That is not entirely correct, because judges set a scale of fees on a solicitor-client basis, and there is a taxing officer in Ontario–and I suspect in other provinces–to tax lawyers' bills according to certain standards of services rendered.

It is improper to say that a lawyer can charge a certain fee. If the client insists on having it taxed, the lawyer receives what the taxing officer says he is entitled to receive for the services rendered.

You have stockbrokers' commissions, for example, set by the Toronto Stock Exchange under the authority of the Ontario Securities Commission. They are exempt from the bill as they are regulated by existing provincial regulations under the Ontario Securities Act.

The area which we are discussing with Mr. Hemens is not a new one. Senator Buckwold, when speaking about a product hit the point right on the head with regard to the meaning of trade terms. Meanings that are now being suggested for purposes of administration do not appear in the bill, so it looks as though we have an area to which we have to give some attention.

I am not committing myself to any particular opinion. I am merely pointing out our course of action and the approach we shall have to take in order to deal seriously with this matter.

Mr. Hemens, I notice that you say there should be an appeal to the courts.

Senator Flynn: Mr. Chairman, before we leave that point, do we solve the problem of a diminishing product if we insert the principle that the trade practice must constitute an undue restraint on competition?

Mr. Hemens: In my view, we do it only in part. If you provided, for example, a specific defence which would permit you to establish that there were, in fact, competing products available, that would help the situation.

Senator Flynn: There are three suggestions that would avoid the necessity of defining a product.

Mr. Hemens: It would go a long way toward it.

Mr. D. I. W. Bruce, Q.C., Member, Legislation Committee, Canadian Manufacturers' Association: I do not want to suggest at this point that the suggestions are exhausted. It is either by an exemption or defence, as we see it, that you can narrow this product problem.

Mr. Hemens: There has been a suggestion that the only complainants in respect of this bill are those representing big business. We feel that these refusal-to-deal problems are going to affect more adversely relatively small businesses, and Mr. McPherson, of Gibbard Furniture, is prepared to elaborate a little on that.

Mr. B. R. McPherson, Member Executive Council, Canadian Manufacturers' Association: With reference to our particular industry, the furniture manufacturing industry, and in our distribution, the question of price is not nearly the factor it was years ago. When you get into the production of furniture, where styling and design is very much a factor, a problem is again created with regard to the question of what is a product. A piece of furniture is an item, but it is also a design. In the merchandising and distributing of furniture, in particular furniture of a higher quality or better design, it is of the utmost importance that such designs are sold in certain stores. We create designs for certain markets. If the industry is restricted from selling to the dealers for whom a design is created, they are going to be in serious trouble. These are small companies. Our industry is a very large one: it employs somewhere in the neighbourhood of 50,000 people; it is a $1 billion industry; it is made up of many, many hundreds of factories. So, it is a complex industry. I think our industry exemplifies just what small companies are in this country. We would very definitely be affected by this refusal-to-deal provision.

I might also mention, along the line of what Mr. Snelgrove has said, that any surveys taken recently of our industry indicate a consumer preference for quality, first of all, followed by design and then price. In these particular surveys, dealer dependability was not one of the questions asked. Had it been, I would certainly think it would have been up at the top. In other words, the customer today–and this is borne out by surveys–is more concerned with assurance of the product, either through dealer dependability or the product itself. Consumers take a long look at their buy today, and price is way down on the totem pole.

This refusal-to-deal provision, we think, would very definitely limit our ability to market new designs and innovations of any type in the industry, because they have to be marketed on an exclusive or semi-exclusive basis. In other words, the manufacturer has to enter into a partnership with a dealer or a group of dealers in order to market a new design; otherwise, there is no way to get a new design off the ground. A dealer will certainly not enter into some kind of partnership if he does not know whether or not he is going to be forced to share that design with someone else whose store image is not in line with his. So, this would affect the sale of any such products. Under this proposed legislation, design would come down to the lowest common denominator. In other words, quality and design would be very much disturbed under this proposed legislation.

Senator Buckwold: This goes back to the definition of the product. I do not think the minister feels that any such case would be subject to an adverse ruling by the commission.

Mr. Hemens: With the greatest respect, senator, once you get before the commission, what the minister feels is completely irrelevant and immaterial.

Senator Buckwold: That is why I say the product definition becomes important. Again, that goes back to the other point.

There are two other matters I wanted to raise and on which I invite your comments. First of all, what about those instances where the manufacturer insists on price maintenance? If a dealer is habitually undercutting the market as against an established price, it is not unheard of for the manufacturer to refuse to deal with that dealer. That is the first point on which I should like to have your comments.