new formal agreement. And because consumers join at varying times, and we heard this earlier, it will be very costly and difficult and somewhat impractical for operators to have to continually sign new agreements with the members who have existing agreements.

And as we also heard, this practice of continuation of services is not limited to the fitness industry. Cellphones, cable television, Internet services, motor association, magazines, websites — I could go on. All have these provisions and it's certainly something that isn't unusual.

We would therefore request that the prescribed requirements in the Act be defined to allow for the continuation of services for one month at a time, providing the consumer is given the opportunity to cancel upon 30-days notice.

Section 76.38 states that clubs:

... shall make available to consumers at least one plan for instalment payments of the fee that allows consumers to make equal monthly payments over the term of the personal ... services contract.

This isn't a huge issue for us, but I think it's one that I wanted to address. While the section is vague, we're concerned that as an industry the commercial fitness facilities would be forced to sell agreements without the ability to charge an initial fee. These initial fees are often used to defray costs such as marketing, sales, service, and administration. It's also unfair for existing members to have to take the burden of these costs and pay for them. For members that are a longer term member, should they have to take on the burden of someone who is just joining? There's often start-up costs, and there's initial services that are provided to new members, and we think that we should be able to charge for those.

Section 76.39 is one of our biggest concerns. It states that a customer may cancel a personal development services agreement within 10 days. Now I'm going to go through and skip down a little bit and go through three of my different

answers.

It's our belief that a three-to-five-day cooling-off period provides a sufficient window of time for the consumer to decide whether the facilities desired are desirable. And the suggested cooling-off period of three to five days would certainly give them time to familiarize themselves with the facility.

A 10-day period invites abuse. Generally in our industry we provide 7 to 10 days of free membership. If someone walks into a club and says, I want to try your club out, almost all fitness facilities will give away a free 7-to-10-day pass. By mandating a 10-day cancellation, consumers could effectively get 20 days of services without having to make any financial commitment. I can't name an industry where a business is asked to take on this type of liability.

Also under 76.39 there is a section (2)(b)(i) which says that it would allow a member to cancel an agreement at any point if "there has been a prescribed material change in the circumstances of the consumer."

This is vague. It's open to abuse by consumers who may choose a longer term agreement to keep a lower cost and then come up with a material change which is ... I know certainly having employees of my own, it's very easy to get a doctor's note for flu. You know, what is the material change? You know, if it was to be something like the member moves within 25 kilometres and there's no affiliate club, that's something that we could support. But being vague like this, it makes us very nervous that we would open ourselves up to people walking in and cancelling agreements and that because they have a material change.

Also the next paragraph after that, the next line after that, (2)(b)(ii) states that it would allow a member to cancel an agreement at any point if "there has been a prescribed material change in the services provided by the supplier."

The language of the Bill could again invite abuse by allowing customers to cancel if a club decided to move a treadmill from one side to another. And what club would ever want to renovate, if someone didn't like the colour scheme and now it's a prescribed change and I'm able to get out of my agreement? Again we would support a provision like this, but we would want to make sure that the provision allowed, say for example, if a club moved outside of a 10-kilometre area of where they were, but we would certainly want to be careful to make sure that we didn't restrict our members' abilities to operate their business. Very few of our members actually own their facilities, and they are sometimes required to sign a five-year lease and then move, you know, a kilometre down the road to another location. And it would make it very difficult to operate without that ability.

My next one F, 76.41 states that, a "cancellation may be expressed in any way as long as it indicates the intention of the consumer to cancel the personal development services contract." Now this in any way does not provide the club an audit trail. And we heard a little bit about that today already.

We believe that cancellations should be provided in a form of a registered postmarked letter or a carbon copied signed

cancellation form where one copy is given to the member and one copy is kept at the club. Emails, phone calls, faxes — all have the potential to be untracked and lost, thereby pitting the consumer's word against the club with no hard record of a cancellation and also potentially inviting abuse. This is even more critical considering the proposed penalties.

Can you imagine the \$10-an-hour, front-desk staff going to jail for a year because they didn't take the person's name down on the telephone properly, who cancelled their membership. And that's essentially what the legislation says today.

My next point G, 76.47, talking about offences and penalties, every person . . . I'm going to read most of it for you, if you don't mind, because it took me a number of reads to really wrap my head around it:

Every person who contravenes any provision of . . . [or part of] the regulation made pursuant to this Part is guilty of an offence and liable on summary conviction:

(a) for a first offence:

(i) in the case of an individual, to a fine of not more than \$5,000, or imprisonment for a term of not more than one year or to both; and

(ii) in a case of a corporation, to a fine of not more than \$100,000; and

(b) for a second or subsequent offence:

(i) in the case of an individual, to a fine of not more than \$10,000, to imprisonment for a term of not more than one year or to both; and [then]

(ii) in the case of corporation, to a fine of not more than \$500,000.

When I saw this originally, I copied and pasted it and put in an email and sent it to a friend of mine who is a lawyer. And I said, do you recognize these penalty clauses? He says, oh that's something out of The Securities Act for insider trading or other serious frauds. I mean it's . . . Our business is about 30- to \$50-a-month memberships. The most typically we're charging 4 to \$600 a year. The fines outlined are excessive given the relative size of the transactions they're looking to protect.

Also can you imagine us trying to hire employees? Our industry right now is having staff shortages. It'd be very . . . I'd have a hard time looking at a staff member and saying, by the way if you make a mistake, you could face a year in jail for not properly collecting that cancellation form.

Imagine how the public sector would respond to this type of penalties, which could easily be clerical errors, if they were asked to have to abide by them. I would ask that this section be substantially changed.

Number H, directors of corporations, again:

Every officer, director, or agent . . . that would constitute an offence by the corporation is guilty of that offence and

is liable on summary conviction to the penalties provided for the offence whether or not the corporation has been prosecuted or convicted.

This provision would again increase . . . I mean I don't even think our fitness providers could get directors' and officers' insurance. We're talking about 2- or \$300,000-a-year businesses that are asked to be . . . They're going to have to be insured for \$500,000 per offence that could happen. This would severely handicap club operators versus the not-for-profits and the government sector that don't have to worry about it. And it would provide significant costs which would have to be passed on to the consumers.

Also given the typical transaction size in our industry — 30 to \$50 a month — this provision is excessive and I think unreasonable.

Next section is 76.49. This is a bit of a boilerplate section which allows defining and fine tuning of the Act, and we agree that that certainly is needed. We would however like to be included in, if necessary, a hearing process if provisions come down that are outside of this committee that we don't have an opportunity to deal with.

We suggest that this power of cabinet, if it's to be made . . . if changes are to be made to the regulations, that it be done with strict monitoring so as to allow a fair and open process so that as an industry association we can make positive suggestions to protect both our members and also our consumers.

I don't believe this legislation was written to cripple our industry. However it was probably written to restrict the unethical operation of a very few fitness operators. We have not heard a lot of complaints about bad fitness operations in the province of Saskatchewan. And we do try to monitor that. We do believe this legislation would severely affect many of the operators that currently provide services in an ethical manner.

Given the current state of the obesity epidemic in Canada, we believe it would work against the public good to increase costs which would in turn be passed on to consumers and thus result in less people using our facilities. We also believe that the legislation in its current form would result in many clubs closing their businesses. And we also believe that it would restrict investment in the province of Saskatchewan. Who would want to open a fitness club here given this type of legislation?

I received a draft of this legislation late last year, just before Christmas, immediately preceding our industry's busiest season. We did not actually receive an invitation to come speak here today nor did our industry, many people in our industry. Our largest operator, who I understand is speaking next, also didn't receive an invitation to arrive here. There was a press release that was put out a week ago. And I actually got home from holidays on Sunday, and I put this letter together last night on very short notice.

We've tried to digest the proposed legislation. However, you know, while we feel this is an excellent forum today to provide an overview of the issues, we would like to have some direct consultation with the authors of Bill 12 to provide a better

forum to allow discussion of the intent of this legislation, to fine tune the legislation so it doesn't cripple many of the good operators that are operating in the province of Saskatchewan.

We would ask that the Standing Committee of the Human Services initiate a meeting with the provincial representatives responsible for Bill 12 and Fitness Industry Canada to discuss the full implications of the proposed legislation and request that amendments be made to the satisfaction of both parties. We also ask that the changes we've requested here today be incorporated into Bill 12.

I have one last thing I'm going to hand out while I have my two minutes of fame. I've brought along a copy of our industry brochure, which will tell you a little bit about who we are, and also a copy of a brochure called tax deductibility for fitness memberships because you may have heard lately that we have been . . . That's actually why our association was primarily formed was to promote tax deductibility of fitness memberships.

Iris Evans, the Minister of Health in the province of Alberta, had actually proposed it about a year and a half ago. The Conservative Party in the last election has endorsed it, saying that they support it in concept, and we're now working with the new ministers to try to work this. It also falls in line with their proposal to allow a \$500-per-child tax credit for children participating in sports. We're looking for the same type of participation for adults who participate in fitness.

And we also . . . One of the concerns that the consumers' association had is that it would result in a number of organizations . . . fly-by-night organizations are operating, and our proposal would be that a central association like Fitness Industry Canada would set standards for who would be allowed to offer tax deductibility and ultimately increase the overall wellness of our entire association. So hopefully that would help in instances like this. Thank you.

**The Chair:** — Thank you very much. Now we have lots of questions. I just want to make one comment before we open up for questions.

I mentioned this on Monday as well because it was brought to our attention by others that they were not notified. And I mentioned at that time that this is the first time we've done this, and we have quickly learned that we need a better process for identifying and notifying stakeholders. So we take your comment, and it just adds the fuel to the fire that we heard Monday.

But thank you and we certainly do intend to get better as we go along, as this is the first time we've done public hearings. We will take what we've learned and hopefully not make the same mistakes twice. And thank you for bringing that up again.

So questions. Mr. Elhard.

**Mr. Elhard:** — Thank you for your presentation today. I'm interested in knowing the strength of your organization and what level of involvement the industry has had in responding to the legislation that's in front of us. You said that there's 60 active clubs and 50,000 members in Saskatchewan that are part

of your organization. How many independents might exist to your knowledge in the province that are not part of your organization? Do you speak in large measure for all of the clubs?

**Mr. Hardy:** — We're certainly trying to speak for all clubs.

There's an association in the United States called IRHSA [International Health, Racquet and SportsClub Association], which is an international association which has been in existence for 25 years that represents the fitness industry. We have started up a Canadian association because largely we were unrepresented in some issues by US [United States] interests. They were just not familiar with our systems.

We have built a database. We send out a biweekly newsletter to over 1,000 clubs across Canada on a biweekly basis of issues of importance to them. We have two meetings a year, one in Toronto which is with our industry convention. At that convention there's 5 or 10,000 people that attend. It's called Can-Fit-Pro. We're off to Vegas in March where we have the other annual convention. And again there, there's about 25,000 people I understand that attend, and a number of people from Canada.

We have an elected board that is made up of members from across Canada. And we are trying to do the best that we can to represent the industry and to bring forward both positive changes to the industry and also ensure that in some of these cases negative legislation don't cripple the good operators. We are trying to be — I guess we're hoping to be — somewhat self-legislating. Especially with this tax deductibility, we know that we will then have some clout and hopefully be able to help turn around this industry. Because it's the old adage, it's that 1 in 20 or 1 in 50 clubs that hurts the reputation of the entire industry.

**Mr. Elhard:** — So you indicate there's 60 active clubs. Have you any idea how many clubs exist in Saskatchewan that are not part of your organization at this point?

**Mr. Hardy:** — No.

**Mr. Elhard:** — Would you give us some indication as to what proportion of the 60 active members you've got are franchised-based organizations versus completely independent.

**Mr. Hardy:** — My guess would be, short of a few franchises, which are Curves and Blitz and some of the other locations, I would have to guess but I would suspect it would be 30 to 40 per cent might be franchised. Again though, I don't have my database here. I could probably get that information for you though.

**Mr. Elhard:** — Is the franchising trend likely to continue and expand its dominance in the market? The reason I'm asking I guess is, I would assume that the more a franchised opportunity becomes the norm, the more likely there is for self-regulation. Is that a fair assumption?

**Mr. Hardy:** — Well certainly. I have a background as well in the franchise industry. They would have higher standards than just an independent operator, but that's not always the case. We

have some independent operators that run very, very good businesses in our industry. And it's not always just franchises that do it. Again it really relates back to the operator and how they run their business.

So while franchising will probably also help to clean up our industry by bringing some standards, there are also some very, very good operators across Canada who are not franchised — and some of them, you know, in excess of 100 clubs which are larger than a lot of franchises anyways — they run very good businesses.

**Mr. Elhard:** — With the possible exception of some specific areas that you've identified in your presentation today, can I assume then that your industry wouldn't have any reason to be opposed to this type of legislation generally?

**Mr. Hardy:** — We certainly support consumer protection legislation. I mean, these consumers are our members and we don't like it when someone down the block treats them poorly and our industry gets a black eye for it. So we certainly support consumer protection legislation.

We just don't want it to be crippling and, you know, the pendulum sometimes swings a little too far. And just from, I guess, from reading this, I probably read the worst into it. And we want to just clarify that someone one day doesn't take it to that extreme. And also some of the things that are in here, specifically some of these penalties, will make it almost impossible for someone to open a facility or operate a facility and, for that matter, even hire staff.

**Mr. Elhard:** — Yes. Thank you.

**The Chair:** — Ms. Crofford.

**Ms. Crofford:** — I would say my questions were on the same lines of self-regulation because we do have a number of professional bodies in the province that undertake to regulate their own industry in terms of qualifications and designation of practitioners and whatnot. So maybe at this point there isn't the critical mass. But you know, I guess the question would be, would there be an interest in that?

But also, I just want to thank you for the work you're doing. You know, in many of the times when governments were more broke perhaps than they are today and, of course, when people are demanding a lot more accounting of how their tax dollars are spent, it's important that there's both private and public initiative in things like fitness and dealing with health issues and whatnot.

So I just want to thank your industry for the work that you're doing and contributing to making people more conscious of the need to be fit and to be involved in those kind of activities. I know that eight of my girlfriends are probably healthier today because of Curves in particular. But I wouldn't want to pitch one particular place. That just happens to be where they've all congregated.

So on the question of self-regulation, would this just be another burden? And is it easier to deal with these things with an improved consumer protection Act or do you think there is a

real interest in a self-governing profession?

**Mr. Hardy:** — We're certainly moving towards that. That is ultimately the goal of our association.

But to have self-regulation, if you take a look at other industries like massage therapists or others who have taken it on, we need to have some ability to have some clout whether it is the government saying that to operate in the province of Saskatchewan you have to be certified by our association. Or what we're working toward is, to be able to offer tax deductibility you have to meet the standards of our association.

So at some point we're hoping to move towards that and we think that by doing that we will weed out . . . And there's not many of them. As a matter of fact in Saskatchewan I'm not aware of anyone that is an unscrupulous operator. But we would hope to weed out those operators that aren't scrupulous and provide a black eye to the rest of the industry.

**Ms. Crofford:** — Thanks.

**The Chair:** — Mr. Morgan.

**Mr. Morgan:** — Just with regard to self-regulating. It's a big undertaking but it's done with lawyers, accountants, dentists, doctors, veterinarians, and it's an onerous task and it's expensive for the industry to do. But I think the industry has a vested interest in providing good protection for consumers.

And I'd rather it come from the industry itself with a strong legislative framework to allow the industry to deal with an unscrupulous . . . because I don't think it's appropriate for us as legislators for us to sit here and decide who is or is not a good operator. Nor is it appropriate to see the method of enforcement they've got with the massive fines that they are contemplating in this legislation. I think we'd be better off.

I've got a few questions. You had, in your paper that you had presented, suggested that a two-year minimum would be appropriate. Some of the people that we've heard from yesterday — Curves — indicated that a one-year minimum was appropriate. And the comment they made was that, if we have somebody for a year and they attend regularly for a year, we've got them for life. It's become a lifestyle for them.

So would that be the same throughout or is there a significant benefit to having a two-year obligation on the part of the member?

**Mr. Hardy:** — From our industry's perspective we can lower the costs. If we know that a member is committed for a year — and I am going to just use some numbers — we may be able to offer them a \$40-a-month membership. So at the end of the year they have paid \$480. If we know they are committed for two years we don't have sales costs, we don't have to . . . there's a lower cost and a lower administration cost and we could typically offer them a \$30-a-month membership so that on an annual basis they're paying \$360 dollars a year.

I just think as an industry it is nice that we can pass those savings on to our consumers. And I know that while Curves as an example doesn't sign one-year memberships — and there's

not a lot of facilities by the way in Saskatchewan that do ask for two-year memberships — it does provide a savings to the consumer. And we think that that's appropriate that those savings be passed on.

**Mr. Morgan:** — And then you're reasonably comfortable once the — whether it's one-year or two-year — that the membership could automatically renew on a monthly basis or that would automatically continue on the same terms subject to a monthly 30-day cancellation. You had mentioned the requirement or the benefit to your industry of having either an initial membership fee or some money paid at the outset. I'm just wondering how many months worth of payments in addition to the regular payments you would want as a membership fee or an initiation fee.

**Mr. Hardy:** — Well it's difficult for me to talk, you know, for 60 different clubs, but some clubs charge a very low membership fee. It might be \$50. Others might take a somewhat higher fee which would allow you to buy down the monthly fee on a perpetual basis. So instead of paying \$40 a month, if you put \$150 up, you only pay \$25 a month forever. And again that discourages people from leaving as well because they know they have a lower rate. Again it's very difficult for us to come up with a formula of one size fits all.

What I am concerned about is that clubs should have the ability to price themselves according to what the market is. And sometimes, especially with not-for-profits in the market and other competition, it's often difficult to compete with these — taking a larger upfront amount, you know say the \$100, and having a lower fee — when your competitor doesn't have to worry about sustaining capital investment payments or paying taxes or other things . . . allows you to be competitive in the market.

**Mr. Morgan:** — The department officials presented earlier and they talked about the clubs that had gone bankrupt and the consumers that had lost money. Invariably the consumers that had lost money were ones that had either prepaid or paid a large membership and then there was claims against the bonds. One of the things that this legislation will do will be eliminate the need for bonds which I'm sure will be welcomed by the industry. I don't know how many of your members are required to post bonds or not.

**Mr. Hardy:** — In Canada, I understand that we're not doing that.

**Mr. Morgan:** — Posting bonds?

**Mr. Hardy:** — Posting bonds.

**Mr. Morgan:** — Some provinces require it and depending on how you're . . . Under the current legislation some of your members may well be subject to a bond.

**Mr. Hardy:** — Oh, yes, I think actually in Quebec you're required to post a bond.

**Mr. Morgan:** — Well some here might have been. I don't know which ones, but in any event the purpose of this legislation was to limit the amount of money that a consumer

would prepay in case a business went out.

I think most people aren't terribly alarmed if a business folded on the second day of the month and a consumer was out a month's membership. Yes, they're out \$50. Yes, it's too bad. But it's not something that's going to bankrupt somebody. It's an irritation, it's maddening. But somebody that's out \$1,000 or \$500 . . . So I guess I wouldn't mind your comment on what might be a reasonable amount to be paid. You've suggested 100 or \$150 might be an initiation or membership fee.

**Mr. Hardy:** — Well and maybe I missed part of that from reading the legislation. But there are two ways to pay for a membership. One way is to pay an upfront amount, a membership fee and then pay on a monthly basis. And in this case we're talking about paying for 12 months and then having it . . . continuation of services on a month-to-month basis with 30-day cancellation policy. The other way is to prepay for a year. And again, people who do that receive substantial discounts. It's not my understanding in reading the legislation that you are eliminating all of the prepayments.

**Mr. Morgan:** — No, we're not. We're just looking for options that are going to be workable to consumers and options that we feel are palatable to the industry. So I'm not advocating one or the other. I'm just sort of trying to get a sense of . . .

**Mr. Hardy:** — Ten years ago it was a concern. Ten years ago there were lifetime — and it's more like 20 years ago — there were lifetime memberships and there were large upfront fees. You know today there's an awful lot less of that. And as an industry — and this isn't something we've mandated — but an awful lot of clubs that have gone down, we encourage our members, other members to honour their memberships, again because we don't want to end up in hearings like this with a black eye on our industry. And I know one member who's here in particular, we talked about that today, where they have — if a facility closes in their market — they will typically honour the membership for the remaining term of the memberships for people that have done that.

I guess the real question is: are we making something out of something that's not as big an issue today? Ten years ago I would have said absolutely. I don't think it's as big an issue today where that is happening and where people who . . . you know they may get a substantial discount. They may not be comfortable giving their payment information out or they may not have a bank account to be able to do monthly payments. They're more comfortable paying a simple fee and having a year of membership.

**Mr. Morgan:** — I wasn't suggesting your industry wasn't doing a good service or wasn't providing. The Bill is a broad Bill. It deals with travel clubs who unfortunately have chosen not to participate in this process. I'm hoping it's not just that they have not heard about it . . . [inaudible] . . . a conscious decision on their part. So I'm just trying to get sort of some broad general sense of what your industry feels is fair and then I may want to apply some of that logic to whatever we have to do with travel clubs which is where we have seen large amounts of consumer fraud.

**Mr. Hardy:** — If I could speak to one thing. As an industry

association we do keep statistics. The vast majority of our members are looking to go on a month-to-month basis. You're talking about memberships of healthy clubs that are selling . . . 60, 70, 80 per cent of their memberships are monthly.

There is a portion of the population that just wants to prepay for something. They don't want a monthly charge coming out. But it's certainly something that we're very cognizant of and we're trying to improve our industry's track record on.

**Mr. Morgan:** — There was . . . You would have heard the earlier presentation on it and that's on the issue of, once you've gone past whatever the mandatory period is and you're into the area where the consumer could cancel, I'm wondering what you might suggest as a method that would be appropriate for a consumer cancellation.

You know, being a lawyer, sort of the default position is you get out The Business Corporations Act and you serve registered mail notice on the registered office of the corporate entity that operates it, which is probably more onerous than the consumer would want and probably a nuisance for the business.

So I wouldn't mind hearing what the industry would suggest. I was pleased that the Consumers' Association thought that any method wasn't a workable option. And they were suggesting that it should be something in writing. So I'm trying to think of something that would be in writing both ways or that would be workable. So I certainly would welcome your suggestion there.

**Mr. Hardy:** — Most of our members have a process that we've outlined in section F, which is providing a carbon-copied cancellation form. Say they come into the club and they sign a form. One copy goes to the member; one copy stays with the club. If there's ever a concern by the member that they didn't cancel, there's a signature of the employee on there and it's dated so that there is some backup.

And the reality is we have an awful lot of 8- and \$10-an-hour front-desk people that, you know . . . We as an industry as well recognize that we have to make these procedures simple. And so we've set it up typically so people can show up at the club and do this. Accepting telephone cancellations — and in some cases a lot of clubs will do that — I want to cancel my membership; that's fine.

But in terms of holding us to the penalties that are prescribed in here, I think that's a bit of a concern. And so we would want to see . . . Our number one choice would be going to the club and signing a form, a copy of which is left with the consumer and a copy of which is left with the form. Alternatively, some form of registered letter that is going to the club, and that way there is a receipt that's available for the member in case there's ever a dispute.

**Mr. Morgan:** — The legislation talks about a material change in the circumstances of the operator and of the consumer. And the things that they regarded were, as material changes: we have the club became dirty or poorly run — I don't know how you prove that but I can certainly understand or accept that that would be — or the club closed and there wasn't another one in the vicinity and somebody walked. There wasn't an issue there.

But then there was the issues of what would be a material change for the consumer. And I have some significant problem in leaving this just to regulations or leaving it to the courts. So if we're going to allow that — and I'm not certain whether that should come down to that or not — I wouldn't mind your comments as to what a material change on the part of the consumer might be and what the industry practice has been.

**Mr. Hardy:** — Obviously different organizations operate in different ways. But providing if there's a serious illness, well the consumer association suggested adding the time on the end of the contract would certainly be a way of doing that. And again the concern is, as you've mentioned, being able to quantify what happens here. We're talking about clubs that might have 1,000 members or 10,000 members.

You know, when someone calls up, how do you quantify if the person has a broken leg or if the person is going to be out? And then what is the degree of time that they're going to need off?

You know, there's been some talk about paying the difference between a short-term and a long-term membership. If the person is a year into their membership and they've committed to a . . . or a month into their membership, and they've committed to a year, have them perhaps pay some cancellation fees and go back to the monthly rate and some form of fees again prescribed under the Act. But you know, again it becomes difficult to regulate this, and I think also difficult to quantify what sections are reasonable.

If someone changes jobs, should they be qualified to cancel their membership? We're not talking about a \$1,000-a-month mortgage payment here. We're talking about a \$30-to-\$50 fitness membership. If they lose their job, they should probably be more at the gym so they're ready for their next job.

I think that some of the legislation that we're doing here is a bit overkill. And trying to legislate every piece of this Act or of this transaction between a consumer and a club is going to be too onerous and in some ways too difficult to ever enforce and/or mandate.

**Mr. Morgan:** — Thank you.

**The Chair:** — I understand you have a plane to catch, but I do have a question.

**Mr. Hardy:** — I'm okay for a while.

**The Chair:** — We have in our background information that was presented to the committee by the department that presented the legislation, we have a pan-Canadian view of other provinces who have similar legislations. So you have members in all of those provinces, I'd assume, like BC [British Columbia], Manitoba, Ontario, Quebec, and Nova Scotia.

And two items that you brought up of concern were your length of contract and your cooling-off period. All of the provinces I mentioned, the length of contract is one year except for BC, which is two years. So all of your other members in those provinces would have the one-year contract. So my question is, is it a problem for those members?

And then my second one is the cooling-off period. British Columbia, Ontario, and Quebec all have 10-day cooling-off periods. Those are the biggest provinces, which would have the most members I assume. So they're living under your organization with that type of cooling-off period. Nova Scotia has five, and Manitoba has seven.

So the legislation was crafted to reflect basically the pan-Canadian kind of norm of some of these clauses for those particular areas. Could you comment on that then?

**Mr. Hardy:** — Well I'll work backwards with the most fresh which is the cooling-off period. Attached to the letter, you'll see a list of the cooling-off periods that are available in the US and typically it's three days.

In the legislation that came in, Ontario didn't have this open forum. And as a matter of fact, there was no one from the fitness industry that actually commented, to our understanding, when this new legislation was passed. It kind of came through and everyone was somewhat caught off guard. So we didn't have an opportunity to respond to it, and quite honestly that predicated in part the formation of this association so that we wouldn't get caught blindsided again with legislation that's going through.

Quebec is a bit of a different animal, and I can't speak to it because the legislation's been there for a long time, and again we didn't get an opportunity to speak to it. But from a cooling-off period, we do know that there are abuses.

A person comes into any one of our clubs, and they typically get 7 to 10 days for free. If they have a cooling-off period of 10 days as well, they would end up being in the club for 20 days without ever having paid a thing.

And again it also came up with a consumer association, how do we try to integrate a new member into a club? We know the most . . . the 72 hours to the first seven days are the most important time in a new member's experience of the club. If they join and they aren't immediately integrated into the club and provided orientation services — and there's costs for us for providing those services — their chances of staying as a long-term member diminish substantially. There's research to support that.

So a longer cooling-off period we think does a disservice for the customer because obviously clubs are going to be discouraged from expending big amounts of money to encourage a person to stay when there's a chance that after 10 days they could take advantage of the three personal training sessions that might cost the club 75 or \$100 and then just say, I'm sorry; I'm invoking this section of the Act and I'm cancelling my membership. Thanks for the three free personal training sessions.

In terms of the one-year contracts, again speaking to Ontario, they didn't have any input on it. And as an association, we just feel it limits the options available to consumers, and it will also in turn increase costs to consumers because it increases costs to the clubs. I guess the question is, are there — with the 2 million members that are across Canada or the 50,000 members that are here in Saskatchewan — are there significant amount of complaints to warrant reducing consumers access to a longer

term option and a lower price? Certainly from what we've heard, we don't think so. You have to think there are complaints, and there's going to be complaints with any industry, but we're talking about 50,000 members in the province of Saskatchewan. There aren't substantial amounts of complaints to warrant, I think, reducing the term of the agreement to one year when it could provide savings for consumer by offering two years.

**The Chair:** — Thank you. One other thing we've learned I think is that half an hour isn't long enough. We do thank you for coming from Alberta here to talk to us, and we appreciate your input and your validation at this committee process which is . . . I think Quebec has this committee process. But otherwise we're the first.

**Mr. Hardy:** — No I think it's wonderful.

**The Chair:** — So I think it is good to hear that you appreciate the opportunity, and we certainly appreciate you coming. Thank you.

**Mr. Hardy:** — Thanks. And if there's any other questions, please feel free to contact me. Thank you.

**The Chair:** — Thanks. We are ready to begin our third presenter, and we apologize for running over into your time. As I said, we obviously have learned that we should have more time set aside for each presentation because we have lots of questions.

So if you'll introduce yourself, welcome. And proceed with your presentation.

**Mr. Shkopich:** — All right. Thank you. I have some handouts here too.

Good afternoon. My name is Don Shkopich. I'm the president of California Fitness Centres. To provide you with a little background, 20 years ago my wife Marvis and I invested our life savings in the fitness industry and here we are today. We presently have six facilities located in the cities of Saskatoon, Regina, and Prince Albert and employ 155 people. The clubs vary between coed and ladies-only facilities.

California Fitness has been very community involved over the past 20 years, and we participate in approximately 300 charitable and fundraising events each year. We have a strong commitment to the community and believe in giving back. Obviously we are committed to the industry. It is our life, and we are committed to the next 20 years as long as legislation doesn't adversely affect our viability.

Personally, I've been a director of the Saskatoon Chamber of Commerce, past president of young entrepreneurs organization, past president of SABAS [Saskatchewan Association of Boards of Addiction Services], and involved with many other boards and organizations, and most recently sit as a board member of Fitness Industry Canada.

I appreciate the opportunity to be able to discuss and provide feedback on how I believe Bill 12 will impact the private fitness industry in Saskatchewan, and to have your committee consider

changes to the Bill. I thank each of you on this committee for taking valuable time in your schedules to meet with the stakeholders.

I have witnessed many clubs come and go over the past 20 years. I have seen members enrich their lives through regular exercise. I have also seen some members lose their money when their clubs have closed. California Fitness has honoured most of those memberships during that time in the cities that we operate in, so I understand your concerns.

I believe that there are solutions to not only protect the consumer, but also to protect the fitness industry from further financial failure that could potentially be triggered by the proposed legislation. Bill 12 in its present form will cause financial hardship for fitness clubs and fitness club members in Saskatchewan. The result — more people will lose more hard-earned income.

Today I'm going to focus on a number of issues in Bill 12, including maximum one-year term memberships; continuation of services; exclusion of other service providers from the Act, including municipal facilities and non-profit facilities like the YM and YWCA; cancellation provision; refunds; trustee for payment when facility is unavailable; notice of cancellation; fines and jail time; and personal liability for directors.

First in regards to maximum one-year term memberships, the issue is not that the membership term is monthly or one year or two year or three years or on continued services. The issue is one of the consumer knowing what they are purchasing. It is an issue of transparency. It is an issue of full disclosure by the business.

In my experience, the consumer in today's society does not want less choices, but ideally wants more choices and more flexibility in their purchases. Bill 12 reduces the choices Saskatchewan consumers will have available. If a consumer wants to buy a two-year versus a one-year membership for the reason that they can save money by paying a discounted rate, he or she should not be legislated to spend more. If a consumer can again save money through the continuation of services program, he should not again be legislated to spend more. If a membership is for a longer term, it is obviously cheaper for a club to administrate. Thus the savings are extended back to the member either in a form of a discount or additional services.

Our industry is no different than your own Crown corporation, SaskTel. SaskTel sells three-year contracts for cellphones. The rate becomes cheaper with a three-year contract, and you might even get a phone thrown in. Why? Because administration costs are substantially reduced for agreements on longer terms. I do believe consumers want these choices. I do not believe for a second that consumers should be legislated to pay more for any type of personal services.

At the end of the cellphone term, I believe, is also a continuation of services provision as there is with SecurTek, a division of SaskTel which is a security company. SecurTek's continuation of service states that if you do not notify their organization of cancellation 60 days before the contract end, you are automatically renewed for one year. Not one month, but yes, one whole year. I submitted a copy in my submissions each

of you have.

Our industry continues services one month at a time, and the consumer can cancel with 30-days notice. The SecurTek agreement also states, in small print on the back of the contract, that if no term is specified in the agreement that it will be assumed that the agreement is for a 36-month term. Our industry clearly states the terms and provides full disclosure even with the current legislation.

I do not believe that your intention is to limit consumers' purchase choices for any industry, but to prevent a consumer loss when services are not fulfilled as agreed to. I believe the same benefit and protection can be afforded to all consumers in the fitness industry by still allowing longer term memberships that the consumer can still purchase for less. If the consumer doesn't receive a substantial savings, he will not purchase the longer term.

Now how do we protect the consumer? If our desire is to protect the consumer totally, only have provisions for memberships to be paid on a monthly basis regardless of the initial term, and allow for a continuation of services option that necessitates full disclosure. Membership agreements are currently approved by the Justice department; thus control can easily be maintained in regard to full disclosure.

If a consumer desires to pay in advance for a longer term membership, the consumer can sign a waiver stating that I understand that my prepayment could be at risk, and that he or she accepts total responsibility for any loss that he or she may incur. The consumer may then decide to pay at a monthly basis. The Justice department could provide the acceptable wording.

Again full disclosure is the real issue so that the consumer understands exactly what they have purchased. In regards to continuation of services provisions, California Fitness requires the member to read a separate highlighted box on the front page of the agreement that states, please read — important cancellation notice. That is highlighted in reverse print and a separate signature is required.

We are very transparent and are committed to full disclosure. It is not buried in fine print. It is the most visible part of the contract of which a member immediately receives. Thereafter it's the consumer's responsibility to complete their portion of the agreement, and the club's responsibility to provide the services.

California Fitness has provided the majority of our renewing members with the same rate for over 15 years. You may ask how we've been able to accomplish this as utilities, property taxes, minimum wages — all controlled by government by the way — have increased dramatically over that time. We've been successful to date due to minimizing administration costs to the continuation of services program and also by attempting to increase our membership base.

If Bill 12 is passed, we will have to hire dedicated front counter and administrative staff to police, renew and process expired memberships. Additional staff costs for our organization alone would exceed 250 to 300,000 per year. That cost would have to be charged back to our members in order to maintain our



facilities.

What do I tell our members who enjoyed fixed rates for over 15 years and we are forced to increase their membership prices? Will they pay the increased rate or just cancel? Unfortunately when prices rise, demand declines and revenues decline. It becomes a vicious circle.

I can assure this committee that the fitness industry is a small-margin business. Ask your taxpayer-subsidized leisure community centres what their annual losses are. They operate with substantial deficits, including the capital costs of the facility. Bill 12 in its present form would adversely affect the Saskatchewan fitness industry.

Longer-term memberships will result in substantial savings to the consumer. Monthly payments only provide for maximum protection for the consumer and provide assurance that the club owner will maintain a growing, level revenue stream in their business without the substantial seasonal income fluctuations that create closures in the industry. The industry will become much more stable in this scenario providing security and maximum savings to the customer.

I do not believe that bonding is the solution as a bond can never be enough to cover everyone. And it increases business overhead, thus reducing club viability. Bonding is potentially an administrative issue for the Justice department. When a club cannot pay or qualify for a bond, does the department shut down the business and create consumer losses, or do they ignore the situation and hope that the club improves its financial condition?

Thirdly, Bill 12 creates a non-level playing field in the fitness industry. It excludes civic facilities and non-profit facilities including the YM [Young Men's Christian Association] and YWCA [Young Women's Christian Association]. These businesses are our toughest competitors. They are subsidized directly and indirectly through property and income taxes by the general public which includes, unfortunately, our very own businesses and our personal selves.

Now our provincial government is providing a further benefit by excluding public sectors as well as the YM and YWs from a Bill that places our industry at even a further competitive disadvantage. I'm wondering: are the non-profit and civic facilities initiating this legislation?

As opposed to subsidizing the civic and non-profit sector, our government should strongly consider introducing tax deductibility for fitness memberships. Greater consumer savings would be realized and long-term health care costs would be reduced substantially as fitness utilization will increase.

Bill 12, when passed in whatever form, needs to include all stakeholders and should not create competitive advantages or disadvantages for anyone. The playing field should be level. If Bill 12 is not repressive, then why are public and non-profit organizations excluded? What kind of message does it send to all entrepreneurs considering investment in our province?

Fourthly, in regards to cancellation provisions, I am a supporter

of a three- to five-day cancellation policy versus ten days. Ten days leads to an abuse of services. Individuals will know within three to five days whether it was a good decision or not. Most private clubs offer one-week trial passes as it is. This provision in Bill 12 would provide the opportunist with 17 days of free services. Do SaskTel, SaskPower, car dealerships, golf courses, etc., provide 17 days of free services? I don't think so.

Further, I have concerns that a consumer may cancel his or her membership with a material change of circumstances. Could it mean that if I change jobs I could cancel my membership? Could it mean that if I have a flu or common cold, my family doctor writes a convenient note for me that I could again cancel my membership?

At California Fitness we allow cancellation if customers move to a different city that has no affiliate club at a reasonable distance and time from their residence. We ask them to complete a form and to provide proof of move — for example a utility bill, school letter, employer letter, etc. We allow cancellations for medical reasons, if a doctor provides a letter stating that the person is disabled or ill for a lengthy period of time and not just a common cold. In addition to this, there are always exceptions to every rule.

We also provide freeze options, where members can stop their memberships for illness and vacation purposes. We believe in flexibility of services.

I also have concerns in regards to cancellation if there is a material change in the circumstances of a supplier. Does it mean an individual can cancel if we move treadmills around? If we renovate and the customer disapproves? Or we move a facility? If the Act forces industry consolidation, does it mean a membership is cancellable if we purchased the business down the street where our services are basically similar? What does it mean? I have real concerns about the issues surrounding the potential wording.

Refund within 15 days. I would suggest a refund time frame could be changed to 21 to 30 days as most operators in Saskatchewan are mom-and-pop operations and mom and pop could possibly, if things are going well, be on a two- or three-week vacation. Thirty days would cover off 98 per cent of most scenarios.

Six, trustee for payment when facility is unavailable. I am in total agreement of utilizing a trustee for payment if a new facility is built. If an operator does not have the capital or financing in place before opening a new business, the consumer should not be placed at risk for potential loss if the business does not open. This provision would probably have substantially reduced the club closures in the past and minimized member losses.

Notice of cancellation. Cancellation should only be provided by a registered letter or a cancellation form signed, dated, and witnessed at a club upon which the member immediately receives a copy of the signed cancellation form. This process would protect all parties concerned, especially when someone says they have phoned in or dropped off a cancellation letter that has never been found.

At California Fitness at present, cancellations are handled at one central office and all consumers are directed to this office where cancellations are dealt with. This process eliminates any confusion. Cancellation should require a formal process no different than a membership purchase so as to minimize conflict, especially given the proposed fines and penalties in Bill 12.

Bill 12 states that every employee who contravenes any provision of the Bill is guilty of an offence and is liable for a fine from 5 to \$10,000 and/or a one-year prison term. The corporation is liable for a fine from 100 to \$500,000. This is totally unreasonable considering the amount of potential consumer loss. What justification is there for these penalties? Hiring employees would be next to impossible knowing that fines and jail times could be the result of an innocent error. Why would you work in the private fitness industry? Why are non-profit and civic facilities exempt from these penalties and fines? Again, this Bill creates a competitive disadvantage for private industry.

Bill 12 also states that:

Every officer, director or agent of a corporation who directed, authorized . . . or participated in an act or omission of the corporation that would constitute an offence by the corporation is guilty of that offence and is liable on summary conviction to the penalties provided for the offence whether or not the corporation has been prosecuted or convicted.

Again this is totally unreasonable considering the amount of potential consumer loss. Where is the justification? Why would any individual be a director of a company unless you were forced to? If we are going to be liable for the innocent mistakes that our 155 employees could make, I might as well surrender my business immediately.

Anyone can make a mistake, even government and non-profit employees. I would not have invested my life savings into fitness centres due to this type of liability. Again why are non-profit directors and civic facility directors exempt from these penalties and convictions? Many club owners may not qualify or be able to afford director liability insurance even if it was available for the fitness industry. Again, increased operating cost will increase membership cost. Again, Bill 12 creates a competitive disadvantage for private club operators.

In closing I believe that we as a fitness industry in conjunction with the Saskatchewan government need to work together diligently to improve the health of Saskatchewan people. Allow our industry to further provide input with a joint committee to develop solutions that are workable and sustainable for all stakeholders. We have the highest incidence of diabetes in Canada and obesity is out of control. We need to allow Saskatchewan people to improve their health without losing their wealth either through unnecessary high membership dues and/or clubs closing due to unnecessary additional expenses. Let's not pass regressive legislation that limits consumer choices and creates a non-level playing field in business.

Hopefully I was able to provide this committee with some viable concepts. I again thank each and every one of you on this

committee for taking valuable time in your schedule to meet with the stakeholders involved in Bill 12. Thank you.

**The Chair:** — Thank you, Mr. Shkopich. That's a very nice presentation and we do appreciate your time as well. Now we'll have questions from the committee. Mr. Morgan.

**Mr. Morgan:** — How many of your members want to prepay more than a month at a time?

**Mr. Shkopich:** — How many of our members prepay memberships?

**Mr. Morgan:** — Well the previous presenter indicated that a significant number of people look for a discount or a lower rate by paying for a year at a time, but that's a preference issue with them and they get a better price. I'm sort of wondering how prevalent that is.

**Mr. Shkopich:** — In our business, with the six locations, probably less than 10 or 12 per cent would prepay their memberships. Everyone is either on a one- or two-year membership paying on a monthly basis, so the risk is limited to 30 days.

**Mr. Morgan:** — How many of your members have opted for a longer term membership than one year?

**Mr. Shkopich:** — I would not know any numbers right offhand but I would suspect 25 to 30 per cent, maybe 35 per cent.

**Mr. Morgan:** — Okay. How much cheaper a rate do they get for going through a multi-year?

**Mr. Shkopich:** — Their rate would be anywhere from 10 to 15 per cent cheaper, but they may receive another 50 or 100 per cent in additional benefits. For example they'd receive additional services like free babysitting or unlimited suntanning over that time frame that could add up to \$1,000 very easily.

**Mr. Morgan:** — Do you charge a membership fee or an initiation fee or just . . .

**Mr. Shkopich:** — Yes we do and our administration fee is \$49.

**Mr. Morgan:** — So that's the only upfront cost they would have in addition to the monthly cost?

**Mr. Shkopich:** — Yes.

**Mr. Morgan:** — Is that waived on a longer term or reduced?

**Mr. Shkopich:** — It can be waived depending if we're doing a special promotion. There may be times throughout the year that we may waive the administration fee up front as an incentive.

**Mr. Morgan:** — Thank you for being here, and thank you for being in business, and thank you for creating jobs in our province. Thank you.

**The Chair:** — Further questions? Mr. Borgerson.

**Mr. Borgerson:** — A couple of questions going back to the

second page of your presentation where you talk about the one- or two- or three-year contracts. I think you say it's an issue of transparency, issue of full disclosure by business. My understanding is that the reason for the one year, and of course that's to be discussed and debated, the reason for that is to limit the amount of loss that a customer would have to one year.

Now what I hear you and others saying is that in a way it's redundant. Most folks sign up, not with the prepayment, but most folks sign up with monthly payments. It might be a one- or two-year contract but most people are doing monthly and not a . . . you know, not dropping the full amount on the first day.

**Mr. Shkopich:** — Right. Consumers have learned in the past, and not so much in the last five or 10 years, but definitely 10 to 20 years ago, that they could lose a lot of money by prepaying their services, prepaying for services. And what we found is the members that do prepay services with us, the 10, 12 per cent are members that have been with us for a long time and are very comfortable with our organization.

But otherwise, most consumers will look at it, and we don't offer a substantial discount for prepayment. Our discount is 10 per cent. So it's not a substantial discount where we try and gather as much cash in one lump sum as possible because you'll pay later. Ninety per cent again of our dues come in on a monthly basis. So we have a level cash flow throughout our 12-month period. So definitely we can operate our business much easier in that way.

Where if you have fluctuations where memberships, revenues are higher in your January, Februarys, and your September and Octobers, for some operators if they decide, well it's a great time to purchase more equipment, or do renovations, they spend all their money and through the summer months, or the other quieter months, the cash flow is very limited. So it creates issues.

**Mr. Borgerson:** — Nevertheless if it was a two-year limitation for those very few operators that would do things differently and perhaps not appropriately, they could strongly encourage their customers to sign up and pay that full amount for two years and then if they did fold their tents and moved away then there is a full almost two-year loss.

**Mr. Shkopich:** — Well in my experience, I don't know many people that will prepay for two years because it's 1,000 or more dollars, and I don't see that happening. Also in my experience, I know in our organization and I know in many other organizations if somebody moves out of their market area there's either a refund or there's a stop-payment on the monthly dues unless there are real affiliations.

There's an affiliation group called IPFA [International Physical Fitness Association], international fitness clubs association. And so we honour their members if they move to our market areas; they honour our members if our members move to their market areas and they complete the contract. But if there is no affiliation, I know with us and I believe in most clubs in Saskatchewan that there's either a refund or there's a stop-payment on dues so I don't think there's any risk involved. They're a very, very small percentage.

**Mr. Borgerson:** — What is your thought if the legislation stayed with the one-year but included the possibility, the option, of not a new contract but of in fact allowing operators to go to the month-by-month after that one year without having to renew a contract and go through all of the cost of renewing.

**Mr. Shkopich:** — Well I'm in favour of that. And as I mentioned earlier, I don't think consumers should be legislated not to save money and I don't think the issue is the length of the term. The issue is making sure the consumer understands what they are purchasing.

It's no different than SaskTel. Why is it okay for a Crown corporation to sell a three-year contract? Because I would think that probably most of the three-year cellphone purchasers in the last marketing campaign SaskTel has had are probably younger people because they are very affordable. You get a free phone. The marketing started around Christmas time; it was an ideal Christmas present. So you know the issues are the same across the board. As long as the consumer understands what they are purchasing, I think that is the real issue.

And if the Justice department wants to have a clause on the bottom of a contract that says, I understand that I am purchasing a one-year membership or two-year membership, ask for a separate signature, again all contracts have to be approved by the Justice department in this province. All those things I think could be eliminated, all those issues. If the consumer understands what they're buying I think it's okay and if they can save money, fantastic. The issues happen is when the consumer does not understand what they are buying. That is the real issue. And I don't think again we should legislate people to spend more money or not be able to save money on their purchases.

**Mr. Borgerson:** — In terms of notice of cancellation, if I remember correctly the consumer association suggested that after receiving a cancellation letter that the club should then provide a confirmation of some sort. Is that a problem, a confirmation that the contract has been cancelled?

**Mr. Shkopich:** — It's going to increase administration costs. I don't think there's a real issue there. And I believe that there should only be two ways of a cancellation, one being the registered letter so there is no dispute on the club's part, that the club can't pull the wool over anyone's eyes because it's a registered letter. And the other form is providing a copy at the location. If the consumer comes in and wants to cancel, the original copy is kept with the facility, with the business. A copy of it goes to the consumer. Again, the club can't pull the wool over anyone's eyes again because the consumer has a copy of that. And again, on that cancellation provision it could have a statement saying, I have received my copy of the cancellation notice. So again there's no disputes, no problems in the future.

**Mr. Borgerson:** — And my last question, just in terms of the fines, and I . . . Believe me, we understand your concern about the, as you indicated, the harshness of the fines or the level of the fines. But just as a matter of clarity, the legislation as it's . . . The draft legislation does not set out fines of 5 to \$10,000. It sets out a maximum to \$5,000 for first offence and then a maximum to 10,000 for second offence. So I just wanted to clarify that it's not as harsh as you've indicated here. And no

more than a one-year prison term, as opposed to a one-year prison term. But I just wanted to point that out.

**Mr. Shkopich:** — I understand that. The issue is it is harsh in comparison to every other industry and again, for a minimal potential loss. And if we compare it to other industry, as Dave said earlier, this, I think his lawyer friend had suggested that the only place he's ever seen something as rigid or harsh was in the investment business where you are dealing with millions of dollars of people's capital.

**Mr. Borgerson:** — I'd like to thank you for your presentation, and particularly the additional information you've provided to us — the contract, for example. That's very, very helpful. Thank you.

**The Chair:** — Mr. Wakefield.

**Mr. Wakefield:** — Thank you, Madam Chair. It just reconfirms how important it is when we're entering this kind of a new exercise, how important it is to have somebody that's in the business, has had a lot of experience and can give us some feedback and guidance. So this is an important part of the piece for us too.

Just a couple of quick questions. How comfortable are you to be part of an association, Fitness Industry Council of Canada? Are you comfortable that they can represent you and maybe at some point become part of a self-regulated organization where you look after the consequences that are anticipated here in the legislation?

**Mr. Shkopich:** — I'm very comfortable. Fitness Industry Canada is new, and there will be some growing pains over the next number of years. But in the future no, I'm very comfortable with that type of process. I think it can be regulated by our industry but it will take time. It'll take, I guess, some diligent work with our government departments and working hand in hand on being able to formulate an association and a process that can work to regulate our industry.

**Mr. Wakefield:** — Do you know of — what's the right word — unregistered entities operating in the fitness industry that you're aware of? What you have referred to us so far, I think, is people that would comply with the overall direction of the fitness industry as an association or professional levels that you have certainly tried to implement and maintain. Are there other ones that you are aware of that are operating outside of this? How about in a small town like, you know, take Podunk, Saskatchewan? Are there those kind of things operating? Because without recognition, formal training, and so on customers are still at risk if they are.

**Mr. Shkopich:** — They are at risk. I think what happens in small towns, the club owner knows absolutely everyone in that town and everyone in that town knows that club owner. So I think it provides a whole different type of experience. I think the other thing that happens in small towns, there may be shorter memberships. There may be only three-month memberships sold at a time versus a process. Or maybe someone just comes in and pays on a monthly basis, dropping off a cheque on a monthly versus being on a pre-authorized payment system because their numbers are much smaller and

their facilities. And they may only have 100 members or 50 members or 150 members. The dynamics are totally different in small towns in comparison to the larger cities.

**The Chair:** — Any further questions? Well thank you very much, Mr. Shkopich, for your presentation and your attachments. We will certainly be taking all those into consideration when we have our deliberations and we appreciate your attendance and your input.

**Mr. Shkopich:** — Good. Thank you for the opportunity.

**The Chair:** — And you are also part of the history making of this committee so you can find a way to . . . Iris will tell you how you can connect to the *Hansard* so you can see your presentation or have a copy of it because you are part of history.

**Mr. Shkopich:** — Good. Thank you.

**The Chair:** — I will now entertain a motion to adjourn. Mr. Elhard, thank you very much. All in favour? The committee is adjourned and we're going to stay for a couple of minutes to have a discussion.

[The committee adjourned at 15:24.]