



**Third Session - Thirty-Sixth Legislature**  
**of the**  
**Legislative Assembly of Manitoba**  
**Standing Committee**  
**on**  
**Law Amendments**

*Chairperson*  
*Mr. Jack Penner*  
*Constituency of Emerson*



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**Thirty-Sixth Legislature**

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**LEGISLATIVE ASSEMBLY OF MANITOBA**  
**THE STANDING COMMITTEE ON LAW AMENDMENTS**

**Tuesday, June 17, 1997**

**TIME – 7 p.m.**

**LOCATION – Winnipeg, Manitoba**

**CHAIRPERSON – Mr. Jack Penner (Emerson)**

**VICE-CHAIRPERSON: Mr. Mervin Tweed (Turtle Mountain)**

**ATTENDANCE - 11 – QUORUM - 6**

*Members of the Committee present:*

Hon. Messrs. Enns, Gillehammer, Newman, Radcliffe, Toews

Messrs. Jennissen, Maloway, Ms. Mihychuk, Messrs. Penner, Reid, Tweed

*Substitutions:*

Ms. Barrett for Ms. Mihychuk

**WITNESSES:**

Bill 9–The Public Utilities Board Amendment Act  
Mr. Mark O'Neill, Centra Gas Manitoba Inc.

Bill 14–The Pension Benefits Amendment Act  
Mr. John Doyle, Manitoba Federation of Labour

Bill 30–The Farm Practices Protection Amendment Act  
Mr. Jim Shapiro, President, St. Germain-Vermette Community Association

**WRITTEN SUBMISSIONS:**

Mr. Peter Budd, Bennett Jones Verchere  
Mr. Richard Perdue, CENGAS

**MATTERS UNDER DISCUSSION:**

Bill 5, The Mineral Exploration Incentive Program Repeal Act

Bill 9, The Public Utilities Board Amendment Act  
Bill 14, The Pension Benefits Amendment Act  
Bill 17, The Retail Businesses Holiday Closing Amendment Act  
Bill 30, The Farm Practices Protection Amendment Act

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**Mr. Chairperson:** Good evening. Could the Committee on Law Amendments please come to order. Before the committee can proceed tonight, we need to elect a Vice-Chairman. Nominations are open.

**Hon. David Newman (Minister of Energy and Mines):** I nominate Merv Tweed, member for Turtle Mountain.

**Mr. Chairperson:** Merv Tweed has been nominated as Vice-Chair. Agreed? [agreed]

This evening the committee will be considering Bill 5, The Mineral Exploration Incentive Program Repeal Act; Bill 9, The Public Utilities Board Amendment Act; Bill 14, The Pension Benefits Amendment Act; Bill 17, The Retail Businesses Holiday Closing Amendment Act; and Bill 30, The Farm Practices Protection Amendment Act.

To date, we have had a number of persons registered to make presentations to the bills this evening, and I will now read aloud the names of persons who are preregistered.

The names on Bill 9, The Public Utilities Board Amendment Act, are Mark O'Neill, Centra Gas Manitoba Inc., and Richard Perdue, CENGAS.

Bill 14, The Pension Benefits Amendment Act, we have Valerie Price, Manitoba Association for Rights and Liberties, and Rob Hilliard, President, Manitoba Federation of Labour.

Bill 30, The Farm Practices Protection Amendment Act, we have Mr. Jim Shapiro, President, St. Germain-Vernette Community Association.

Those are the presenters that we currently have a list of. If there are any people in the room who would like to present who have not yet registered, can you please identify yourself to the person in back of the room.

We also, I understand, have a written submission for Bill 9. It has been received from Mr. Peter Budd of Bennett Jones Verchere. Copies have been made for committee members and were distributed at the start of the meeting. Is it the will of the committee to have this submission appear at the back of the committee transcript prepared for today's meetings? Is that the will? [agreed]

Does the committee wish to use time limits for the presentations?

**Mr. Mervin Tweed (Turtle Mountain):** Mr. Chairman, may I suggest that we do the 10-minute submission and five-minute questioning.

**Mr. Chairperson:** This is what has been used up till now in committees that there be a 10-minute limitation on presentations and five-minute limitation on questions. Is that agreed? [agreed]

Which bill order did the committee wish to hear the presenters? As they are before you on the list? That would mean that we would hear, first of all, from Bill 9, The Public Utilities Board Amendment Act. Is that the will of the committee? [agreed]

### **Bill 9—The Public Utilities Board Amendment Act**

**Mr. Chairperson:** I would call then the first presenter, Mr. Mark O'Neill, Centra Gas Manitoba Inc. Mr. O'Neill, do you have a presentation for distribution to the committee?

**Mr. Mark O'Neill (Centra Gas Manitoba Inc.):** What I have are highlights of my presentation I intend to make this evening. We just received notice this morning, of course, at eight o'clock, and I scrambled to make sure I had a presentation ready for you.

**Mr. Chairperson:** Thank you, we will ask the Clerk to distribute.

**Mr. O'Neill:** My 10 minutes is not running yet, is it?

**Mr. Chairperson:** No, it is not. When I recognize you, it will start running. Mr. O'Neill, you may proceed.

**Mr. O'Neill:** Thank you, Mr. Chair. Honourable ministers and committee members. Firstly, my name is Mark O'Neill. I am the regulatory legal counsel for Centra Gas Manitoba Inc. With me this evening is Ian Anderson, the senior manager, regulatory affairs and strategic planning for Centra Gas Manitoba Inc. He is the silver-haired fellow in the front row.

Centra Gas Manitoba Inc., for those of you who are not familiar with that company, is the owner of a natural gas distribution company, and it is therefore an owner of a public utility within the meaning of The Public Utilities Board Act. In that regard both Centra Gas Manitoba Inc., whom I will refer to as Centra, as an owner, and the utility operations which Centra owns, the pipes, the system, the equipment and the service connected with the distribution of the gas, both of these, the owner and the utility, are subject to regulation by the Public Utilities Board pursuant to the powers given to that board by the act. My comments tonight relate only to Section 5 of the amendment act, that which creates Section 74.1 and its subsections.

I will give you my short form submission firstly since I only have 10 minutes, and that is that in general principle Centra Gas agrees with the purpose of the amendment and, further, Centra Gas submits that the Legislature can achieve the government's stated intention with this legislation by enacting only proposed subsection 1 of 74.1, and that the Legislature may wish to consider adding a purpose section to the act in order to avoid confusion in future litigation. I will point out that confusion.

We have no difficulty with the purpose of the proposed amendment as that purpose was stated by the honourable minister for the Public Utilities Board, Mr. Radcliffe. Regulatory forbearance in areas of the economy where historically monopolies have operated should occur in areas where today or tomorrow,

competition now or will exist. The minister specifically referred to that intention in the media release that came with the introduction of first reading.

In the natural gas industry, though, we are not then talking about the distribution of gas for which there is a natural monopoly. We are talking rather, for example, about the purchase of natural gas from suppliers or brokers, and this is the area where Centra now competes with other gas marketers. Although we applaud the government for moving toward deregulation of competitively provided services, it is our view that this legislation goes beyond that deregulation and may indeed inadvertently create more regulation.

Secondly, it is our position that the legislation is awkwardly worded, with all due respect to legislative counsel, and will only invite litigation to interpret its meaning. It is something that we submit can easily be avoided by a clearer statement of the legislation's intent within the act itself. If the Legislature intends to go further than the stated intention of the government, then it should be certain that it is doing that, and it may wish to have public debate on the intention of the legislation in the first place.

The confusion that we say arises out of the legislation which (a) may lead to more regulation and (b) more litigation, arises out of, firstly, the introduction of new concepts into the legislation that are not currently in the legislation and secondly—sorry, introduction of new concepts within a forbearance section—and, secondly, out of what we say are loose and unnecessary words and wording in the subsections themselves.

The Legislature is saying to the board, you may consider not regulating in certain areas if you take into account the following considerations, but those considerations are not referred to elsewhere in the legislation when the board is to consider whether to or how to regulate in the first place. In terms of the new concepts, there are three new concepts which are introduced in this legislation. The first one is protection of the public interest. The second one is reference to competition and the competitive market, and the third one arises as a subsection 3 and that is the ability to impose conditions on a company associated with the owner of the utility. In other words, the ability

to impose conditions on someone who is not yet regulated under the current act.

The awkward wording has three issues surrounding it. The first one is the unnecessary subsections 2 and 3 after the amendment already allows for conditional regulations; the second is the use of the expression “company associated . . . with,” which is found in subsection 3; and the third one is the absence of a purpose section in the act. Regarding the new concepts, we should firstly look at what the purpose of the act is that exists now, at least vis-a-vis Centra Gas from our point of view, and that purpose is to give the PUB regulatory powers to ensure that the utility, which is operated by Centra, delivers natural gas to its customers in a safe and reliable manner and at reasonable cost, and then in making its orders, the board may take into account the public convenience—not the interest, the public convenience—and necessity.

The Consumer and Corporate Affairs has published a brochure called the Public Utilities Board Hearing Process, which tells the public what this government sees is the role of the board. It says: The main duties of the board are to review and set rates; review and set terms and conditions of service; ensure customers of regulated industries receive safe and adequate service; and review consumer complaints. You will not find any reference in there or in the act as it currently exists to competition or to protection of the public interest, both of which are expressions found in the proposed subsection 74.1(1), which is a forbearance section. They are not found anywhere else in the act and particularly not in 74, which is the general supervisory section.

\* (1910)

So, if the Legislature wishes to make these new concepts appropriate considerations for forbearance, it then raises a question as to whether protection of the public interest and insufficient competition are appropriate considerations for regulating in the first place. The question then becomes, is it now to be the role of the board to protect the public interest and to ensure that sufficient competition exists in services provided by the owner of a utility? If that is the case, this act needs a purpose section, we submit. If you do not put that purpose section in there, there is going to

be a great deal of confusion. You are asking for more litigation from those lawyers who are charging out at an hourly rate, Mr. Minister, as you asked about earlier, and it also will call for more regulation.

This act has a potential for more regulation because there is talk about putting conditions on people who are not subject to regulation prior to the implementation of this proposed amendment, should it go through. Part of the difficulty, we submit, comes because, as was noted in the press release, this is almost a direct lift from the Telecommunications Act, and I say almost, and I will get to why it is almost, later. But that act has a purpose section that is substantially different from the Public Utilities Board. There is no purpose section in The Public Utilities Board Act, but some of the objects of the Canadian Radio Telecommunications Act that are specifically outlined are enhancing the efficiency and competitiveness of Canadian telecommunications, fostering increased reliance on market forces for the provision of telecommunications services, and ensuring that regulation, where required, is efficient and effective.

We do not, for a minute, say that those are not laudable objects of an act dealing with monopolies and then competitive services which may or may not be operated by those monopolies or its affiliates, but that is not in the act now, and it is bound to create confusion. If you want it in the act, then we submit you should just say so, and then everybody knows where they are playing, or maybe it requires a public debate. So we do not say that the forbearance section creates these new objects of the act; what we say it creates is that it creates confusion because some bright lawyer is going to come forward and say it creates those objects and another—

**Mr. Chairperson:** Mr. O'Neill, you have one minute left.

**Mr. O'Neill:** Great. You can ask lots of questions about the other issues. The other concept not referred to in the current legislation is the imposing of conditions on bodies that are associated with the corporation.

In terms of the awkward wording, I want to deal with that expression "associated, . . . with" which is found in

subsection 3 of the proposed 74.1. That expression itself is confusing because it does not say this is associated within the meaning of The Corporations Act or associated within any meaning whatsoever. So, if the Legislature is intending to impose conditions only on affiliates of a company that owns a utility, in this instance, you are going to be causing problems for jobs in Manitoba in the future and possibly losing jobs in Manitoba and having money run out of this province. Because the competitors of the affiliates of Centra Gas, in the future and partly now, are and will be affiliates of major international energy companies.

If the board says that there is sufficient competition in one area and can impose conditions in deciding to forbear, they can only impose them on companies associated with Centra Gas. It cannot impose them on the other companies that are operating in the market thereby putting a Manitoba operation at a competitive disadvantage, losing jobs, losing money from the province. If what the Legislature intends to say is anyone dealing with a company or a person under Section 74, then it should say so.

**Mr. Chairperson:** Thank you, Mr. O'Neill, for your presentation. I am going to open the floor for questions, and I remind honourable members that we have five minutes for questioning. Are there any questions?

**Hon. Mike Radcliffe (Minister of Consumer and Corporate Affairs):** Thank you, Mr. O'Neill, for your presentation today, and I look forward to the ongoing dialogue with Centra Gas over the ensuing years. I would ask, sir, do you know of any decided cases or litigation on the Telecommunications Act and specifically arising out of 34(1), (2), (3) or (4) in the regulatory environment?

**Mr. O'Neill:** Sorry, cases that simply deal with that object?

**Mr. Radcliffe:** Arising out of the forbearance section of the Telecommunications Act.

**Mr. O'Neill:** I am not specifically aware of any that will help at all this discussion.

**Mr. Chairperson:** Are there any other questions?

**Hon. Vic Toews (Minister of Justice and Attorney General):** I would just like to suggest, Mr. O'Neill, if you have further comments that you wish to make, you may want to submit them to the minister in writing and that might be of assistance to him in any further contemplation.

**Mr. Chairperson:** If there are no further questions, thank you, Mr. O'Neill, for your comments.

**Mr. O'Neill:** Mr. Chair, may I ask a question?

**Mr. Chairperson:** Yes, you may.

**Mr. O'Neill:** Since we have still got about three minutes left, I wonder if I might just hit one point that was important to Centra Gas to get made at this hearing, while all the members are present?

**Mr. Chairperson:** I would entertain that. I would suggest that it be seen as a response to a question. Mr. O'Neill, proceed.

**Mr. O'Neill:** I want to thank Minister Toews for asking me about the unnecessary complication that subsections 2 and 3 cause, and I will respond to that question.

The Telecommunications Act is obligatory in nature. It is not permissive. This is not a direct lift because The Telecommunications Act says that the CRTC shall forbear when there is sufficient competition, and then it is necessary to add subsections that deal with restraints on the obligation. In this instance, we have a "may forbear section," so the board can choose to forbear and can conditionally forbear. Therefore, the other sections are not necessary and because of the awkward wording, it makes sense just to get rid of them. They do not help the situation. A court would likely say, well, if they are there, they are there for a reason, and try to interpret what that reason is. What the Legislature wants is already in existence in 74.1.

**Mr. Chairperson:** Thank you very much, Mr. O'Neill.

The next presenter is Richard Perdue, and I understand he is not here. However, we have a written presentation for distribution. Is it the will of the

committee to allow the submission to be entered into the record? Agreed? [agreed]

What is the will of the committee? Should we hear all the presenters tonight on all the bills before we proceed to clause by clause? [agreed]

#### **Bill 14—The Pension Benefits Amendment Act**

**Mr. Chairperson:** I call then next for Bill 14, The Pension Benefits Amendment Act. The first presenter is Valerie Price, Manitoba Association for Rights and Liberties. Is Valerie Price in the audience? Valerie Price not being here, I will call then Rob Hilliard, President, Manitoba Federation of Labour. Mr. Hilliard.

**Mr. John Doyle (Manitoba Federation of Labour):** I apologize. Mr. Hilliard is out of town tonight. He has asked me—my name is John Doyle—to attend on his behalf. I do have copies for distribution.

**Mr. Chairperson:** We will ask the Clerk to distribute. Mr. Doyle, you may proceed.

**Mr. Doyle:** For those of you who have not met me before, my name is John Doyle. I am employed as the communications co-ordinator for the Manitoba Federation of Labour.

The Manitoba Federation of Labour is pleased to have the opportunity to present its views on the content of Bill 14, The Pension Benefits Amendment Act. For the benefit of those who may not be familiar with the MFL, it is the largest central labour body in Manitoba, representing unions and their members who are affiliated with the Canadian Labour Congress. We are mandated through regular conventions to represent the interests of nearly 90,000 working women and men on a wide range of issues, including labour relations, the economy, social issues, legislative action and so on.

\* (1920)

A major concern is the financial security of working people in their retirement years. Generally speaking, the labour movement promotes the defined benefit model of pension plans because of its overall quality. Workers know from the outset what they are buying

into. They have a measure of certainty about how much or how little pension income they will have in retirement.

For this reason, we tend not to support or encourage the promotion of other pension plan models. We believe, as attractive as some of their features are, that they tend to undermine the defined benefit model and ultimately will lead to a less financially secure retirement for working people, not more.

Many of the alternative pension planning models provide, with various penalties, access to retirement funds before retirement occurs. In tough economic times, the temptation is to withdraw funds that are earmarked for retirement income with the intention of replacing them at some future date. All too often, this future date never arrives, and in spite of their best intentions, poverty in retirement or not retiring at all becomes their choice at age 65.

Bill 14, in and of itself, is a modest bill that provides for improvements in a number of areas. The MFL is pleased to note that the bill will require new defined benefit pension plans to contain language that determines the disposition of surplus pension funds, language that is mutually agreeable to the plan holder and to the plan members.

It has long been the MFL's position that all pension plan funds, including surplus funds, are owned by the plan members. Working people who have negotiated the establishment and terms of their pension plans know full well that they come about as a result of hard-nosed bargaining, giving up wage increases and other benefits in order to gain their pension plan. Pension funds in this light are deferred wages. In the event that a defined benefit plan develops a surplus, it should be retained by the plan members in the form of benefits or some other device that the plan members make an informed decision on.

Bill 14 presents an opportunity to the government to expand the surplus pension fund language beyond new plans and extend that provision to defined benefit plans already registered in the province of Manitoba. The need for it exists since many of these plans were structured outside of collective agreements at a time when the development of surpluses were not

anticipated, or addressed in the absence of union representation.

If it makes sense to ensure that new defined benefit plans are required to address the issue of surplus pension fund disposition, then it makes sense that plans already in existence should contain similar language. In this area, unionized workers enjoy access, through their unions, to pension expertise and negotiation services. Workers in defined benefit plans who are not currently members of unions do not have access to that expertise, nor do they enjoy the ability to bargain collectively with their employer. These workers, of course, should be unionized. However, in the absence of a union, there needs to be a review of surplus pension fund clauses by a third party, such as the superintendent of pensions, who can ensure that the pension plan language on these funds does not have a negative impact on their rights. Well, far from adequate, such a review would preclude workers in less than democratic workplaces from being taken advantage of.

Bill 14 is also an excellent opportunity to the government to take action on another surplus pension fund issue, employer contribution holidays. While existing Province of Manitoba policy sets out rules governing the withdrawal of surplus pension funds by employers, it does not address employers taking a holiday from pension plan contributions while a surplus exists. In the MFL's view, contribution holidays are a backdoor to accomplishing something that other policies prevent, and that is the use of surplus funds by employers in a way that does not necessarily benefit plan members. The MFL urges the government to take action through amendments to Bill 14 that will extend the requirement that defined benefit plans have language governing the use of surplus pension funds to all plans, existing or new, and end the practice of employer contribution holidays, unless there is a genuine agreement with plan members to do so.

I would like to conclude this presentation with an issue that does not directly relate to Bill 14. However, it is an emerging pension policy issue. There is growing concern among labour pension practitioners about the long-term viability of some self-directed retirement funds, particularly in workplaces where the employees are not represented by a union and have



access to their expertise. There are many variations that a person can opt for in the course of deciding how to invest pension plan funds to ensure an adequate yield in retirement. It is a challenging process even for people with many years of expertise in the investment field.

In the interest of making it possible for working people to retire in financial security without overreliance on public pension plans, the MFL recommends that the Manitoba Pension Commission's role as educator be enhanced with adequate resources to take on the challenge of training people to manage self-directed funds. Working people are not well placed to secure this kind of training using their own resources and, in many cases, they may not even be aware of the challenge. Thank you for your attention.

**Mr. Chairperson:** Thank you very much, Mr. Doyle. Are there any questions?

**Mr. Daryl Reid (Transcona):** Thank you, Mr. Doyle, for your presentation. You referenced contribution holidays in your presentation here this evening, and I wonder if you have some examples in mind or some experience in that regard where you have seen or heard of or witnessed employers taking contribution holidays that, perhaps, you might be able to share with this committee.

**Mr. Doyle:** The knowledge that I have of the issue comes from my exposure to discussions at the staff level, and, in many cases, the relater of the anecdote did not identify which collective agreement he or she was talking about. However, I do know from that level of discussion at conventions and specialized meetings that it continues to be a large concern for union pension practitioners across the country.

**Mr. Reid:** You reference this issue as a precautionary measure to ensure that protections are in place for the employees who are the benefactors of the pension plans to make sure that the surpluses of the fund and the funds themselves are not utilized for purposes other than the intent for the retirement for the employees.

**Mr. Doyle:** Yes.

**Mr. Chairperson:** Thank you very much. Are there any other questions, comments? If not, thank you for your presentation, Mr. Doyle.

**Mr. Doyle:** Thank you.

### **Bill 30—The Farm Practices Protection Amendment Act**

**Mr. Chairperson:** Bill 30, The Farm Practices Protection Amendment Act. There is one presenter that I have on the list here. His name is Mr. Jim Shapiro. Is Mr. Shapiro here?

Mr. Jim Shapiro, would you come forward, please. Have you a presentation for distribution to the committee?

**Mr. Jim Shapiro (President, St. Germain-Vermette Community Association):** Yes, I do, Mr. Chairman. With your permission, I would like to distribute it after my presentation.

**Mr. Chairperson:** After the presentation.

**Mr. Shapiro:** Yes, Sir.

**Mr. Chairperson:** If that is the wish of the committee, you may proceed then, Mr. Shapiro.

**Mr. Shapiro:** Mr. Chairman, honourable ministers and members of the committee, my name is Jim Shapiro and I am the President of the St. Germain-Vermette Community Association. St. Germain-Vermette is still part of the city of Winnipeg and is the southeastern corner of the city of Winnipeg.

I appear before you to support Bill 30, The Farm Practices Protection Amendment Act. In particular, I am here to represent the residents of St. Germain who are not satisfied with the lack of an enforcement section to The Farm Practices Protection Act. These individuals, numbering 31, have previously filed a complaint with the Farm Practices Protection Board against the owner of 3399 St. Mary's Road. This complaint was filed after a 14-year period of time during which these individuals demonstrated patience, compassion and understanding with and for the owner of this operation.

When the Farm Practices Protection Board was created these individuals felt that an agency was finally available that could help them. Their patience had run its course. They asked me to represent them. A complaint was filed, the board investigated the complaint and ruled on November 22, 1994, that the operator was indeed in violation of normal farming practices. The board gave this individual until June 1, 1995, to remedy the violation. He refused. This situation then became the second Manitoba instance of a nonvoluntary compliance with the board's ruling.

A glaring deficiency in The Farm Practices Protection Act immediately became apparent. Without an enforcement section to the act there is nothing to compel an individual who is benefiting by not using normal farming practices to change his or her practices to their own disadvantage.

We tried everything that we knew to have this ruling enforced. We registered the board's ruling in Court of Queen's Bench. We then contacted two lawyers, each associated with a reputable firm in Winnipeg. We asked them: How much would it cost for you to represent us in court? Both said, independent of the other, between \$5,000 and \$20,000, depending upon the operator's response to such an action and the number of appeals he may file. Obviously, as residents we could not afford these kinds of fees, nor did we feel that we should have to. We approached Legal Aid, but we were told that such an action would not pass their financial test or their test of importance, and that test involves a broad impact on the public and an impact on low-income individuals.

\* (1930)

We approached our councillor, John Angus, and we asked him if it was possible for the City of Winnipeg's legal department to obtain a notice of motion to require the operator to comply with the board's order. Mr. Angus did make that request of Mrs. Ursula Goeres, the city's manager of Legal Services. Mrs. Goeres informed us that she would not feel comfortable enforcing a ruling that her department did not help establish. She felt that the City of Winnipeg would not have an appropriate standing in a court of law if it tried to enforce the order.

Finally, we spoke with Dr. Allan Preston, the chief field veterinarian for the province of Manitoba. On the assumption that the operator's animals were subject to harsh conditions due to a lack of shelter, we did anticipate some action on the part of the province of Manitoba, but without linking quality of premises to animal care it is impossible to obtain a conviction.

There is obviously a gap in the provincial legislation concerning the compliance provisions of the Farm Practices Protection Board. On the one hand, the province has, for all practical purposes, removed the citizen's right to proceed against a farmer. On the other hand, the lack of an enforcement section to The Farm Practices Protection Act requires the complainant to bear the additional responsibilities and costs to have the board's order enforced when in fact it was the board's order. By not empowering the Farm Practices Protection Board to file an order in the Court of Queen's Bench, the legislation concerning this act is considerably diminished.

Under the present circumstances, The Farm Practices Protection Act has become a hindrance to enforcement, not an aid. I say that because other agencies, knowing that the Farm Practices Protection Board has made an order to modify or cease a farm practice, expect it to enforce that ruling, and so they are reluctant to take action on their own.

Such a ruling by the Farm Practices Protection Board not only is practically unenforceable to residents without resources, but it is counterproductive. It is counterproductive because other agencies refuse to take action under the impression that the Farm Practices Protection Board is going to enforce their own ruling. So the very board the province set up to help in nuisance claims has become an impediment to action. It is also an embarrassment because as violators become aware of the lack of an enforcement section of the act, they can ignore the board. They can ignore its rulings. They can ignore everything associated with it.

We do not understand why the province thought that violators would voluntarily comply with the board's ruling. Why should someone profiting by not using normal farming practices change their practices to their own disadvantage? The logic behind this thinking does

not make any sense to us, and it makes the Farm Practices Protection Board appear ineffectual.

As currently enacted, The Farm Practices Protection Act is legislatively impotent. In its present form, this act is the worst kind of legislation because it raises false hopes while at the same time it wastes taxpayers' time and money on a useless exercise. I mean, here it is, 16 years after the fact, three years after the ruling, and nothing has happened.

If the board can only make recommendations, of what use is it? Bill 30 will rectify this deficiency in The Farm Practices Protection Act. We strongly urge you to support its passage.

**Mr. Chairperson:** Thank you very much, Mr. Shapiro, for your submission. Are there any questions or comments?

**Hon. Harry Enns (Minister of Agriculture):** We thank you, Mr. Shapiro, for your presentation and for your support for Bill 30.

I think it might be of interest for members of the committee—and you may have identified it more specifically in your presentation that is just being passed out. Could you just in a few words describe the particular operation that has been of concern to some of the residents in St. Germain?

**Mr. Shapiro:** I have tried to be tactful in identifying the property and not the individual's name. I do not know what the committee's policy is on that.

**Mr. Enns:** Just the nature of it.

**Mr. Shapiro:** The nature of the operation depends upon who is asking the operator what he is doing. There are pigs on the property which is a five-acre lot in an area zoned rural, unserviced, large lot, agricultural. The individual is not violating a zoning by-law.

The individual is violating normal farming practices. Among them are depositing large loads of food picked up from bakeries, such as two-day-old bread and dumping them on the ground, allowing any and all animals, including rats and so forth, that can access the

food to feed on it, instead of having proper shelter, proper cages, pens for the livestock, and feeding them appropriately on schedule and nutritionally with nutritionally sound practices.

I said at the beginning of my presentation that the residents had been understanding and compassionate and patient, and that is because they have tried to understand the individual's financial circumstances. Nobody is asking him to leave. There is no attempt to evict this individual.

The surrounding residents feel that they have a right to use their yards, to not have a stench associated with rotting vegetation, rotting food, that makes it impossible for them to have guests, to sit on their veranda, to enjoy their backyard. They are not even complaining about the unsightliness of the area. They are complaining about the stench associated with it. They would like it cleaned up to eliminate that odour, and that is the primary concern.

I think that anybody going by that area would not only wonder what the odour was but would wonder how a municipality or city could allow that kind of an operation to exist. You wonder about the health of the children and the individual living there. You wonder about the residents adjacent to the property. You wonder about the care and maintenance of the animals involved.

I am an animal behaviourist working at the University of Manitoba, and I can tell you that place would be condemned and immediately cleaned up tomorrow without any question if this was the Canadian Council on Animal Care or the university's animal care committee. It is simply unacceptable, but the Catch 22 is that a resident stench becomes agricultural gold in the form of rotting manure when you go to a court of law. So since this is zoned agricultural, it is not a violation of a zoning by-law, but it is a violation of farming practices and that is what we are trying to have cleaned up, so that the rest of the residents who are not engaged in farming practices can exist and live and let live.

**Mr. Enns:** Mr. Chairman, I think you and I both agree and I am pleased, certainly, that the Farm Practices Board did acknowledge and did agree with you and your residents that the practice that you describe is not

in compliance with acceptable agricultural practice, and has thus ruled. This act now makes it more enforceable to get, not at citizens' request, but with the board order going to the court to pursue that for court action.

\* (1940)

One further question. You mentioned in your statements that somehow the act itself had taken away citizens' right for redress. In what way has that happened? I do not need a Farm Practices Board or anything else to prevent me from suing my neighbour if I think I have cause to sue him.

**Mr. Chairperson:** Mr. Shapiro, with a final response.

**Mr. Shapiro:** The act does not take away that right; you have to wait 90 days. But in a practical sense it renders residents without resources, that is, finances, legal advice, impotent in the face of a court of law. You can wait 90 days or 900 days; you do not have the resources to pursue it. Your rights are there, but you have no recourse but to just walk away from the situation. The amended Bill 30 will allow the board to do what the residents now cannot do.

**Mr. Enns:** Mr. Chairman, just one final comment.

**Mr. Chairperson:** Mr. Minister, we have exceeded the time limit that we have allotted for—

**Mr. Enns:** I plead with the members of the committee to allow me to pursue this one final issue.

**Mr. Chairperson:** What is the will of the committee? Is there leave?

**An Honourable Member:** Leave.

**Mr. Chairperson:** There is leave.

**Mr. Enns:** In other jurisdictions, Mr. Shapiro, this kind of legislation is sometimes referred to as the right-to-farm legislation. Part of the rationale for my introducing this legislation a few years ago was precisely that, not to have my farmers harassed by well-meaning but insensitive urbanites who come to enjoy and move out into the country, who maybe even want to separate from their city status in a more formal way

and then complain about my hogs or my cattle or my sheep that are in that pastoral setting. I think you appreciate that we are making progress, first of all by establishing the board and now by putting more teeth in it. Would you agree to that?

**Mr. Shapiro:** I do agree to that. We also support the purposes of the board and I also farm.

**Mr. Chairperson:** Thank you very much for your presentation, Mr. Shapiro. I will call again the name of Valerie Price who was not here before. Is she now here to make a presentation? Not seeing her, we will then go to clause-by-clause consideration of the bills. Are there any other presenters in the back of the room that have not presented that would like to present? Are there any presenters? Seeing none, we will proceed then to clause-by-clause consideration.

#### **Bill 5—The Mineral Exploration Incentive Program Repeal Act**

**Mr. Chairperson:** If it is the will of the committee, we would go to Bill 5, the bill that we had listed first in the presentations. It is The Mineral Exploration Incentive Program Repeal Act. As normal, the title and the preamble will be set aside. Are there any opening statements by the minister?

**Hon. David Newman (Minister of Energy and Mines):** I have no statements to make unless the official opposition critic has a statement to make. If not, I would like to just proceed with it.

**Mr. Chairperson:** Thank you very much, Mr. Minister. Does the critic for the official opposition have an opening statement?

**Ms. MaryAnn Mihychuk (St. James):** I am prepared to support this bill and refer those interested to Hansard when I did make a few comments in the House.

**Mr. Chairperson:** Thank you very much. As I said before—Mr. Minister.

**Mr. Newman:** I will resist the temptation to comment on what was said in the Legislature on second reading except to say that your concerns expressed in that debate about the way MEAP will be audited and the

accountability futures indeed is addressed in practice in accordance with the requirements of the public Auditor.

**Mr. Chairperson:** Thank you very much, Mr. Minister. As I indicated before, the title and the preamble will be set aside. Clause 1—pass; Clause 2—pass; title—pass; preamble—pass. Bill be reported.

#### **Bill 9—The Public Utilities Board Amendment Act**

**Mr. Chairperson:** As I indicated before, Mr. Minister, would you have an opening statement?

**Hon. Mike Radcliffe (Minister of Consumer and Corporate Affairs):** Thank you, Mr. Chairman. I think I would forbear on any remarks at this point in time.

**Mr. Chairperson:** Thank you. Would the critic for the official opposition have an opening statement?

**Mr. Jim Maloway (Elmwood):** Mr. Chairman, we will be opposing this bill for the many reasons that I outlined in my statement on the bill at second reading, but I will pass at this point.

**Mr. Chairperson:** Again, the title and the preamble will be set aside. Clauses 1, 2 and 3—pass; Clauses 4 and 5—pass. Clauses 6, 7 and 8.

**An Honourable Member:** No.

**Mr. Chairperson:** Which one, Mr. Maloway.

**An Honourable Member:** Recorded vote.

**Mr. Chairperson:** On which clauses?

**An Honourable Member:** The bill.

**Mr. Chairperson:** We are not there yet, Mr. Maloway. We have not gone through the bill yet.

#### **Point of Order**

**Mr. Maloway:** Mr. Chairman, on a point of order, I wonder if the committee would see fit to have the member for Wellington (Ms. Barrett) added to the

committee, as I believe this was something that was supposed to be done earlier?

**Mr. Chairperson:** Is there leave to make changes to the committee? Which member is she proposed to replace?

**An Honourable Member:** The member for St. James (Ms. Mihychuk)?

**Mr. Chairperson:** The member for St. James? Is there leave? [agreed] It will then be recorded and reported in the House that the honourable member for Wellington will replace the honourable member for St. James.

#### **Committee Substitution**

**Mr. Chairperson:** Mr. Maloway, did you want to move that motion?

**An Honourable Member:** I am sorry. So moved, Mr. Chairman.

**Mr. Chairperson:** It has been moved that the honourable member for Wellington (Ms. Barrett) replace the honourable member for St. James (Ms. Mihychuk).

**Mr. Radcliffe:** Mr. Chair, I would just add that I do not think that the honourable member for St. James could be replaced. However, we would welcome the honourable member for Wellington to the—

**Ms. Becky Barrett (Wellington):** If she could, I am the best one here.

**Mr. Radcliffe:** I would concur with the honourable member for Wellington.

**Mr. Chairperson:** Thank you. All agreed? [agreed] So ordered, and it will be reported in the House.

\* \* \*

**Mr. Chairperson:** Now, can we get back to clause-by-clause consideration? Clauses 6, 7, and 8—pass; Clauses 9 and 10—pass; title—pass; preamble.

**An Honourable Member:** No.

**Mr. Chairperson:** No?

**An Honourable Member:** On division.

**Mr. Maloway:** Mr. Chair, I would like a recorded vote.

**Mr. Chairperson:** A recorded vote has been asked for.

**An Honourable Member:** On the preamble.

**Mr. Chairperson:** I think, Mr. Maloway, what you might want to consider is proposing a motion or asking for a recorded vote on the reporting of the bill. That is normally the practice if the total bill is in question, and the reporting procedure would be used as a way to identify whether you are in favour of reporting the bill in the House or not. So shall we then pass the title and the preamble—pass. Shall the bill be reported?

**Some Honourable Members:** No.

**Some Honourable Members:** Agreed.

#### Voice Vote

**Mr. Chairperson:** No? All those in favour of reporting the bill, would you say yea?

**Some Honourable Members:** Yea.

**Mr. Chairperson:** All those opposed, would you say nay?

**Some Honourable Members:** Nay.

**Mr. Chairperson:** I declare the Yeas have it.

#### Formal Vote

**Mr. Maloway:** Mr. Chairman, I would like to request a recorded vote.

*A COUNT-OUT VOTE was taken, the result being as follows: Yeas 6, Nays 4.*

**Mr. Chairperson:** The bill will be reported.

#### Bill 14—The Pension Benefits Amendment Act

**Mr. Chairperson:** Bill 14, The Pension Benefits Amendment Act. Mr. Minister, do you have an opening statement?

**Hon. Harold Gilleshammer (Minister of Labour):** No.

\* (1950)

**Mr. Chairperson:** Does the official opposition critic have an opening statement?

**Mr. Daryl Reid (Transcona):** Mr. Chairperson, I put my comments on the record with respect to Bill 14 during second reading, although I have some questions arising out of one of the presentations that was here this evening and perhaps the minister might have staff that might be able to answer a couple of those questions for us?

**Mr. Chairperson:** Mr. Reid, did you have a specific point in mind?

**Mr. Reid:** I do, Mr. Chairperson. I would like to know, because in the presentation here and under the legislation itself it says that any new pension plans coming into effect will have to have some declaration or intent with respect to the surpluses in the legislation itself, and I would like to know why the minister or the department chose only to include the new plans and not to look at the intent for inclusion of existing plans. Is there some reason why existing plans were not included in the legislation?

**Mr. Gilleshammer:** I am informed that the issue of surpluses is a legal matter that is frequently dealt with by the courts.

**Mr. Reid:** I did not quite catch what the minister was saying. I was addressing a concern that was raised by his colleague here. The minister is saying then that it was a matter that would have to be addressed by the courts for its inclusion in the legislation?

**Mr. Gilleshammer:** I am told that the ownership of the surpluses has been determined and that we cannot override those determinations.

**Mr. Reid:** So the existing pension plans themselves would have some provision within them for determination of the splitting or the sharing of or the ownership of surplus of the investment of the pension funds themselves? Is that what you are saying here, that all plans have that in effect in them and that therefore there is no need to have inclusion or retroactivity of that in legislation?

**Mr. Gilleshammer:** I am informed that the existing plans, the surpluses, are either owned by the employer or the employee, and if there is some sense of doubt, they can go to court.

**Mr. Reid:** So if the employees have the financial wherewithal, where there is a question that may arise with respect to the surplus funds, then the employees themselves can proceed to court to ascertain ownership of those funds. If they do not have the financial wherewithal, then there is no protection for them to secure some kind of an understanding of ownership for those funds.

So it is essentially left in the hands and the financial capabilities of the individuals who would eventually be recipients or benefactors of that pension fund. Is that what you are saying, Mr. Minister?

**Mr. Gilleshammer:** I am informed that the Pension Commission is there to see that the interests of employers and employees are addressed.

**Mr. Reid:** So with respect to the presenter's concerns, the need to review surplus pension fund clauses by a third party, you are saying then that the board or the commission itself would review all those matters, and that would address the concerns that the presenter had here this evening.

**Mr. Gilleshammer:** That is correct.

**Mr. Chairperson:** We will then set aside the title and the preamble and proceed to the clause by clause.

Clauses 1 and 2—pass; Clauses 3 and 4(1)—pass; Clauses 4(2) and 5—pass; Clause 6—pass.

**Mr. Reid:** One final question that comes to mind, Mr. Chairperson, the presenter here this evening had recommended that the Pension Commission take on the role as an educator, with adequate resources to address the need for training people to manage self-directed funds. Has there been any thought given by the department, or the Pension Commission, with respect to taking on that particular challenge to ensure that there is appropriate education in place?

**Mr. Gilleshammer:** I am told they perform that role at the present time.

**Mr. Reid:** So then those services are available for the public. Is there any means for advertising that to the public so that they are aware of it? Because it appears that the presenter here this evening may have been unaware that that service is available.

**Mr. Gilleshammer:** The next time I meet with the presenter and his colleagues, I will draw that to his attention.

**Mr. Chairperson:** Clauses 7, 8(1), 8(2), 9(1) and 9(2)—pass; preamble—pass; title—pass. Bill be reported.

#### **Bill 17—The Retail Businesses Holiday Closing Amendment Act**

**Mr. Chairperson:** Bill 17, The Retail Business Holiday Closing Amendment Act, does the minister have an opening statement?

**Hon. Harold Gilleshammer (Minister of Labour):** No.

**Mr. Chairperson:** No. Does the honourable critic for the opposition have an opening statement?

**An Honourable Member:** No.

**Mr. Chairperson:** No. The title will then be set aside, and the preamble will be set aside.

Clauses 1, 2 and 3(1)—pass; Clauses 3(2), 4 and 5—pass; preamble—pass; title—pass. Bill be reported.

**Bill 30—The Farm Practices Protection  
Amendment Act**

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**Mr. Chairperson:** Bill 30, The Farm Practices Protection Amendment Act, the title and the preamble will be set aside.

Shall Clauses 1, 2 and 3(1) pass? Oh, by the way, are there any opening statements? No opening statements.

Clauses 1, 2 and 3(1)—pass; Clauses 3(2), 4 and 5—pass; preamble—pass; title—pass. Bill be reported.

Seeing no other business before me, committee rise.

**COMMITTEE ROSE AT: 7:59 p.m.**

**WRITTEN SUBMISSIONS PRESENTED  
BUT NOT READ**

Toronto, Ontario  
June 17, 1997

Re: Bill 9

Dear Sir:

I have attended as counsel on behalf of a variety of corporate energy clients before the Manitoba Public Utilities Board as well as similar boards in other Canadian jurisdictions where competition and the provision of energy related services have been addressed.

The legislative amendments to The Public Utilities Board Act which are proposed in Bill 9 are exemplary and will permit the Manitoba Public Utilities Board to continue exercising its leadership role in bringing competitive advantages to the people of Manitoba.

I am pleased to support the enactment of Bill 9.

If you have any questions, please contact the undersigned.

Yours very truly,  
Peter Budd, Bennett Jones Verchere

Re: Bill 9—The Public Utilities Board Amendment Act

Attention: Clerk to the Legislative Committee

CENGAS is an association of residential and small commercial marketers of natural gas in Manitoba and Ontario. The member companies currently supply gas to about 650,000 customers in both provinces.

CENGAS is making this submission in support of Bill 9 and its intention to provide the Public Utilities Board with the authority to refrain or forbear from regulating those aspects of the natural gas industry which are found to be competitive and within the public interest.

CENGAS is seeking similar legislation to this bill in Ontario but the schedule there is somewhat behind yours. Manitoba is currently in the forefront of natural gas deregulation in Canada and North America and giving the PUB the authority to continue its reforms can only serve to benefit all Manitoba customers by offering them wider choice as well as an effective market-based check on retail prices.

During the transition to a fully competitive gas market, the PUB must be seen as the single body today which can, in the public interest, oversee the marketing and delivery of gas by all competitors. Bill 9 will provide the legal certainty to all industry participants that the PUB can monitor and discipline the transition to a fully competitive market. Bill 9 guarantees an orderly transition and allows companies such as CENGAS members to be certain of the transition rules and to devote their energies to offering competitive options to all Manitoba gas customers.

Thank you for this opportunity to present our views and we trust that this submission will prove of some assistance.

Yours very truly,  
Richard R. Perdue, Managing Director  
CENGAS  
North York, Ontario