LEGISLATIVE ASSEMBLY OF MANITOBA

THE STANDING COMMITTEE ON MUNICIPAL AFFAIRS

Wednesday, 15 July, 1987

TIME — 8:00 p.m.

LOCATION — Winnipeg, Manitoba

CHAIRMAN — Mr. S. Ashton (Thompson)

ATTENDANCE — QUORUM - 6

Members of the Committee present:

Hon. Messrs. Bucklaschuk, Cowan, Doer, Parasiuk

Messrs. Ashton, Dolin, Downey, Ducharme, Ernst, Findlay and Maloway

APPEARING: Bill No. 25:

Mr. David Matas - Manitoba Association of Rights and Liberties

Mr. Lyle Smordin - League for Human Rights of B'nai B'rith

Bill No. 28:

Mr. George Ylonen - private citizen of Lac du Bonnet

Mr. Walter Robbins - Concerned Citizens of Manitoba

Dr. W.T. Hancox - Vice-President Waste Management Atomic Energy of Canada Ltd.

Bill No. 65:

Mr. Rene McNeill - Manitoba Surface Rights Association

Mr. Phillip Frances - private citizen

Mr. Adam Turbak - private citizen

Mr. Rick Brown - Chevron Canada Resources Ltd.

Mr. Bob Douglas - Keystone Agricultural Producers Inc.

Mr. Robert Puchniak - Tundra Oil and Gas

Bill No. 68:

Mr. Robert A.M. Young - TransCanada Pipelines

Mr. Craig R. Frew - Vice-President, Operations, Western Gas Marketing Ltd.

Mr. Wilf Hudson - Manitoba Federation of Labour

WRITTEN SUBMISSION:

Israel A. Ludwig - Winnipeg Jewish Community Council Inc.

MATTERS UNDER DISCUSSION:

Bill No. 25 - The Discriminatory Business Practices Act; Loi sur les pratiques de commerce discriminatoires

Bill No. 28 - The High-Level Radioactive Waste Act; Loi sur les déchets radioactifs de haute activité

Bill No. 58 - An Act Respecting the Accountability of Crown Corporations and to Amend Other Acts in Consequence Thereof; Loi concernant l'obligation redditionnelle des corporations de la Couronne et modifiant certaines lois

Bill No. 65 - The Surface Rights Act; Loi sur les droits de surface

Bill No. 66 - An Act to Amend the Electoral Divisions Act (2); Loi modifiant la Loi sur les circonscriptions électorales (2)

Bill No. 68 - An Act to Govern the Supply of Natural Gas in Manitoba and to Amend The Public Utilities Board Act; Loi régissant l'approvisionnement en gaz naturel du Manitoba et modifiant la Loi sur la Régie des services publics

Bill No. 73 - An Act to Continue Brandon University Foundation; Loi prorogeant la fondation de l'Université de Brandon

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MR. CHAIRMAN: The Standing Committee of Municipal Affairs will come to order.

I've been advised that the Premier, who has a bill before us, has to leave fairly soon. I'd like to see if there is willingness on the part of the committee to deal with The Act to amend the Electoral Divisions Act (2), which would require the presence of the Premier; and then deal with the other bills, public presentations, etc., afterwards. Is that agreeable to the committee? (Agreed)

BILL NO. 66 - THE ELECTORAL DIVISIONS ACT (2)

MR. CHAIRMAN: We will be dealing then with Bill No. 66 first; then we will proceed to deal with the other acts that we're considering tonight, including the public presentations and the consideration of clause by clause.

What is the will of the committee in regard to Bill No. 66 - clause by clause, page by page?

HON. H. PAWLEY: There are some amendments. Have they been distributed?

MR. CHAIRMAN: It's a fairly short bill. Perhaps, following that suggestion, then we can introduce the amendments and deal with the bill as a whole afterwards.

The Attorney-General will be moving the amendments.

HON. R. PENNER: An amendment occurs on page 2. Mr. Chairperson, I move

THAT section 2 of the Bill be amended by striking out proposed subsection 9(2) of The Electoral Divisions Act and substituting the following therfor:

Population of reserves.

9(2) Where an Indian reserve did not participate in the census of population referred to in subsection (3) or does not participate in any subsequent census, the commission may use an estimate of the population of the Indian reserve prepared by the Manitoba Bureau of Statistics or by such means as is satisfactory to the commission.

(French version)

IL EST PROPOSÉ QUE l'article 2 du projet de loi soit modifié par la suppression du paragraphe 9(2) de la Loi sur les circonscriptions électorales et son remplacement par ce qui suit:

Population des réserves.

9(2) Lorsqu'une réserve indienne n'a pas participé au recensement de la population visé au paragraphe (3) ni ne participe à un recensement subséquent, la Commission peut avoir recours à une évaluation de la population de la réserve indienne préparée par le Bureau des statistiques du Manitoba ou par tout moyen qu'elle juge satisfaisant.

MR. CHAIRMAN: Is there any discussion on that particular amendment? Pass.

Mr. Penner.

HON. R. PENNER: I move

THAT proposed subsection 9(3) of The Electoral Divisions Act as set out in section 2 of the Bill be amended by striking out the figures "1981" where they appear therein and substituting therefor the figures "1986".

(French version)

IL EST PROPOSÉ le paragraphe 9(3) de la loi sur les circonscriptions électorales figurant à l'article 2 du projet de loi soit modifié par la suppression de "1981" et son remplacement par "1986".

MR. CHAIRMAN: Is there any discussion on that amendment? There being no discussion—pass.

HON. R. PENNER: Bill as a whole, Mr. Chairperson.

MR. CHAIRMAN: Bill as a whole—pass; Preamble—pass; Title—pass.

Bill be reported.

HON. H. PAWLEY: I wish they all were as easy as that.

Thank you very much.

MR. CHAIRMAN: Following along with the very cooperative mood that we've been in, we'll proceed now to public presentations on other bills, perhaps in a similarily cooperative fashion.

BILL NO. 25 - THE DISCRIMINATORY BUSINESS PRACTICES ACT

MR. CHAIRMAN: The first bill before us is Bill No. 25, The Discriminatory Business Practices Act. The first presentation is from Mr. William Converse from the Manitoba Association for Rights and Liberties.

Mr. Converse.

MR. W. CONVERSE: We couldn't get Dr. Converse to be here. I do have a pinch hitter. I just wanted to get up and say a word to congratulate both sides of the House and wish them bonne chance on ending the Session, hopefully, this week.

My pinch hitter is a man who needs no introduction, but I want to make sure that you know which hat he's wearing, Mr. David Matas, who is a valued member of the MARL Board of Directors.

MR. CHAIRMAN: Mr. Matas.

MR. D. MATAS: The first thing I want to say on behalf of the Manitoba Association for Rights and Liberties is we wish to commend the government for introducing this bill and congratulate them on the bill. We think it's a good bill in principle. We're glad to see it.

It was as a result of the MTX affair which brought evidence to light that Jews and women were not being allowed to go to Saudi Arabia as part of the MTX contract, and this bill, if it's passed, will be a happy ending to a sad story. It will be a positive outcome to what historically was a negative incident. So in terms of purpose and intent and overall effect, we like the bill.

There are a couple of suggestions we do have to make, however. The first and perhaps the most important is to deal with section 4. In somewhat, section 4 says if there is a visa requirement that prevents someone from going forward on the basis of race or sex, then the Canadian or the Manitoba company can go ahead all the same, but shall offer to the affected employee the next equivalent employment opportunity for which that employee is qualified. We feel that that, in effect, negates the principle of the bill. The bill opposes discrimination in principle, but then, through section 4, allows it to take effect in practice.

The type of problem we saw with MTX could reoccur if this particular provision were allowed to continue in the bill, so that somebody like MTX in the future could refuse to allow women or Jews to go forward, or say that they would not go forward. What we would like to see is if a company is faced with a requirement that is offensive to Manitoba standards, that the company should not do business in compliance with those standards. It shouldn't be party to a transaction or party to a course of conduct that violates those standards.

We must not forget the inducive effect this sort of bill has. When we have a law that says this cannot be done, then it is possible to say to a foreign government, it is possible for a business that's dealing with a foreign government, to say our law prevents this from being done, and it can have an effect in negotiations about the business transaction. It could allow the transaction to go forward in a non-discriminatory way; whereas, if the law accepts, in principle, the possibility of discrimination with somebody getting employment elsewhere, then the employer or the business person

is faced at a disadvantage in negotiating with the foreigner. The foreigner can say, well, your law is prepared to contemplate this sort of activity; therefore, you can do business with us; therefore, we can carry on with this discriminatory visa requirement.

I should say that this issue has been faced in the United States in litigation and the American courts have said that this sort of visa requirement of a foreign country is not a bona fide occupational requirement. So I don't think it can be excused under any general principle to that effect.

The general principle is we don't want to participate in discrimination. We cannot change foreign visa laws, but we can choose whether or not we go along with them. I say that if we're faced with a choice of going along with them or not, we should say, no, we won't go along with them rather than just say, yes, we will but the person who's discriminated against can get another job. That's the first comment.

The second comment we have has to do with the "no negative statement of origin," which causes problems. What we're concerned about here is a boycott that is organized not by foreigners but by Canadians. We are concerned that this sort of provision might be used in such a way that it will be directed against Canadians organizing boycotts rather than foreigners trying to impose boycotts on Canadians.

Now there are ways in the bill which would prevent that from happening because there's an Order-in-Council power and there's something in the bill that says if there's a government policy to that effect, then the government policy carries the day; but the problem with those provisions is that it leads to government-approved expression; that if the government approves the boycott, it's all right, but a Canadian organized boycott that is not government approved is not all right. What we really want to focus in on here is the foreign-imposed boycott rather than a boycott as such.

There may be a way of drafting the provision in order to deal with that particular problem. I taught Civil Liberties at the University of Manitoba this year and a student of mine did a paper on the issue and he had a suggestion for drafting, that it might be possible to draft it in such a way, to say that it was not in response to a foreign request, so that might deal with the problem. If there is a way of drafting ourselves out of this problem that would be fine, but if there's not a way of drafting ourselves out of this problem, we feel that this section should just be deleted. That's what our concern is there.

The third concern we have is full right of appeal. There's a limited right of review here from our decisions based on errors of law, jurisdiction and natural justice. What we believe in this issue, that there should be an unlimited right of access to the courts. This is an issue that comes up in several areas and it's a thorny issue, where there's debates on both sides and I don't want to go into the details of that debate but that was the conclusion we came to on this bill.

Finally, our fourth recommendation was that the government prepare a brochure explaining the operation of the act and the type of practices which are prohibited and distribute it to businesses. Those were the points we had to make to add to what we think, on the whole, is a good bill.

MR. CHAIRMAN: Are there any questions?

Mr. Penner.

HON. R. PENNER: Thank you for a very good presentation, Mr. Matas. I have a couple of questions for clarification.

First of all, with respect to your criticism of the exemption provision, it seems to me - and I want your response to this - that as with other bills, so too with this bill, there is a jurisdictional problem. The government can impose upon itself as a matter of a course of conduct, a decision that it will not trade with, or will not contract with, or will not conduct ventures in a country which discriminates and insists on that discrimination. But in terms of legislating so that someone in the private sector has said that unless they do this, that, or the other thing, that company can't trade with, let's say, Saudi Arabia; surely we would be legislating outside of our jurisdiction. Would you not agree with that?

MR. D. MATAS: The jurisdictional issue, as I see it, is the same whether it says you can do it, provided you give the person the next job, or you can't do it. The private company being affected is the same in both cases. Obviously this is a type of law we would like to see done nationally, and if it were done nationally, it would have a wider scope and it might be phrased differently.

I don't think the bill as a whole is ultra vires. I think the draftsman was very careful to try to get it within provincial jurisdiction and that's why perhaps it doesn't read as freely and easily as it might, but I think the draftsman has solved the problem. We have a bill like this in Ontario, which has not been subject to any constitutional challenge and does not have this particular provision in it.

HON. R. PENNER: In response to my question, Mr. Matas, you're not disagreeing that - and I'll put it as broadly as I can - there may be a constitutional problem legislating with respect to trade and commerce outside of our boundaries?

MR. D. MATAS: Well, that's certainly putting it very broadly. Once we legislate outside of our boundaries, we are in a problem, but what we're talking about is what somebody does here in Manitoba. I see what's happening overseas as part of an interconnected chain with what's happening here and it's a question of the locus of the event. If a Manitoba firm is doing business here, is recruiting here and sending the people overseas, I would say the sum and substance of the activity is in Manitoba, and it's artificial to imagine it legally as happening in a foreign company, as opposed to in Manitoba.

We cannot legislate beyond our boundaries, but I do not think, by removing this particular provision, we have cast ourselves into any more of a constitutional problem than we had before, or indeed any constitutional problem at all.

HON. R. PENNER: Okay I guess we'll have to agree to disagree on that.

Again, for clarification with respect to your point about 3(4), "No negative statement of origin. No person shall,

for the purpose of engaging in or assisting in engaging in the discriminatory business practice, seek or provide a statement, whether written or oral, to the effect that any goods or services supplied or rendered by any person or government do not originate in whole or in part in a specified location."

So that simply says, does it not, and again we can only legislate with respect to Manitoba, that no one in Manitoba can demand of another person in Manitoba, let's say a sub-contractor, that they specify that the goods and services that they're to use in an overseas contract does not originate in Israel. That's what the section appears to say, would you not agree?

MR. D. MATAS: Yes.

HON. R. PENNER: In that light, would you clarify your objection to that section for me, and why you think it should be removed?

MR. D. MATAS: Well, what I was suggesting perhaps might be added to deal with the particular problem that we're concerned with, is the phrase not in response to a foreign request. What myself and others in the association are concerned about here is the California grapes example. Suppose somebody wants to boycott California grapes because the workers are not unionized, and it's not as a result of some foreign request, it's a locally-motivated desire. There's no Canadian Government or Manitoba policy boycotting California grapes and we feel it shouldn't be necessary to have some sort of government policy boycotting California grapes for people to want to do it.

HON. R. PENNER: Thank you very much again for your brief and for your answers to my questions.

MR. CHAIRMAN: Mr. Dolin.

MR. M. DOLIN: Just a couple of questions.

Section 1(2) of the act - I assume you've read where it describes basically secondary and tertiary boycotts being prohibited. Do you have any problem understanding that section of the act?

MR. D. MATAS: I thought I understood it at the time. Do you have a question about it?

MR. M. DOLIN: I'm still not clear on section 4. If the Canadian Wheat Board or the Manitoba Wheat Pool were to sell wheat to a country in the Arab block, for example, which had secondary or a primary boycott, which would honour our employees in allowing Jews or women to be employed; are you suggesting that we should stop doing business entirely with the Arab block?

MR. D. MATAS: No, that's not the nature of my suggestion.

MR. M. DOLIN: Well, perhaps Mr. Matas can complete his answer.

MR. D. MATAS: I am not suggesting, in your example, that the Wheat Board would stop doing business with Saudi Arabia in terms of selling wheat. What I'm suggesting is if it's a matter of sending employees over, they can't, in effect, say, well, we're going to send over the men but not the women; we are going to send over the Christians but not the Jews, because that's what their visa requirements are.

If they're faced with the situation where they are going to be sending people over and they've got a discriminatory requirement, in that situation they should be saying we will send over who we want, provided they meet what would be public policy requirements, if there are non-discriminatory requirements of a foreign country that are within its normal sovereignty rights, but other than that, we will send over who we want, and if we're being told we cannot send over women but only men, and we can not send over Jews but only Christians, we will send over nobody.

That's what I'm saying; whereas what this says is, if we've got that sort of requirment, we will do the winnowing out ourselves and we will send over who you want and we'll just promote these people at the next available opportunity.

MR. M. DOLIN: Just to clarify that position, if they do not accept the employees we send over, you are saying we cease to do business with them. What section 4 says is that we provide compensation if we wish to do business with them. You have a problem with that. Could you clarify that? You say we cease totally and entirely to do business with a country that refuses to accept the people we send?

MR. D. MATAS: Now, what I'm saying is that we shouldn't be sending anybody over. There may be business that could be done without sending anybody over, for instance, like a shipment of wheat. What I'm saying is we shouldn't sort them out.

The problem with compensation is twofold. It's participating in the foreign-imposed discrimination and indeed condoning it; and secondly, these requirements are not as inflexible as one may think, perhaps. If the foreigner is faced with a law that says the Canadian Wheat Board, or whatever - I'm not sure if this can touch the Canadian Wheat Board - but a Manitoba firm cannot do this, then that's something that could enter into negotiations to, in effect, allow these people to go over.

MR. M. DOLIN: A final question.

In the MTX situation, the Saudi Arabian Consulate, we were advised by the Department of External Affairs, said they did not discriminate against women or Jews but dealt with each application individually; therefore, they were not systematically discriminating. If they refused the visa application or a particular person, if you wiped out section 4, it would strike me that that person who was already offered that position because they were refused a visa, but not according to the Saudi Arabian Embassy for racial or gender reasons, that person would not be compensated then.

Don't you think that section 4 should be included in order to allow for that kind of compensation?

MR. D. MATAS: You are assuming that without section 4 the transaction could go ahead. But I suggest the way the bill would read without section 4 is that nobody

could go over. You've produced an example where you say Saudi Arabia doesn't discriminate systematically, but does discriminate in an individual case. But that would fall within the bill, because the bill requires discrimination on a basis of an attribute of the person, and it defines what attributes are.

If one person is discriminated against on the basis of the fact that he's Jewish, or on the basis of the fact that she is a woman, the bill is infringed and without section 4, it would mean nobody could go over, and that's what we say should happen. It's not that we're taking away compensation from the infringed person. What we're saying is we're taking away participation from discrimination in the Manitoba company.

MR. M. DOLIN: A final, final question on that same issue.

If a person is denied a visa by the Saudi Arabian Embassy and they are not required by any law of ours to give a reason, but they have been offered the job by MTS, this would allow them to be compensated. You are suggesting that that be removed, which would not allow compensation unless we can show, by some prima facie evidence, that they have been discriminated against because of gender or religion. I have a problem with that and I'd just like you to clarify your position.

MR. D. MATAS: I think I'll proceed to answer that question without my name being called. You're suggesting that a person could be compensated with section 4 even if we don't know the reason for the visa denial, but that's not the way section 4 reads. Section 4 reads that a person can be compensated for the visa denial if he was denied his visa, based on an attribute of the person. So you would still be faced with the problem of establishing that he was denied a visa on the basis of religion, or on the basis of sex or what have you.

Once you've established it for the individual, you've got all you need to show that the act has been violated, for the purpose of preventing the company from doing business if this section isn't here, as well as for the purpose of providing compensation if this section is here.

MR. CHAIRMAN: Before proceeding further, I would just like to remind committee members, once again, that the purpose for questions is clarification of presentations and not to engage directly or indirectly in debate with the witnesses. Perhaps we might be reminded of that when we ask further questions later on tonight.

Are there any further questions?

Mr. Enns.

MR. H. ENNS: Mr. Chairman, just for the record, I just simply want to indicate to the record that the Opposition finds this bill incomprehensible. We don't understand it. We're uncomfortable by passing legislation that we don't understand.

I speak for and on behalf of former Attorney-General, Mr. Mercier, my House Leader, who finds the bill incomprehensible. The bill is before us because of the action of a Crown corporation, Manitoba Telephone System, through a subsidiary, MTX.

We endorse what we think are the principles contained in the bill, but we don't understand the bill. We don't understand what we're passing here.

MR. CHAIRMAN: Perhaps it was appropriate that I made that warning just prior to those comments, because I think that has already shown the reason why we have those rules.

I would like to remind people once again that the purpose of committee hearings is to hear members of the public and to ask questions for clarification; not to engage in debate with witnesses or to make statements which are perhaps better seen as part of the debate itself.

MR. H. ENNS: Oh, come on.

MR. CHAIRMAN: So I would ask committee members to please . . .

MR. H. ENNS: Mr. Chairman, on a point of order.

MR. CHAIRMAN: Mr. Enns.

MR. H. ENNS: Mr. Chairman, I object to that interpretation. I was not engaging the witness in a debate. I was putting on the record what I thought was a reasonably important position that the Opposition put at Second Reading of this bill. We are now at another stage of the passage of this bill, namely the committee stage of the bill and I think it's important that the Opposition's position be noted at all stages of the bill.

MR. CHAIRMAN: Mr. Enns, I would indicate in that situation, the appropriate time to place comments on the record would be when we discuss this clause-by-clause, not when we're questioning members of the public on public representation.

MR. H. ENNS: On the same point of order, Mr. Chairman, when I see the mover of the bill, the present Attorney-General and other government members questioning a capable representative on the bill and they're having trouble understanding what the bill means, I simply wanted to put on the record the understandable confusion of the Opposition in this instance.

MR. D. MATAS: I wonder, Mr. Chairman, if I might comment on this.

MR. CHAIRMAN: Mr. Matas, please go ahead.

MR. D. MATAS: MARL supports the principle of this bill, even though we have some reservations, and we may be fooling ourselves, but we think we understand it. We would hate to see this bill fail because there is a lack of understanding of the bill and - this may not be the place - but we are available, at the invitation of anybody here, to attempt to explain what we understand to be the purpose of the bill and the purpose of each and every individual clause.

MR. CHAIRMAN: So long as there's no misunderstanding about our rules and procedures. Thank you Mr. Matas, for your presentation.

The next presentation is Mr. Lyle Smordin from the League for Human Rights.

Mr. Smordin.

MR. L. SMORDIN: Let me add, Mr. Chairman, it's the League for Human Rights for B'nai B'rith, not to be confused with some other organizations that don't exactly have the same goals.

I'm the chairman of the midwestern region, and my first words, on behalf of B'nai B'rith, are ones of praise for the government - as the previous speaker said, this arose out of the MTX affair of approximately one year ago, and at that time, the government had promised to introduce legislation which would in effect stop the MTX affair from reoccurring, and that, indeed, they did - words of praise for the content of the act and the bill and, certainly, when I came here this evening I thought I understood it as I read it. I think perhaps I've read the Ontario bill very carefully over the past number of months, and that helped me read the Manitoba bill and understand it a little more carefully.

However, I have the same problem with respect to section 4 as the previous speaker representing MARL did. I know where the genesis of that particular section came from. It came from the Coopers and Lybrand audit of MTX and parts of that introduced by and written by Mr. Peter Cumming, who addressed the subject of human rights.

This was a recommendation from him assuming that, on a balancing of costs and benefits, a Crown corporation like MTX, with government approval and support, decided to do business in Saudi Arabia or some other jurisdiction, notwithstanding the differing human rights and values. It's recommended the corporation have, in its code of business conduct, a statement of compensatory measures to be introduced if persons selected to work in the foreign jurisdiction are denied the employment opportunity because the reasonable conclusion is that the foreign jurisdiction prevents the entry of persons on a basis that would be unlawful discrimination, in terms of Manitoba law, and I would underline those words.

The recommendation - and at that time I was appalled by the recommendation, and I'm further appalled to see that it crept into the bill - is that it's okay to discriminate and now you're going to, in effect, compensate somebody for that particular discrimination.

The bill, the way it's worded now, is where a person selects someone for employment in connection with a transaction which requires travel outside of Canada, and requires the obtaining of a visa, and the person is unable to meet visa requirements based on an attribute of that employee - and an attribute would not be an indiscriminate decision, but would be something that would relate to race, colour, creed, sex, religion, etc.- the person or company may proceed with the transaction and the person, who was discriminated against can't have the job, but somewhere along the line in the future, we're going to compensate him or her.

I think that particular clause, that particular section of the bill, is really not what the government intended when they told us a number of months ago, they would be dealing with legislation somewhat like the Ontario act, also called The Discriminatory Business Practices Act.

I would recommend, not that the section be amended in any such way, but I would recommend that the section be eliminated for some of the same reasons that the previous speaker had alluded to. I don't think that really was intended, and I don't see any way of correcting the error that crept into the bill, other than completely eliminating that section and letting the law stand with that particular bill.

MR. CHAIRMAN: Are there any questions?

Mr. Penner.

HON. R. PENNER: Mr. Smordin, I want to make doubly sure that I understand your point of the question in the sense of fact, through a hypothetical, and then a question of law.

Assume a major Manitoba construction company - the government can impose upon itself any rules it wants - but we have a major construction company gets $100 million contract to build an airport in Saudi Arabia. In fact, the only way they can carry out that contract is to provide most of the technology and the technicians from Manitoba, right? Otherwise no contract and all of the jobs generated in Manitoba are gone?

MR. L. SMORDIN: Yes.

HON. R. PENNER: In fact, in competition, the best qualified for Engineering 3, airport runways, are women. There are women engineers working in big construction companies; and, in fact, it means a promotion for them, but they can't get visas systematically and it's clear they can't get visas because they're women. Are you really saying therefore, that the Government of Manitoba should, by law, say that they can't carry out that contract in Saudi Arabia?

MR. L. SMORDIN: Absolutely. Why would the members of this Legislature pass a bill into law which would, in effect, describe for themselves a method where they can eliminate and overlook the particular law that they themselves want to pass. I agree that that has some very unfortunate circumstances for the economy of the Manitoba company that achieved that particular contract, in your example, Mr. Attorney-General. However, I don't think the price is high enough to discriminate against the citizens of Manitoba by saying, we'll give you another job, the next available job that comes along. After all, there may not be another available job that comes along, or that just seems to rub the wrong way from the things that this government was saying last year.

HON. R. PENNER: Now, with the question of law, are you saying to me, with your knowledge of the law being familiar with it, that you think that we can actually, as a provincial Legislature, legislate to prevent a Manitoba company doing business in a foreign company?

MR. L. SMORDIN: We can't do that, but we can determine that to be a discriminatory business practice under the act. We can, by this bill, with the teeth that it has in there, assess a fine of, I believe, $50,000

maximum. That may not be in line with the $100 million contract that you're referring to, but that also has further teeth; the further teeth that your department has put into this bill has been that they can't do government contracts for five years. So the teeth in the bill were, okay we can't stop you from doing business in the foreign country, but you are firstly found to have offended the act, and you were fined $50,000.00.

Secondly, you are barred from doing business with the Government of Manitoba for a period of five years; that's the answer.

HON. R. PENNER: That's "an" answer.

MR. CHAIRMAN: Mrs. Carstairs.

MRS. S. CARSTAIRS: Mr. Chairman, can Mr. Smordin tell me if there is a similar position in the Ontario regulation, or would an Ontario company be banned from, in fact, the engaging in the building of this airport in Saudi Arabia?

MR. L. SMORDIN: There was no similar provision in the Ontario Act which was passed in 1977. There's no provision that talks about compensating somebody, and so it would be, in effect, an offence to discriminate in this way.

MR. CHAIRMAN: Any further questions? There being no further questions, thank you, Mr. Smordin.

There was one further presentation with regard to this bill. It's in the form of a letter to the Standing Committee. I assume it will be accepted as a written brief. It's from the Winnipeg Jewish Community Council, submitted by Israel Ludwig.

BILL NO. 28 - THE HIGH-LEVEL RADIOACTIVE WASTE ACT

MR. CHAIRMAN: The next bill before the committee is Bill No. 28, The High-Level Radioactive Waste Act.

The first presentation is from the Concerned Citizens of Manitoba, Mr. Walter Robbins; or Ms. Anne Wieser, the Concerned Citizens of Manitoba.

Perhaps if you could state your name for the committee.

MR. G. YLONEN: My name is George Ylonen, of Lac du Bonnet, a miner and a farmer, and I thank you for taking me on such short notice.

After you hear the Concerned Citizens' presentations and recommendations to the act you're dealing with now, you have it in your power to rectify a great many wrongs that have taken place starting in 1979. You have a lot of information, a lot of input in the last several years.

This didn't take place in'79 when AECL approached our council at that time. The council was uninformed and information was withheld from this council at that time and they were told some half-truths, and one of these is that the AECL program was to be five years for geophysical survey and study of this rock formation - five years.

AECL also said that this type of rock was very solid and there was no water whatsoever in that formation; and on that basis, the council, without taking any other information in, passed a resolution supporting this underground research that is taking place now, and it shouldn't have taken place here because this was totally the wrong way to do it.

As it turns out, this 21-year lease could expand to 50,000 or 500,000 years. The rock formation contains much water. At the time, we told them that there's no such thing as no water underground and now their geophysical studies and hydrological studies are proving it to be true, that there's lots of water in this place and it is a totally wrong idea of putting nuclear waste underground. Your position on this new legislation that you're about to pass will make a lot of people rest an awful lot easier if you can give us some consideration with your act.

Thank you very much.

MR. CHAIRMAN: Walter Robbins, please.

MR. W. ROBBINS: Thank you very much.

Before I go to my prepared comments, I would like to just say a word about the jurisdictional question on this bill. We've talked to lawyers for several years about such legislation and it seems that there are lawyers who tell you why you can't do something and there seem to be other lawyers that tell you how to do something. I suppose it's a good idea to listen to both, but what we're heard here is that there are grey areas in which the province has jurisdiction.

(Mr. Deputy Chairman, J. Maloway, in the Chair.)

Now, admittedly, AECL or the Federal Government of Canada has a good deal of power in the area of atomic energy, which would include nuclear waste, but we believe and some of the lawyers we've talked to, that the province has a right to protect the people of Manitoba in regard to the environment, in regard to the use of natural resources, in regard to the use of tourism and recreation, property values, health and safety of people, and the transportation of certain types of goods through the province. So we don't think this is a black or white issue as far as jurisdiction is concerned.

Now, hopefully, this bill will never be tested in the courts. However, if it is, what we're suggesting here is that there's more elbow room, more flexibility than perhaps some people seem to think.

Now I'd like to go to my prepared comments. The committee strongly endorses, with some changes, passage of Bill 28, which clearly prohibits the permanent and irretrievable emplacement of high-level radioactive waste materials in a repository in Manitoba.

Such a legislative prohibition has been one of the principle objectives of our group since its inception in 1980. Further, the bill addresses the expressed concerns of many individuals and groups throughout this province such as cottage owners and cottage owner associations, churches and church associations, and over 65 municipal councils, which passed resolutions opposing such a facility, so I think it is not correct to make the assumption that I'm here on behalf of just a few people. There have been many, many people, and many groups in this province who have been requesting this kind of legislation for many years.

As a result of our analysis of the bill, which included consultation with a scientific and a legal advisor, the committee makes the following observations and suggestions designed to clarify and improve Bill 28 - I would like to emphasize that we are trying to clarify and improve. Our basic position is that we are endorsing and we are for this bill; so our comments are designed to clarify and improve, hopefully it will.

Under the definitions, we believe that the term "disposal" is inappropriate. We suggest, in its place, the term, "permanent emplacement." Since scientists generally agreed that sometime in the future, radioactive material will eventually escape containment and reach the biosphere, the material cannot be said to have been destroyed, gotten rid of, or finally and conclusively settled, in the meaning of the common and dictionary usage of the term, "disposal." Use of the term disposal really means abandonment of responsibility in the case of high-level nuclear waste; such waste will continuously need monitoring and caring.

The term, "high-level radioactive waste," according to scientific advice we receive, should include neutron-activated reactor components or tubes which may contain certain elements which we've listed here and I will provide this list to the committee, because these elements of half lives, of 20,000 to 80,000 years respectively, and could be considered high-level waste, even though it is not spent nuclear fuel. You see what I'm saying, there are other kinds of high-level waste.

An important point that has been raised by nearly everybody who reviewed this bill is the question of the term, "research." It's used extensively throughout the bill, but it's not defined under the definitions. Nearly everyone we talked to noted that omission. There is a deep concern that the term research can be interpreted in such a way as to permit activities which are actually developmental and operational in nature.

This point, by the way, has been frequently made in connection with the American Strategic Defence Initiative - Star Wars - and it holds true for nuclear waste as well, in that a temporary research situation could extend over time to become a de facto operational program. We strongly urge that the term "research" be defined and limits placed upon it.

The term "reprocessing" is used within the definition of high-level radioactive waste. We would like clarification . We would like to know why that definition specifically excludes spent nuclear reactor fuel which is "not intended for reprocessing." Surely the government would not permit reprocessing of spent nuclear fuel in Manitoba; and yet, that is exactly what is implied in the bill the way we read it.

Under the present wording, it would be possible to bring spent nuclear fuel into Manitoba, reprocess it and ship it back out. We are very strongly opposed to the reprocessing of spent nuclear fuel, because it involves very dangerous processes and creates plutonium, the main substance used for thermonuclear explosions, among other things.

We request of the drafters of the bill that the definition of high-level radioactive waste cover all spent nuclear fuel not intended for legitimate research, including that which would, in the future, be intended for reprocessing. In other words, to make a long story short, we request that Bill 28 clearly and definitively prohibit the reprocessing of high-level radioactive waste in Manitoba.

Additional comments other than definitions; we note that under section 2(c), this bill permits interim storage of high-level nuclear waste in the province for up to seven days. We're not at all clear on the meaning and intent of this seven-day period. It could be construed, in the light of the above comments, to permit reprocessing of spent nuclear fuel, assuming we could reprocess the fuel in seven days. The bill would permit the movement of high-level radioactive waste into the province, to Pinawa, where it could be reprocessed and shipped out of the province.

Now we are well aware that the Government of Canada currently has a ban on reprocessing, but for many years Atomic Energy of Canada Ltd. has been quite open in its position favouring the reprocessing of spent nuclear fuel and in one of their recent publications, they stated that they expected the Government of Canada to make a decision on that before the year 2000. I'm paraphrasing that. We therefore would like clarification of this seven-day interim storage provision to prohibit the reprocessing, as stated in our comments under definitions.

Under section 2(d), the bill permits storage of high-level radioactive waste subject to continuous monitoring as long as it provides "reasonable human access to the containers in which the waste or nuclear fuel is contained." Now, this provision would make it possible for the creation of a permanent, full-scale, monitored, retrievable storage repository in the province. In other words, all the high-level nuclear waste in Canada, and perhaps from elsewhere, could wind up in Manitoba in a monitored retrievable storage repository.

We are certain this is not what the framers of the bill intended and we assume this provision was inserted to permit AECL to continue using its existing above-ground storage facilities for small quantities of research waste. The committee is as much opposed to an operational monitored retrievable storage repository in Manitoba, as it is to permanent underground non-retrievable emplacement. We ask that this provision be clarified so as to clearly prohibit a permanent monitored retrievable storage repository in the province.

This bill does not address the question of transportation of high-level radioactive waste through the Province of Manitoba. Such transportation should be prohibited, and restrictions, limits and controls should be placed on wastes coming into the province for research purposes.

If, for example, the Federal Government should place a permanent repository in Saskatchewan, waste from eastern reactors could travel through Manitoba; or if AECL follows through on its stated intent to transport waste from its Slowpoke reactors, which it is attempting to market in the Northwest Territories, and store it at Pinawa, such waste must travel through the province.

The issue of transportation can be expected to become more contentious as more nuclear materials are transported from place to place. It is a fact that every shipment of nuclear waste emits radiation. In fact, you could almost say that every time nuclear waste is shipped, it is an accident. The possibility of real accidents, plus the controversy over the health effects of low doses of ionizing radiation is such that Manitoba can ill afford to overlook the transportation aspects of the nuclear fuel cycle. We request that a transportation section be added to this bill or that other transportation

legislation be amended to protect the province in this crucial area.

In conclusion, you'll be happy to know, Concerned Citizens of Manitoba appreciates the opportunity to have commented on Bill 28. We would like to commend the government, and especially the Minister of Environment, Gerard Lecuyer, for taking this initiative, and to thank the Opposition parties for, what we hope will be, their cooperation.

We trust that serious consideration will be given to the modifications we have proposed to improve this bill.

Thank you very much.

MR. DEPUTY CHAIRMAN: Are there any questions for the presenter?

Mrs. Carstairs.

MRS. S. CARSTAIRS: Yes, I have a question with regard to medical use of nuclear waste.

In cobalt treatment, I understand that it is a high-level waste. At the present time, that high-level waste is being sent back to Chalk River. What would be the reaction of your citizens group, if Ontario passed legislation like this and said that we can't transport it back to Chalk River? This bill would seem to say it can't stay here either, so do we end, for once and for all, treating cancer patients with this type of treatment?

MR. W. ROBBINS: I don't have a good answer for that. I do know that no one in our group is advocating that latter part of your statement, that we prohibit medical treatment if the treatment is useful.

As far as the nuclear material goes, if it is indeed considered high-level waste - and I'm not certain about that - I've heard definitions to the effect that that is not high-level waste, it is considered intermediate or low-level waste by some scientists - if it is high-level waste and we ban it, then obviously we've got a problem there.

This bill deals primarily with the waste created by nuclear reactors. There may be an area here of omission, if you will, that needs to be considered and dealt with, so I don't really have a good answer for you on that.

MR. DEPUTY CHAIRMAN: Are there any further questions?

Mr. Lecuyer.

HON. G. LECUYER: Well, Mr. Robbins, you've raised a number of questions and just be way of explanation, you have to understand that I'm not in a position to provide the answers here. I can only seek clarification and I will have to limit my comments to that. But my question is: Was it your thought that if there were eventually to be - and I believe it links up to the question asked by Mrs. Carstairs - underground waste disposal somewhere in Canada, would it be your understanding then that the province could prevent transportation to that site across Manitoba's territory?

MR. W. ROBBINS: Yes, we are saying that we would be opposed to the movement, shipments, if you will, of high-level radioactive waste through this province. That is correct.

HON. G. LECUYER: I thank you.

MR. DEPUTY CHAIRMAN: Mr. Ernst.

MR. J. ERNST: Thank you, Mr. Chairman.

At the delegation, we have obtained from Legislative Counsel a legal opinion that indicates that this act cannot be enforced upon Atomic Energy of Canada. If that's the case . . .

A MEMBER: I can't hear.

MR. J. ERNST: Sorry, can you not hear?

MR. DEPUTY CHAIRMAN: Perhaps if you could repeat your question, Mr. Ernst.

MR. J. ERNST: Sorry, Mr. Chairman. Can you hear now?

Mr. Robbins, we have, as I indicated earlier, a legal opinion from Legislative Counsel that indicates this act cannot be enforced on Atomic Energy of Canada. You mentioned something at the beginning of varying legal opinions. The legal opinion from Legislative Counsel is that the act cannot be enforced upon Atomic Energy of Canada.

Would you care to comment on that?

MR. W. ROBBINS: Once again, I was pointing out that some legal opinions we have is that there are grey areas and that they deal in the areas of environment, natural resources, tourism and recreation, health and safety, and transportation, among others, and that the province does have a right to protect its citizens in those areas.

I would imagine - I'm not a lawyer and I cannot picture the scenario of what would happen if this bill were ever tested - but I would imagine those areas I mentioned would certainly become bones of contention and should. So it's sort of a black and white; it cannot be enforced. I don't think you'd want to put it in those terms, sir.

I think it's preferable to say that it may never come to that point, and hopefully it won't, but if it does, it would seem to us that there are legal counsels around who believe that the province does indeed have some flexibility in this particular act. That's the best answer I can give you, sir.

MR. J. ERNST: If, in fact, the legal opinion from Legislative Counsel that it cannot be enforced against AECL is true or comes to pass or is fact, are you aware of any other significant creator of a nuclear problem, you having that broad experience.

MR. W. ROBBINS: Well, I think it becomes a political issue at that point, sir. If the Federal Government attempts to muscle in on Manitoba with this bill on the statutes, on the books, then the political issue surfaces, and at that point the people of Manitoba, I suspect, will make their voices known.

I personally can't imagine the Government of Canada attempting to force itself onto the Province of Manitoba. Maybe I'm naive, but I can't imagine that happening with this bill on the books, because this is a clear message to the Government of Canada, whichever party

it happens to be, that Manitoba simply will not tolerate this kind of facility. That's a moral and political position. I think that would become the major issue rather than the legalities and the jurisdictional issue within the bill, if you want me to see what I'm saying.

MR. J. ERNST: Thank you, Mr. Robbins, but you didn't answer my question.

Are you aware of any other generator of nuclear material?

MR. W. ROBBINS: I'm not sure what you mean by generator, sir.

MR. J. ERNST: Well, we're talking about producer. Who else is in the nuclear business that would create nuclear waste, high-level radioactive nuclear waste in Manitoba, besides Atomic Energy of Canada.

MR. W. ROBBINS: I'm not sure that there are in Manitoba, although there may be some research waste produced here; that's possible, very small quantities that could be classified as high level, but there are other producers of waste outside of Manitoba and we're concerned about them, too, sir. I know that people have an eye on this province from other places as a potential repository, and I think that one of the attractive things about this bill is it would send a message to those individuals and those countries as well.

MR. DEPUTY CHAIRMAN: Are there any further questions for Mr. Robbins?

Mr. Kovnats.

MR. A. KOVNATS: Thank you.

Mr. Robbins, can you advise, to your knowledge, who else other than Atomic Energy of Canada, stationed at Pinawa, would want to store nuclear waste, high-level nuclear waste in Manitoba?

MR. W. ROBBINS: Who might want to?

MR. A. KOVNATS: Yes. You just mentioned that there were others.

MR. W. ROBBINS: Well, there are many countries which either have unsuitable kinds of situations for a nuclear waste or there are countries which are running into such political controversy about this particular area that they might move in this direction.

For example, the United States Government, all 50 governors are opposed to nuclear waste depositories in their states. The entire United States program for high-level nuclear waste is completely bogged down. So that would be one possible country that might be interested in that particular option. I would imagine the earthquake-ridden countries such as Japan could be interested.

Don't forget that Atomic Energy of Canada Limited is a commercial oriented organization which is under a mandate to sell its services and its products. It has moved from what you might characterize as a national research laboratory to basically a commercial operation.

So, in the light of statements from high-level officials in Ottawa over the years which have expressed an interest in Canada taking nuclear waste from foreign countries, we're not just idly speculating over this. These statements have been made. There is interest although it's not the policy of the Government of Canada at this point. Those statements have been made.

There are people in this country who, for commercial purposes, are interested in the idea, at any rate, of taking nuclear waste from other countries. I have named two countries that might be interested. I can't give you any documents that suggest that at this point they are, but I can tell you that in the case of the United States the probability of the U.S. Government ever achieving a nuclear waste repository is becoming almost nil.

As you well know, I suspect the United States Government Department of Energy is working very closely with Atomic Energy of Canada at Pinawa on its research.

MR. A. KOVNATS: Mr. Robbins, would you suggest or would you agree that this bill does not allow Manitoba to accept nuclear waste from any other jurisdiction other than from their own; inasmuch that's what I believe this bill leads us to believe and I think that it would not be right of us to think that or even threaten that other jurisdictions will be depositing, storing or disposing of nuclear waste in Manitoba.

MR. W. ROBBINS: I agree with you, Mr. Kovnats. That is the intent of this bill, it's preventative, and any foreign country that might entertain the idea of moving toward a nuclear repository or making a deal with AECL or the Government of Canada to do so with regard to Manitoba would be confronted at least with this bill.

MR. A. KOVNATS: That's fair enough.

Thank you.

MR. DEPUTY CHAIRMAN: Seeing no further questions, thank you, Mr. Robbins.

We have another presentation on this bill. It's Mr. Frech from Atomic Energy of Canada Ltd.

MR. E. FRECH: Mr. Chairman, it's our Vice-President for Waste Management of the Atomic Energy of Canada Ltd. Research Company, Dr. Bill Hancox, who'll be making the presentation. Would you hear him?

MR. DEPUTY CHAIRMAN: Sure.

Dr. Hancox.

DR. W. HANCOX: Mr. Chairman, members of the Legislature, thank you very much for inviting me to appear before you this evening to comment on behalf of Atomic Energy of Canada on Bill 28.

As you know, AECL operates the Whiteshell Nuclear Research Establishment near Pinawa and the Underground Research Laboratory near Lac du Bonnet. I think also, as you know, we have the national mandate to develop the peaceful uses of nuclear energy. As part of that mandate, we are developing technology for the safe, permanent disposal of high-level nuclear waste. I want to emphasize that we are not involved in the disposal of high-level nuclear waste in Manitoba, nor are we involved in the construction of disposal facilities in this province.

We do have a number of concerns about Bill 28. First, it appears to us unnecessary at this time. Second,

it appears to prejudge the technology for disposal that is being developed by AECL. Third, it prohibits the storage of out-of-province high-level nuclear waste, and we believe that this could adversely affect future commercial developments in Manitoba. Finally, it establishes a political climate detrimental to the nuclear industry in Manitoba.

First, let me say something further about the need for Bill 28. As I've already mentioned, AECL does not have a mandate to dispose of high-level nuclear radioactive waste. Our mandate from the Government of Canada is to develop the disposal technology and to assess its safety. Where, when and even if the technology will be implemented is not AECL's decision.

Four successive Federal Ministers of Energy have stated that it is not the intention of the Government of Canada or AECL to convert our Underground Research Laboratory near Lac du Bonnet into a waste disposal facility, nor is it the intention to establish a nuclear waste disposal site anywhere in the province.

We have leased land from Manitoba for 20 years to carry out research at the Underground Research Laboratory; also, we have other permits and leases to study groundwater flow in the region surrounding the laboratory. As a condition of these leases and permits, we have agreed not to use or place any nuclear waste on or under the land in question. The Manitoba Government monitors our activities to ensure that we comply with these provisions and with other relevant Manitoba laws and regulations.

The electrical utilities - New Brunswick Electric Power Commission, Hydro Quebec and principally Ontario Hydro, who produce the high-level nuclear waste today - are responsible for its disposal. They are responsible, in fact, for its overall management.

Our initial estimates indicate that a capital investment of about $1 billion will be required to build a high-level waste packaging and disposal facility and that a work force of about 600 would be required for 30 to 40 years to operate the facility. The monies required to pay for disposal are today being collected as part of the electricity charged to consumers. This amounts to about 0.5 percent of the monthly electricity bill. Once the safety of the disposal technology has been established, we anticipate that communities will find having such a facility in fact an attractive prospect. Thus, even if Manitoba wanted to host such a facility, it seems to us highly unlikely that the provinces making the investment would agree.

Bill 28 does not prevent us from doing the research needed to complete the development of the technology for the safe permanent disposal of high-level nuclear waste, and I think this was the intention of the government drafters of the bill, but it nevertheless will have a negative impact on our work.

We believe that the bill prejudges the disposal technology that AECL is developing. The wording of the bill implies that the Manitoba Government has already decided that the disposal technology will never be safe enough to implement. It does so even though the research is not yet complete and the disposal concept has yet to be reviewed by technical experts outside AECL, by environmental agencies and by the general public. To avoid such a prejudgment, a preamble to the bill could be added to clearly indicate that the Government of Manitoba is not intending to judge the acceptability of the technology in putting this bill forward.

Let me turn briefly to the storage restrictions provided by the bill. The bill prohibits the storage of high-level nuclear waste originating outside the province for more than seven days. We understand the government's desire to prevent permanent disposal even though we believe, as I said, it is unnecessary to do so at this time. However, storage is a temporary arrangement in which the waste is constantly monitored and which could be carried on under special conditions and regulations established by the province to meet its objectives.

We have, in fact, stored high-level nuclear waste at the Whiteshell Laboratory since 1965 and there have been no releases to the environment. In fact, these wastes are stored in a much more secure fashion than are most toxic chemical wastes.

The prohibition of such storage will not have any immediate effect on the activities at the Whiteshell Laboratory. However, we believe that it could constrain the development of new commercial opportunities in Manitoba with an associated loss of jobs and revenues to the province.

For example, as already has been noted, one of the new technologies that we are marketing is an inherently safe small reactor called the Slowpoke Energy System. The Slowpoke Energy System is the leading edge of a new low temperature district-heating technology, and is attracting wide interest from leaders in innovative energy use and conservation practices. About 20 people are now employed at the Whiteshell Laboratory to develop and demonstrate this new technology.

This commercial opportunity for Manitoba, we believe, is jeopardized by Bill 28. It would prohibit us from storing used fuel from Slowpoke reactors located outside Manitoba. If we are not able to use facilities that already exist at the Whiteshell Laboratory for the few dozen used fuel assemblies that will be involved, we will duplicate those facilities elsewhere at additional cost. It is likely that the commercial operation will then be attracted away from Manitoba, costing Manitoba not only the jobs that are involved, but the chance to be at the forefront of new technology that could lead to other benefits. These flow not only to the Whiteshell Laboratory, but to Manitoba consulting engineering firms who are now working with us on these new district leading concepts.

Other future commercial activities could be similarily affected. Each time there is such an impact, jobs that would have been created in Manitoba will be created elsewhere.

Let me say something briefly about the political climate that the bill creates. Our final concern is that Bill 28 establishes a political climate in Manitoba that is detrimental to the nuclear industry. Perhaps we have not done a very good job of communicating the benefits of the nuclear industry to Manitobans, but we are somewhat distressed that anyone would say that Manitoba derives no benefit from the nuclear industry.

We are a major employer in Eastern Manitoba, providing nearly 1,000 highly-skilled and highly-paid jobs. Our company and the people we employ pay millions of dollars each year in Manitoba taxes. According to the Manitoba Bureau of Statistics Economic Impact Model, our company's total contribution to the Gross Domestic Product of Manitoba

is about $85 million annually, and the total direct and induced employment is about 1,900 jobs.

Our research on high-level nuclear waste could easily have been done in Ontario or Quebec. There is nothing unique about the granite in Manitoba. As Manitobans, we strove to ensure that the work came here, and we succeeded in adding a $300 million program to the Whiteshell Laboratory. The result is that Manitoba is now home to a world-class technology for waste management, a technology that can also be applied to non-nuclear wastes.

This legislation, we believe, sets an unfortunate political tone that says the nuclear industry is not welcome in Manitoba. I suspect that fact will not go unnoticed elsewhere, and it could have unforeseen consequences for the Whiteshell Laboratory, especially as the trend is for an increasing share of AECL's research funding to come from Ontario rather than from the Federal Government.

In conclusion, since the Whiteshell Nuclear Laboratory began operation in the early 1960's, the research activities have been conducted in an environmentally safe and responsible manner. Overall, emissions to the environment have been maintained at a small fraction of those allowed under the stringent regulations of the Federal Government. We have established a modern community and provided employment in a place that was previously marginal farm land and unused wilderness.

The Whiteshell Laboratory has established an international reputation for the excellence of its research on various aspects of nuclear safety, the safety of nuclear power plants, and for its research on high-level waste disposal.

There are no plans to build a disposal facility in Canada for several decades; and, as I've said earlier, it is extremely doubtful that a site would be proposed in Manitoba. In any case, the people who live near proposed sights, wherever that might be, should have the right to make their own decisions based on their own understanding of the risks and the benefits.

Bill 28, we believe, will not make Manitoba a safer place to live, and it may have some future side effects that will harm the province's economy. I hope that this committee will consider, if not abandoning the bill all together, at least introducing amendments to clarify the issue of prejudgment of AECL's disposal technology and to allow temporary storage under limits and conditions set by the province of waste produced outside Manitoba.

Thank you very much, Mr. Chairman, for the opportunity to say these few words. I hope that they'll have some impact on your deliberations.

MR. DEPUTY CHAIRMAN: Are there any questions? Mr. Ernst.

MR. J. ERNST: Dr. Hancox, I asked the previous delegation, or put to him that we have legal opinion from Legislative Counsel that the bill would not be enforceable against your company.

Have you received any legal opinion with regard to this bill or would you care to comment on that potential inability of this act to apply against your company?

DR. W. HANCOX: I think our position is quite clear. Independent of the rights of the province to pass or enforce this legislation, we would comply with its provisions.

MRS. S. CARSTAIRS: Doctor, I'd like to make reference to your statement on page 4 with regard to the fact that more and more of your funding is coming from Ontario rather than the Federal Government.

I would gather that is a direct result of Ontario Hydro's need for a disposal facility?

DR. W. HANCOX: No, it has nothing to do with their need for a disposal facility. It does, however, have to do with their need for the research that we're doing, both in the area of reactor safety, which is required for the continued operation of the plants in Ontario, and for the research that we're doing on the disposal concept.

MRS. S. CARSTAIRS: In this additional funding which you have been receiving from them, has there ever been, to your knowledge, any intimation that they would in fact like to have that laboratory located in the Province of Ontario so they could spend their money in their own province?

DR. W. HANCOX: I assume, by laboratory, you're referring to a disposal facility?

MRS. S. CARSTAIRS: Well, I'm, in fact, referring to any of the research that you're presently doing on behalf of the Ontario Government.

DR. W. HANCOX: No, as far as the research we're doing in Pinawa is concerned, there is no question about the location of the laboratory in terms of receiving funding from Ontario. It is not a factor.

MR. DEPUTY CHAIRMAN: Mr. Downey.

MR. J. DOWNEY: Mr. Chairman, a couple of questions to Dr. Hancox dealing basically with the overall concept or the overall concern that society has with nuclear power, nuclear waste. In a short comment, could Mr. Hancox give the committee some idea as to how the work they're doing there will benefit the province and benefit the country as a whole? I say this in the context that we are all so extremely concerned about a nuclear war and the fall-out, the impact, and the losses from that, Mr. Chairman.

The work that you're doing out here in this particular area - I'm talking as a long-term safety measure and finding out and helping the support of the opposition in nuclear impact - is there anything that you could indicate to us that would happen if you weren't there, as far as providing of knowledge is concerned? Are there any safety measures that are being developed through the program there that would put us in a better position in this country, then if we didn't have the knowledge that you're providing, if something like that were to happen?

DR. W. HANCOX: I can give you two examples of where there are spinoffs from the research that we'd done in the nuclear area. The first is that since the early 1940's, we have worked closely with radioactive materials, which

I think everyone understands requires special care to protect workers and the environment.

The skills and technologies that we've developed to do that over the years, we are now applying to the handling of hazardous materials in the workplace, in areas outside the nuclear area. In fact, we've worked closely with the Department of Industry and Trade of this province in the area of occupational health. We're working today in advising companies in Manitoba how to handle hazardous materials in their workplace; that's one example.

The second is that the technology and the research that we've done for the disposal and management of radioactive wastes is being applied to other hazardous waste. The work that we've done, for example, in the field in the Whiteshell area, to develop techniques to characterize, to understand if you like, what happens underneath the surface in the way of movement of groundwater; the methods by which hazardous materials get into groundwater and are transported by groundwater, how they affect the environment.

These same techniques, which we have developed for radioactive materials, can and are being used to look at other toxic materials that are in the environment. We have been having discussions and working with the Manitoba Waste Management Corporation in this area, and are hoping to continue those types of activities.

MR. J. DOWNEY: Mr. Chairman, there's again, a major concern about the contact with nuclear material or fall-out or the exposure to it. How many people have either had short-term or long-term health problems from the work that is taking place in the area in which you are responsible for.

DR. W. HANCOX: At the Whiteshell Laboratory, in fact, within ACEL, we have a health study under way. We have been monitoring the health of our employees since the very beginning. In all of those years since the 1940's, I think there has been only one documented case of an adverse health effect from radiation.

Generally speaking, our employees are, if not healthier, as healthy as any employees in any industry.

MR. J. DOWNEY: You're indicating that you've had one possible health situation or related health concern since 1948, dealing with what we would consider, in the public's mind, an extremely, extremely dangerous situation. We are now faced with a bill that you've indicated will put some serious restrictions on an enhancement of the economic environment in that community, if not further advancing of an economic activity that could help the province.

I ask you a question directly. Are you aware that this Legislature, at this Session, is passing a bill, Bill No. 47, that is, in fact, encouraging . . .

MR. DEPUTY CHAIRMAN: Mr. Downey, we're discussing Bill No. 28. Bill No. 47 has already been considered by committee. Could you please restrict your questions to Bill No. 28.

MR. J. DOWNEY: Mr. Chairman, I can appreciate your sensitivity to the question of which I'm asking.

MR. DEPUTY CHAIRMAN: Order, order please.

It's not a question of sensitivity, it's a question of the rules. The rules clearly state that questions shall be on the bill before the committee and the presenter to the committee, so I'd ask the member to follow the rules; nothing more, nothing less.

Thank you Mr. Downey.

MR. J. DOWNEY: Mr. Chairman, I asked the question: Would the supporting of Bill 28 or Bill 47, if one were to measure the importance to the Province of Manitoba in the long-term economic viability of the province, which one would be of more importance; the one providing the support of the homosexual movement in the province, or the safe use of high-level radioactive . . .

MR. DEPUTY CHAIRMAN: Order please, Mr. Downey. That question is out of order, as I've already stated.

MR. J. DOWNEY: Mr. Chairman . . .

MR. DEPUTY CHAIRMAN: On a point of order, Mr. Downey?

MR. J. DOWNEY: Well, Mr. Chairman, I would expect an answer. I didn't mention the fact that Bill 47 could well be the bill that promotes AIDS in the province as well.

MR. DEPUTY CHAIRMAN: Mr. Downey, your question was out of order. Your present comments are out of order. I would appreciate it if you would proceed in accordance with the rules, as I believe all members of the committee have done up to this point in time. I don't really see the need for getting into this type of abuse of the rules.

Mr. Kovnats is next on the list.

MR. A. KOVNATS: Has Mr. Downey completed his remarks?

SOME HONOURABLE MEMBERS: Oh, oh!

MR. DEPUTY CHAIRMAN: I recognized Mr. Kovnats.

MR. A. KOVNATS: Thank you very much. Mr. Chairman, to Dr. Hancox.

How many deaths have been attributed to the development of nuclear energy and the control of nuclear waste in Canada since the end of World War II?

DR. W. HANCOX: There are no deaths that I'm aware of.

MR. A. KOVNATS: Then the danger that we perceive with nuclear energy and nuclear waste is a real danger, to some extent; but what educational process has the Atomic Energy of Canada gone through to advise the people, particularly in the area of Pinawa, that the danger is not what is perceived by the people who have this fear of the danger of nuclear waste and nuclear energy?

DR. W. HANCOX: Well, in terms of educating in the surrounding area, I guess the best education comes

through those thousand people who work at our facility, who live in those surrounding communities. They're the best testament that we have to the safety of our operations. In addition to that, we do meet on a regular basis with the municipal councils. We do speak to anyone who wishes to listen to us to describe what we're doing, the safety of our operations.

MR. A. KOVNATS: Dr. Hancox, does the Province of Manitoba, who owns the property in which you are performing your services - do they have the right to monitor the situation, to see that you are complying with the rules and regulations?

DR. W. HANCOX: Today I believe that there is, in fact, an agreement between the Atomic Energy Control Board who have the federal responsibility for regulating our operations.

There is an agreement between the AECB and the provincial Department of the Environment and, collectively, they monitor our operations. They have full access to what we're doing.

MR. A. KOVNATS: Dr. Hancox, you've made mention of a Slowpoke reactor. These Slowpoke reactors are to provide electrical and heating energy in small remote communities, I would believe is the main purpose of these Slowpoke reactors.

Can you tell me whether Slowpoke reactors are in service in any other area other than Manitoba at this time?

DR. W. HANCOX: The Slowpoke technology is still in a developmental stage. In fact, the demonstration unit has just started operation today in Pinawa, so it is not yet a commercial product. It is, yes, intended for remote communities; that is the first place that we feel it would be economically attractive. However, we do not see it restricted simply to remote areas, but rather also to urban areas where the economics indicate that it can be competitive with heat from natural gas, and far more competitive than electrical heating.

MR. A. KOVNATS: Are there any other sites or locations that have already signed up to use the Slowpoke reactor?

DR. W. HANCOX: We have discussions under way with a number of potential customers at the present time.

MR. A. KOVNATS: Can the waste material from Slowpoke reactors be stored on site, where the Slowpoke reactors will be working? And is there any danger other than the same type of danger as storing this nuclear waste - not disposing, I don't want to get any - you know, make any - I want the difference being made there - but, is there any danger in storing this nuclear waste on site as it would be in storing nuclear waste on site at Pinawa?

DR. W. HANCOX: First, we see - and the customers that we're talking to today for the Slowpoke reactors are located in areas where they would not have the provisions to store the used fuel at those sites. I should also say that the lifetime of the fuel in the Slowpoke reactor is about two-and-a-half to three years. So, there would be a time interval of about six years before the fuel would have to be removed from the reactor and brought back for storage purposes. The amount of fuel is relatively small, not larger than what we already have at the facilities in Pinawa, and it would be stored under the same conditions with the same level of safety.

MR. A. KOVNATS: Dr. Hancox - I lost my train of thought. But I was going to ask you about the recycling - that's exactly what it was - the recycling of the high-level waste materials from the Slowpoke reactor. Can it be recycled and is the cost prohibitive at this point? How far into the future can you see where the recycling, so that we don't have to store this waste material, where it can be recycled and reused, how far into the future can you see it taking place?

DR. W. HANCOX: First, in terms of the Slowpoke, the amount of fuel is relatively small. It will never be economic to recycle that fuel. In the case of the large power reactors, where the economics could possibly be there in the future, but are not today, the cost of uranium would have to increase by about a factor of three over today's price to make it economic. We don't see that happening for several decades, at least to the middle of the next century. So, today it's not economic to recycle or to reprocess the fuel. We have no programs under way at the present time on reprocessing.

MR. A. KOVNATS: Dr. Hancox, can you see somewhere in the future that the Slowpoke reactor or some reactor somewhat similar would replace the use of natural gas in the Province of Manitoba, on an economical basis?

DR. W. HANCOX: I'm glad you added the qualifier. On an economic basis, yes, today. In fact, I just heard on the radio yesterday that a steam plant was being shut down in Winnipeg that supplies heat to a number of buildings in the downtown core. I think in a different climate if simply the technical characteristics and the economic characteristics of the Slowpoke were considered, it would be economic today to install the unit to heat those buildings. Of course, I think we would have to do something to convince the public that it was safe. We haven't achieved that yet.

MR. A. KOVNATS: Dr. Hancox, what precautions are in place today to transport nuclear waste throughout the Province of Manitoba safely?

DR. W. HANCOX: There is very little nuclear material transported in the province today. We transport material at the Pinawa site with our own equipment, but not off of the site. Occasionally we have trucks come from Ontario, Ontario Hydro trucks that are especially equipped for the transportation of waste. This technology is perfectly safe. There was a comment made earlier, I think by Mr. Robbins, that suggested that this was an accident any time that it was on the road. I believe that's a gross over-statement of the situation. In fact, standing in this room, we're probably all receiving much more radiation from the building materials than we would receive from a passing truck with radioactive material.

MR. A. KOVNATS: Thank you very much, Dr. Hancox.

HON. G. LECUYER: Dr. Hancox, in your reading and understanding of the bill in front of us, is it your understanding that it prohibits any of the ongoing research activities, including the nuclear waste research activities ongoing by ACL in Manitoba?

DR. W. HANCOX: No, it doesn't. I believe, as I said earlier, the bill has been carefully framed to not interfere with the research program.

HON. G. LECUYER: Again, from your reading and understanding of this bill, is it your belief that it prohibits the storage of nuclear waste produced from your research facilities here in Manitoba?

DR. W. HANCOX: No, it does not.

HON. G. LECUYER: Then, Dr. Hancox, would you tell me what you mean when you say that this bill prejudges the results of the research technology and nuclear waste disposal?

DR. W. HANCOX: I believe that the bill will be interpreted because it prohibits disposal, that it is in fact a prejudgment of the technolgy before the technology has been judged.

HON. G. LECUYER: But you're saying it doesn't say that, the bill doesn't state that?

DR. W. HANCOX: No, the bill does not state that.

HON. G. LECUYER: Dr. Hancox, a final question.

Is it not, as I understand from your brief, your belief and your statement that it is your assumption that, for one, the bulk of the nuclear waste is produced as a result of electricity production at facilities in Ontario, Quebec and the Maritimes, and if I read again from your presentation, is it not also your belief that the permanent disposal of the nuclear waste produced in Canada would not be in Manitoba?

DR. W. HANCOX: That is correct. If you go back to the earliest statements when the program was first formed in 1978, and then somewhat later in 1981, it was a clear intention of both the Federal Government and the Government of Ontario who formed this alliance that the disposal would eventually take place in Ontario.

MR. DEPUTY CHAIRMAN: If there be no further questions, thank you, Dr. Hancox.

DR. W. HANCOX. Thank you.

MR. DEPUTY CHAIRMAN: I have been advised that there may be a willingness on the part of the committee to deal with Bill No. 25 and Bill No. 28, the clause-by-clause deliberation. Can I get some indication from the committee in regard to that?

Mr. Findlay.

MR. G. FINDLAY: Mr. Chairman, there are a number of people from outside of town here to make presentations on Bill 65 and I think we should proceed directly to hear them.

HON. R. PENNER: I did speak to the Member for Lakeside and he indicated that we could take The Discriminatory Business Practices Act as a whole. I'm not a member of the committee, and that courtesy was extended, but if you want to withdraw it. We're talking about two minutes.

MR. DEPUTY CHAIRMAN: I believe the understanding was that it would not take any great length of time and would not overly inconvenience anyone making presentations.

Mrs. Carstairs.

MRS. S. CARSTAIRS: Mr. Chairman, I would also appreciate Bill No. 28 being dealt with, simply because I'm not allowed to remain in the room for any discussion of Bill No. 68.

MR. DEPUTY CHAIRMAN: Can we then proceed with Bills 25 and 28 on the understanding that it will be dealt with forthwith?

Okay, Bills 25 and 28.

BILL NO. 25 - THE DISCRIMINATORY BUSINESS PRACTICES ACT

MR. CHAIRMAN: Bill No. 25, The Discriminatory Business Practices Act.

Can we deal it with bill by bill perhaps?

HON. R. PENNER: There are three minor amendments, one of them, in fact - the Member for River Heights' - deals with 3(3) and eliminates it because 3(3) and 3(6) are deeming provisions which are likely contrary to the Charter.

I move

THAT subsection 3(3) of Bill 25 be struck out.

(French version)

IL EST PROPOSÉ QUE le paragraphe 3(3) du projet do loi 25 solt supprimé.

MR. CHAIRMAN: Agreed. Pass.

HON. R. PENNER: I move, Mr. Chairperson,

THAT subsection 3(6) of Bill 25 be struck out.

(French version)

IL EST PROPOSÉ que le paragraphe 3(6) du projet 25 solt supprimé.

MR. CHAIRMAN: Agreed.

HON. R. PENNER: I move - and this is technical -

THAT clause 19(1)(d) be struck out and the following clause be substituted therefor:

(d) contravenes subsection 3(2), (4) or (5); or.

(French version)

IL EST PROPOSÉ QUE l'alinéa 19(1)d) soit supprimé et remplacé par ce qui suit:

d) contrevient au paragraphe 3(2), (4) ou (5).

MR. CHAIRMAN: Agreed. Pass.
Bill, as amended—pass.

MRS. S. CARSTAIRS: Mr. Chairman, unless I missed it, because we went too speedily, did we even in fact deal with section 4?

MR. CHAIRMAN: I'm sorry. I believe you're correct, Mrs. Carstairs. That was just being pointed out. Perhaps we could deal with that by leave. (Agreed)

HON. R. PENNER: I move

THAT section 4 of the bill be amended by striking out "shall offer" and substituting therefor "shall make reasonable efforts to offer".

(French version)

IL EST PROPOSÉ QUE l'article 4 du projet de loi soit modifié par la suppression des mots "doit offrir" et leur remplacement par les mots "doit faire des efforts raisonnables pour offrir".

MRS. S. CARSTAIRS: Can I ask the Attorney-General for some clarification as to why we are not accepting the recommendation of the three groups that presented tonight, and not striking section 4 in its entirety?

HON. R. PENNER: Because I think that to remove it would create a situation where we would have no remedy to deal with persons who are in fact disadvantaged; and to attempt to enforce the bill in the way that was suggested would be contrary to our constitutional powers. It would be invalid.

MRS. S. CARSTAIRS: Well, certainly if we deleted the whole thing we would not have to pay compensation. But why do we consider it, in Manitoba, to be contrary to our constitutional powers, when Ontario does not consider it to be contrary to their constitutional powers?

HON. R. PENNER: On the contrary, we discussed this very carefully with the Ontario officials, and they have drafted that bill precisely to be within their constitutional powers.

MRS. S. CARSTAIRS: So the Attorney-General is saying, in fact, that there is no prohibition for a corporation, in Ontario, doing business with a country that is practising discriminatory practices toward Ontario citizens?

HON. R. PENNER: That is correct. What is prohibited and, equally, our bill prohibits, is doing things within Manitoba with an intent to discriminate.

MRS. S. CARSTAIRS: Thank you, Mr. Chairman.

MR. CHAIRMAN: Is there agreement on the amendment? Section 4, as amended—pass.
Once again, Bill No. 25, as amended, as a whole—pass.
Bill be reported.
Thank you very much.

BILL NO. 28 - THE HIGH-LEVEL RADIOACTIVE WASTE ACT

MR. CHAIRMAN: The next bill is Bill No. 28. Proceeding bill by bill, once again, I believe there's one amendment.
Mr. Kovnats.

MR. A. KOVNATS: There were some presentations made as to whether there was any legal right of the province to pass a bill concerning jurisdiction that comes under the federal jurisdiction. If that is the case, and the only one that could be involved would be the Atomic Energy of Canada at Pinawa, would the Minister consider at this time withdrawing the bill?

HON. G. LECUYER: Mr. Chairman, no. It is clearly established, and did so again with the questions I put awhile ago, the purpose and intent of the bill is not to inhibit the research that's going on, but to prevent the permanent disposal of nuclear wastes in Manitoba.

There is no precedence established in law in terms of whether we can prevent or enforce this bill, because it will have to remain a moot point, whether the waste produced by the energy facilities of Ontario or Quebec or some of the Maritime Provinces, or indeed for the benefit of the citizens of those provinces, are indeed wastes then that are fully under the authority of the Government of Canada, or whether they belong to those provinces.

As I've said many times, with that moot point, we hope and state that we hope that it won't have to be tested.

MR. CHAIRMAN: Is there any further discussion?
Mrs. Carstairs.

MRS. S. CARSTAIRS: Yes, I have two questions.
Does the Minister not feel that the development of the Slowpoke reactor, and certainly its viability as a . . .

MR. CHAIRMAN: Order please.
I recognized Mrs. Carstairs.

A MEMBER: I can't hear Mrs. Carstairs.

MRS. S. CARSTAIRS: . . . its viability as a failed commodity for AECL, will that not be seriously restricted if, in fact, the disposal from that reactor could not be returned to the place where, in fact, it was created?

HON. G. LECUYER: Mr. Chairman, if we're talking about disposal, surely the member is not under the impression - because nobody else is under that impression - that permanent nuclear waste disposal facilities will be developed everywhere in Canada.

If there is one, there will be only one and, therefore, the wastes produced by a Slowpoke reactor, if there is one in use in Manitoba, the bill does not prevent the storage of that waste in Manitoba, because we will assume responsibility for the waste we produce. What it does prevent is the bringing back into Manitoba those wastes to store or dispose of in Manitoba, and there would be no need to do that, Mr. Chairman, if there is a disposal facility available elsewhere anyway.

MRS. S. CARSTAIRS: Well, Mr. Chairman, we're not going to have a disposal, and perhaps I used the wrong word, and should have used "storage." But if we are going to build and develop a reactor here, which we already have, called a Slowpoke, we are then going to sell it to the Northwest Territories, which does not have a storage facility. Is that development, and the sale, and the commercial evolution of that reactor, not going to be totally limited if, on selling that, we cannot say we will take the spent fuel back and store it in Manitoba?

HON. G. LECUYER: Mr. Chairman, if Manitoba, or any other province, for that matter, can store the nuclear wastes that they produce within their boundaries, generally near the facilities that produce them, why can it not be produced in the Northwest Territories, if that's where there are Slowpoke reactors?

MRS. S. CARSTAIRS: But, in fact, Mr. Chairman, we don't do that at the present time. We use . . .

HON. G. LECUYER: We have no Slowpoke reactors at the present time.

MRS. S. CARSTAIRS: No, we use nuclear cobalt waste . . .

HON. G. LECUYER: Not high-level nuclear waste.

MRS. S. CARSTAIRS: Well it is certainly my understanding that we certainly do use high-level waste.

HON. G. LECUYER: They're not high level. It's not considered high-level nuclear waste.

MRS. S. CARSTAIRS: So the Minister is telling this House that there is no high-level medical waste being produced in the Province of Manitoba; is that what you're saying?

HON. G. LECUYER: That is my understanding.

MRS. S. CARSTAIRS: Well I've been given information to which the scientists have given me contrary information, so I'm at a loss for words.

HON. G. LECUYER: Sorry, Mr. Chairman, even Dr. Hancox did not contradict that awhile ago, when asked.

MRS. S. CARSTAIRS: I did not ask Dr. Hancox if we were producing high-level medical waste in Manitoba.

MR. CHAIRMAN: Are there any further questions or discussion? I believe there is one amendment on this bill.

Mr. Lecuyer.

HON. G. LECUYER: On page 2, Mr. Chairman, I move

THAT clause (c) of the definition of "déchet radioactif de haute activité" be amended by striking out the words "l'alinéa b) ou c)" and their replacement by the words "l'alinée a) ou b)".

Mr. Chairman, that's to make it the same as it is in the English version.

(French version)

IL EST PROPOSÉ QUE l'alinéa c) de la définition de "déchet radioactif de haute activité" soit modifié par la suppression de "l'alinéa b) ou c)" et son remplacement par "l'alinéa a) our b)".

MR. CHAIRMAN: Agreed? (Agreed)

Any further discussion on the bill? Bill as a whole, as amended—pass.

BILL NO. 65 - THE SURFACE RIGHTS ACT

MR. DEPUTY CHAIRMAN: Okay, the next bill before the committee for public presentation is Bill No. 65. There was some reference made to individuals being from out of town on Bill No. 65. I'm wondering if we might hear those who are from out of town, given the lateness of the hour, and then hear from others afterwards.

Is there anyone present in the committee wishing to present on Bill 65 who is from out of town and would like to make a presentation now?

Mr. Downey.

MR. J. DOWNEY: Mr. Chairman, I agree we should hear the out of town members and I believe the first one that's up, Mr. Rene McNeill, solicitor for the Manitoba Surface Rights Association, is from out of town, and we should just proceed to hear him.

MR. DEPUTY CHAIRMAN: Perhaps if we can deal with Mr. McNeill's presentation. If there's anyone else from out of town, please, could they contact the Clerk of Committees on my right and we'll rearrange the order in accordance with that.

Mr. McNeill, solicitor for the Manitoba Surface Rights Association. Please proceed.

MR. R. McNEILL: Mr. Chairman, and honourable members.

I did bring some copies of our brief in, but I didn't have the opportunity to hand them to the Clerk. Should I do so at this time?

Mr. Chairman, the Manitoba Surface Rights Association is an association of individuals consisting mostly of farmers who live in or about the area in southwestern Manitoba, which is also the home of the Manitoba oil industry. This association has been very active in voicing the concerns of landowners who pay host to the variety of installations required by the oil industry.

This same association presented an extensive brief to the Commission of Inquiry into surface rights in Manitoba, which resulted in a report by Ross Nugent to the Honourable Wilson Parasiuk, then Minister of Energy and Mines in 1982. That detailed brief outlines the fundamental concerns of the landowners, and still accurately describes many of the difficulties and problems landowners face when dealing with operators who require surface rights.

The Report of Ross Nugent was instrumental in bringing into being The Surface Rights Act, which was assented to on July 22, 1983, and proclaimed in force on August 9, 1983. This act contained the potential for

solving many of the matters at issue between landowners and operators and did, in fact, result in almost all surface leases being reviewed and, in most instances, compensation for existing well-sites and roadways was increased.

As a result of that legislation, most landowners soon requested a review of existing surface rentals and some companies readily negotiated settlements which brought surface rentals into line with rentals being paid in Saskatchewan and Alberta for similar operations. Other companies chose to have protracted negotiations and eventually it became necessary to file applications for hearings under The Surface Rights Act. Various hearings took place throughout the last three years, and unfortunately, the results of the hearings were almost always disappointing to the landowner. A few appeals were filed but never proceeded with as it became quickly apparent that appeal procedures were exceedingly difficult and expensive.

During these same years, the Manitoba oil industry was also experiencing a boom. New discoveries were being made in the Virden area and a whole new oil field was developed in the Waskada area. Again, some companies made a point of offering fair and reasonable compensations and numerous leases were negotiated and settled between the parties.

MR. DEPUTY CHAIRMAN: Excuse me. Mr. Dolin on a point of order.

MR. M. DOLIN: I don't want to demean the brief, but I notice it is 22 pages long and it seems that you are reading it word for word. I'm wondering if perhaps, we could go through the brief and you could point out cogent points. We're going to be here quite awhile if you read it to us. Now I don't know what other members feel about it, I'm willing to stay here for it, but I'm wondering if you could just isolate the points of importance? I'm easy on it, but I think it would be easier on all of us if we didn't read 22 pages.

MR. DEPUTY CHAIRMAN: Mr. Findlay on the point of order.

MR. G. FINDLAY: Mr. Chairman, I've never heard of this procedure being used before, where a citizen is prevented from making his report as he saw fit to report it. I would ask the member to withdraw those comments immediately.

MR. M. DOLIN: I'm doing nothing of the kind, Mr. Findlay. I am asking if it would be possible, on the point of order - I don't like to be accused of it - I asked if it would be helpful. Certainly to me and other members, and I'm easy on this, but I am suggesting if it were possible rather than reading 22 pages, if you could pick up points of most importance and we could deal with those and the recommendations. If you feel you have to read the whole 22 pages, I am perfectly willing to sit and listen.

MR. DEPUTY CHAIRMAN: On the point of order, we do not have set procedures in terms of limitations on members of the public wishing to make a presentation. It is basically up to them. If Mr. McNeill wishes to submit this and summarize it or submit it as a written brief, that is possible. If he wishes to read it, in its entirety, it's possible, so I believe it's really up to Mr. McNeill.

Mr. McNeill, you may proceed.

MR. R. McNEILL: Mr. Chairman, I do choose to go through the brief rather detailed, because I think one of the basic problems that landowners have faced, in this particular type of legislation, is a fundamental failing of parties to understand the theories that are behind this type of legislation. I find that most people who we deal with are quite unfamiliar with it, and I think it does require some discussion in detail.

Specifically, the areas of greatest concern which still cause the most problems in matters of surface rights are as follows: Firstly, the annual compensation rates for well sites developed prior to the coming into force of The Surface Rights Act in most cases do not equal the compensations being paid for similar sites developed subsequent to The Surface Rights Act and the compensations being paid in Alberta and Saskatchewan.

And I might add that, right now, we are looking at compensations in $2,000 per year area for annual surface rentals on a single well site; and compensations that are currently being awarded by the board are considerably below that.

Secondly, some companies consistently offer compensations at levels far below what is generally accepted at reasonable levels of compensation.

Thirdly, and probably most aggravating to the landowners, are that the hearings are too long, too complicated, too intimidating and too expensive for landowners.

It's the position of the Manitoba Surface Rights Association that the board has failed to carry out the purposes of The Surface Rights Act as defined in section 2. It failed because it made awards that were inconsistent and often far below negotiated settlements for similar sites. It failed because it had not effectively resolved disputes between operators and owners concerning new rights of entry. It failed because the cost of hearings became too much for landowners to bear, and they quickly developed a reluctance to appear before the board.

Some of the examples of the board's failure are as follows: The board consistently refuses to award costs of the hearings to the landowners. Accordingly, after deducting the cost of the hearing, a landowner will never be fully compensated for his losses. I'd like to draw to the committee's attention to the fact that in Saskatchewan and Alberta, costs are usually awarded to the landowner when they appear.

Another example, the board conducts its hearings in a formal, adversarial manner much like a court, and allows extensive cross-examination of witnesses. This formal procedure makes it necessary to have lawyers present to conduct the hearings and defend the landowners' positions.

Again, we reiterate that the hearings become too long, too complicated, too intimidating and too expensive, and again I digress. One of the favourite tactics of the operators is to insist that the onus of proof of the compensation is on the owner. Now, to us, this doesn't seem fair because the owner doesn't

have any opportunity to deny the operator the right to appear on the land. Accordingly, the landowner needs assistance and should have the opportunity to have assistance, and the costs should be paid for.

Another example of the board's failure is that the board imposes its own interpretation on the terminology in the act, without reference to accepted interpretations in Saskatchewan and Alberta. Accordingly, even though farmers in Saskatchewan consistently receive $300 to $500 per well site annually for adverse effect, the Manitoba board refuses to make awards for adverse effect.

Also, the board rules that it does not have jurisdiction to look at comparable awards, and accordingly, many of its awards were not consistent with similar cases in Manitoba, Alberta and Saskatchewan.

It should be noted here that compensation awards should not be much different in neighbouring Saskatchewan because their agricultural industry is much the same as in Manitoba and our act was modelled after theirs.

The failure of the Manitoba Surface Rights Board to gain the confidence of landowners and to provide them with fair and equitable decisions has left the landowner in a vulnerable position when it comes to dealing with the oil industry. When the oil industry comes calling for rights to enter and operate on a farmer's land, a farmer is suddenly confronted with an experienced land representative who is familiar with all the effective pitches and who is there for one purpose only; to obtain a lease of the surface rights on the most favourable terms and at the least expense for his client. We must always remember that the landowner cannot refuse to deal with this request by the oil industry for surface rights. He must either negotiate a deal or appear before the Surface Rights Board.

I just might digress at this moment as well too. At the present time, I am conducting some negotiations on behalf of a landowner, who is presently dealing with the Manitoba Oil and Gas Corporation. At this time, we are conducting negotiations and one of the statements that has been made to me by the land representative was the fact that when I commented on the compensation that was being offered, it was, well have you advised your client that the compensation that he may receive before the board may be less. In response to that, I suggested that the land representative should take the position that the Manitoba Oil and Gas Corporation should set an example in this industry, as it is perceived to be acting as a Crown corporation and acting on the authority of the Province of Manitoba.

Accordingly, we feel that the Manitoba Oil and Gas Corporation should be setting the precedent and should be taking a leadership role in establishing surface rentals in Manitoba. At this point, the negotiations are still continuing, but I feel and my client feels that we could be in an uncomfortable situation if we had to eventually appear before the Surface Rights Board on this matter.

So I would urge the committee and I would urge those members that have the conduct of the Manitoba Oil and Gas Corporation, to urge them to take a leadership role in these issues so that these matters do not have to end up before the Surface Rights Board.

Continuing on then, the Manitoba Surface Rights Association feels that the function of the Surface Rights Board is not to just sit as judge and jury and to make a decision between opposing positions. That's only one of the functions set out in section 2 of the act. Our association feels that the board should be able to bring its expertise to bear in surface rights matters, and here is where we feel that the board has failed the most.

Many of the landowners, after appearing before the board, have come away with the feeling that the board members do not have a comprehensive understanding of agricultural economics, and without this knowledge, they are unable to appreciate the often detailed and complex evidence presented before them. In many of the hearings, a mere lack of questions by the board indicates a lack of understanding of the issues that are put before them.

I just might, at this point, show the committee a typical report prepared, in this particular case, by an expert witness on behalf of Chevron Canada Resources Ltd. It's a report consisting of numerous pages, complete with photographs, calculations and theoretical positions on behalf of the oil industry.

This type of report is very complex and needs evaluation. A landowner cannot be expected to have the type of technical expertise available to present an opposite position on this type of material. We therefore feel that the Manitoba Surface Rights Board should have the expertise, either in itself or at its disposal, to be able to consult, to be able to evaluate this type of information.

It could be argued that the landowner could also call his own expert witnesses, but at this point in time the board has not been allowing costs, and accordingly, landowners just cannot afford to hire the types of experts that are required to present the evidence.

The Manitoba Surface Rights Association therefore feels that this government must see that, in future, the Manitoba Surface Rights Act carries out all of the purpose of the act as outlined in section 2 and must see that the board produces results which are just and equitable.

In 1985, after hearings which produced results which were less than satisfactory to the landowners, the Manitoba Surface Rights Association met with the Executive Director of the Surface Rights Board. It quickly became apparent that the board's position was adverse in interest to that of the landowner. By that, I mean, after certain hearings, we had discussions and we discovered that the board was interpreting a particular section of the act concerning adverse effect differently than it is being interpreted in Saskatchewan. The wording of that particular part of the act is exactly the same as in Saskatchewan, and yet in Saskatchewan, awards were being made for adverse effect of $300 to $500, and in Manitoba, they were not. Despite our protests, we were unable to get a satisfactory understanding of why the board took this divergent approach.

The Manitoba Surface Rights Association reviewed the act, subsequent to those discussions, and submitted a brief proposing several amendments in 1985. It is apparent that the government has decided not to follow any of these suggested amendments.

At the annual meeting with the Manitoba Surface Rights Association in 1987, with the Honourable Minister of Municipal Affairs present, the Manitoba Surface Rights Association passed five resolutions calling for,

No. 1, comparable settlements to be used as primary evidence in determining just and equitable levels of compensation; No. 2, cost to be awarded to landowners; No. 3, fines to be assessed on operators who fail to report spills; No. 4, the return of the board to southwest Manitoba; and No. 5, an investigation of surface rights matters.

The Surface Rights Association, various individuals, and honourable members of the Opposition have raised these issues with the Minister of Municipal Affairs. In response, the Honourable Minister has introduced Bill No. 65. What follows is the response to his proposals.

With that background position, Mr. Chairman, the first matter is the matter of appeals. I will summarize this particular one. We are in agreement that the matter of appeals should be changed so that appeals are, on matters of law, to the Court of Appeal only.

The second matter in our brief is the proposed amendments to section 26(1) which are the sections dealing with compensation. The Manitoba Surface Rights Association believes that the Surface Rights Board should have the widest scope possible to consider all factors in determining compensation for surface rights.

Unfortunately, the board seems to be interpreting section 26 in a manner which would limit its right to receive what landowners regard as pertinent information in determining compensation. It is the belief of the Manitoba Surface Rights Association that the government did not intend this section to be restrictive.

The proposal to add an item to section (1) to state that the board shall consider similar negotiated settlements is a welcome addition to the act. Many of the areas of compensation, such as nuisance, require the board to make an estimate of compensation based on reasonableness, rather than on scientific data. Accordingly, the association feels that one of the most significant reference points in determining what is reasonable is the compensation arrived at by operators and landowners in similar cases in Manitoba, Saskatchewan and Alberta; consistent and adequate where more awards will remove much of the friction between operators and landowners.

I wish to emphasize, Mr. Chairman, that the awards must be consistent to cross the western Prairie Provinces. The matters of surface rights do not differ that greatly; certainly agriculture does not differ that greatly, and it is not reasonable to suggest that farmers across the border into Saskatchewan should be receiving compensation at levels different than their neighbours in Manitoba, particularly in view of the fact that our act is modelled after theirs.

The proposal to amend section 26(1) is of significant concern to the Manitoba Surface Rights Association. We are of the view that the addition of the words "before allowance of surface rights," will unduly restrict the scope of the board in awarding compensation to the landowners. We believe that the board will be inclined to use this definition to tie the value of the land to a per-acre value of the remaining acres on the farm. The association is of the view that this is not a fair and equitable definition.

We must remember that the operator, in its sole discretion, chooses the location and the configuration of the land that is taken for its operation. For those of you who are not familiar with well sites, well site is usually in the middle of a 40-acre legal subdivision with a road coming in approximately one-quarter mile long.

Accordingly, the Manitoba Surface Rights Association is of the view that the compensation to be paid for the taking of this portion should be higher than the per acre value. This concern is recognized in section 25 of the Alberta Act, in that the board may consider both "the amount of land granted to the operator might be expected to realize if sold in the open market by a willing seller to a willing buyer on the date the right of entry was made," and the per acre value. This defnition is more accurate and directs the board to consider the size, shape and location of the property that is being taken by the operator. This follows common sense in that an owner would not want to sell a small, irregularly-shaped parcel of land out of his farm acreage at the same price as he might be willing to sell the total farm on a per acre basis if he was a willing seller.

In this regard, the Manitoba Surface Rights Association made this proposal in 1985. The proposed amendments before this Legislature should be changed to recognize the difficulties that the board in Alberta has already experienced. They found it necessary to make the changes. We feel that Manitoba should also consider them.

One of the problems in surface rights we find is the tendency to always want to draw similar conclusions from expropriation law; but in expropriation law, things were being taken for a public purpose and that is not the case here. We are very strongly of the view then that the government should reconsider this proposal and consider a definition, similar to the one in Alberta.

One area of significant concern is section 1(e) which outlines that the board is to consider the adverse effect caused by the right of entry to the remaining land by reason of severence. The proposed amendments have the words "if any" added to this subsection. These added words would not appear to change the meaning of the section, but there has been a significant difference of opinion between the landowners and the board as to the definition of the word severence. Apparently the board has taken the opinion that severence implies to the complete severing of a field into two separate fields. Accordingly, in most instances, they have ruled that severence is not in effect and that no award of compensation has been made for adverse effect. This interpretation is contrary to the interpretations in Alberta and Saskatchewan where the terminology first originated. The interpretation of this clause by the Manitoba Surface Rights Association and the history of this terminology states that severence is a factor in every case where there is an above-ground installation.

The degree of severence, will, however, vary in each case, but it is always there in the case of above-ground installations because the installation interferes with the use of the remaining lands and requires the farmer to adjust his use of the remaining lands to take into account the installation. Again, it is difficult to estimate the adverse effect, with any degree of certainty, as it is not a strictly scientific determination. The Surface Rights Board in Saskatchewan consistently makes awards of adverse effect, but this element has been lacking in Manitoba and consequently, is one of the main reasons why compensation in Manitoba has been lower than in the neighbouring Province of Saskatchewan. The definition in Alberta is somewhat

different because the terminology of adverse effect is broader and includes some of the other items listed separately in section 26 of the Manitoba Act.

To rectify this situation, we would suggest that a definition be inserted into the act such as the following: "severence" means the taking of the portion of the lands acquired by the operator. This particular subsection has been one of the most misunderstood subsections in determining compensation. The Manitoba Surface Rights Association feels that this is one of the main reasons why the Manitoba Surface Rights Board has failed to bring levels of compensation into line with negotiated settlements and comparable awards in Saskatchewan.

Further in section 26, the proposed amendments delete subsection (j) which states that the board may consider "such other factors as the board deems proper, relevant and applicable."

This deletion is not consistent with the philosophy that the board should have the right to consider whatever material it feels is relevant. It could be argued that subsection (h) contains a duplication in this area because the board is specifically allowed to consider "any other relevant matter that may be peculiar to each case." However, this is a restrictive clause in that relevant matters must be peculiar to that case.

We believe that the board should be able to consider any relevant material, even though they are not peculiar to that particular case. Accordingly, we would recommend that subsection (j) not be deleted or that the restrictive portion of subsection (h) be deleted.

I might add that in my brief look at the Saskatchewan Act, it still has a similar section (j) in their act, and they seem to be doing fine in Saskatchewan.

It is also noted that subsection (g) of the existing subsection 26(1) is also to be deleted. The Manitoba Surface Rights Association is of the view that this subsection allows the board to consider the different uses of the land by the operator when assessing compensation. This is a useful factor, because it makes the operator concerned with the upkeep, maintenance and aesthetic effect of its operations.

For example, some operators have allowed some of their sites to become eyesores, in that they have allowed equipment to rust and deteriorate and have allowed junk to accumulate on the site. This has a detrimental effect on the appearance of the farm and reduces the pride with which many farmers regard their farm operations.

Accordingly, the board should be able to take these factors into consideration. The deletion of this section could imply that they are not directed to do so. The association is therefore of the view that this subsection should remain.

Regarding the costs of hearing, the Manitoba Surface Rights Association, in its brief to the Commission of Inquiry, stated that the operator should be responsible for paying the reasonable costs of the landowner in appearing before the board.

The reason for this is that these costs would not be incurred, except that the owner is obligated to accept the operator to accommodate the objectives of the oil industry. As matters of surface rights are not within the general purview and knowledge of the average farmer, it makes sense, that in order to achieve fairness, he will have to seek advice and assistance.

This advice and assistance helps him deal on an equal footing with the experienced land representatives. The experience of the landowners appearing before the Manitoba Surface Rights Board over the last three years is to find out that the board has refused to award costs.

Accordingly, if a landowner were to receive fair compensation for these rights, he would always be in a loss position because of the cost factor. Mr. Chairman, I would wish you to note that most often we are only dealing with differences of compensation of a few hundred dollars, so if costs are not awarded, the purpose of going before the board would be defeated.

The Honourable Minister has decided to introduce a formula concept to assist the board in determining when costs should be awarded. Our association is of the view that this formula concept will not be effective. We believe that the onus should be on the board to determine what costs are reasonable, and that they have been incurred with a view to advancing the position of the landowner. Whenever this is the case, costs should always be awarded to the landowner. The association is also concerned that this concept will not work where the amount of compensation is only one of the issues in dispute between the parties.

We suspect that the Minister is considering this approach because the board is concerned that if costs are always awarded, then every farmer will automatically take his case to the board. We would suggest that nothing could be further from the truth. First of all, if the costs are legitimate, the farmer will not end up with anything more in his pocket, so he won't be appearing before the board to profit from an award of cost. Secondly, most farmers do not like appearing before the boards for a variety of reasons, and I've listed those in our brief.

We are therefore of the opinion that there is already enough of an inherent deterrent to appearing before the board, so using costs as a deterrent is not necessary.

The concept of awarding costs to an owner does two things: it ensures that the owner will feel free to retain the necessary consultants to be on an equal footing to put his case before the board; and it ensures that the farmer does not have to deduct his costs from his award and will not therefore be fully compensated for the rights being obtained by the operator.

Simply put, if costs are not awarded, farmers will not appear before the board and the whole purpose of The Surface Rights Act will be defeated, and we suspect just as the operators would like.

On matters of abandonment, we have two basic concerns: who is going to pay for the cost of the restoration and who is going to see that the restoration is completed?

I'd like to digress for a moment here. We know that your intentions are to try to simplify the procedures and we have no objection to that particular concept; however, we do wish to see the Surface Rights Board actively involved in matters of restoration and further, we would like to see the Department of the Environment and the Department of Agriculture also actively involved. Farmers are concerned about the future of their lands and the children of theirs who will be operating them some day and accordingly, we feel that the environment people and the agricultural departments should be brought into in abandonment procedures

In regard to our first concern, the act is clear that it is the operator's responsibility to do the restoration.

However, in matters of abandoning an installation can be an expensive proposition for the operator and the Surface Rights Association is concerned that in the long term some operators will not have sufficient resources to complete the restoration procedures.

If for example, it took $10,000 to complete the restoration of a single site, Chevron, with what we understand has over 600 sites, would need $6 million to restore the lands. Now I can just see us if Chevron were to shut down its operations in Manitoba, us trying to go after Chevron for $6 million on behalf of the landowners, particularly when Chevron wouldn't then have any offices in Manitoba in all likelihood, and we just wouldn't have any resources to be able to go after them.

A more likely scenerio might also be that individual sites as they become less productive will be sold off to smaller companies or individuals, and those individuals will then have to bear the responsibility for restoration, and what assurance does the landowner have that particular individual or company will have the resources to complete the restoration.

Our figure of $10,000 may be too high, but we would also suggest that it may be too low. At this point we just do not know. We feel that the government should be committing some resources to studying this matter, so that it has the knowledge and expertise to make decisions concerning restoration, because I can assure this committee that despite the fact that the preliminary matters of abandonment may be before the Mines Branch, the Surface Rights Board will eventually get involved, because our advice consistently to landowners is not to sign consents to abandonment unless they are absolutely certain that the restoration has been completed.

The second concern has to do with the procedures standards and responsibilities completing the restoration. Section 26 states that the operator "shall restore the surface of the land as nearly as possible to its original condition." This standard is not adequate. Firstly, the surface of the land is not the only portion of the lands that are affected; the subsoils are affected by oil and salt water which is leached into the ground. Secondly, the test should not only be "original condition," but should also require the operator, in the case of agricultural lands, to restore the land to the productivity levels of the adjacent lands.

For example, a lot of these wells were put in when the original land was strictly prairie or bush. Now that it is agricultural land and considerable expense has been incurred to improve the lands, it would not be fair if the operator was merely to say, well all we have to do is make sure that it was original prairie or bush.

The abandonment procedure necessarily requires special expertise to set standards, guidelines, and to test and monitor the efforts of the operator, to compile and make reports to the board and to the province. The association is of the view that neither the Mines Branch nor the Surface Rights Board has this expertise. This matter should fall under the purview of the Department of the Environment, and its staff should be trained and instructed to set the guidelines and monitor the effects of the operator. We understand that similar procedures are required in both Alberta and Saskatchewan, and that the Government in Manitoba would be wise to borrow from their experience and get involved in abandonment, before it is too late.

In summary, the proposed amendments in Bill 65 on this matter only solves some of the procedural difficulties for the operators. They do nothing to put in place a more advanced system of abandonment to protect the Manitoba agricultural environment.

On the Interim Orders: Generally our association is opposed to the granting of interim orders for rights of entry. As we stated in our 1985 brief, this section should be deleted entirely. It's not in the Alberta or Saskatchewan acts and the oil industry continues to operate in those provinces. It only means that the landowners will have to go through two hearings instead of one. The proposed amendments only make things worse.

In particular, the time notice is too short; seven days is not enough time to familiarize oneself with the problem, obtain advice, send and file a notice of objection to the office in Winnipeg. The procedure, if it is implemented, should be reversed. There should always be a hearing unless the owner consents to the right of entry.

In regard to section 27(3), the Surface Rights Association wishes to record a strong objection to having only one member of the board make the decisions on rights of entry. This concept is in conflict with section 27(5) and is contrary to the general intent to have a board of several members make these crucial decisions. To allow the presiding member to make such decisions concentrates too much control of surface rights in one person. Accordingly, the board shall not grant interim orders unless two conditions are met. The Manitoba Surface Rights Association feels that the rights of owners can only be protected if the board continues to be responsible for such decisions.

Interim orders only serve the purpose of allowing the oil industry on the farmer's land before the terms and conditions can be settled. Once this is accomplished, it is very difficult for the owner to obtain any kind of negotiations in good faith. Accordingly, it will only result in more board hearings which will be used to bully the landowner into settling on less favourable terms. The whole concept of interim orders is contrary to the purpose of the act, which is to provide just and equitable treatment of the landowner by the operator.

(Mr. Chairman in the Chair.)

The association is of the opinion that the board is trying to make it easier for the oil industry to obtain interim orders for access to farmer's lands before settling on the terms and conditions. If this is so, it does not speak well for the future of surface rights legislation in this province.

Variation Orders: The Manitoba Surface Rights Association has two concerns. The first one is that we believe that it was the intention of the government in the original act to state that any increases of compensation that are to be negotiated or awarded by the board order would be payable to the current owner. However, the original draft only refers to an increase in compensation "ordered by the board." Accordingly, there is a discrepancy between increases which would be by way of board order and by way of negotiated settlement. Accordingly, it appears that there is a glaring omission which should now be corrected by inserting after the word "Board" in the third line,

the words "or is negotiated between the operator and owner or occupant." This would then mean that both situations would be consistent with the philosophy of the government, which is to ensure that surface rights compensation will benefit the current owners of the lands.

My other comment on this particular section is rather lengthy, but in summary it states that the procedure of making the review date the effective date will just increase the paperwork that is involved and will result in unnecessary filings with the board. Most companies are now setting out these reviews on computer and it would mean having to reprogram the information for the next review, each time negotiations took place. The landowner would also have to change his recorded information as well. The Manitoba Surface Rights Association feels that the effective date should remain the date of review and it should be up to the board to use common sense to determine the effective date of any order.

In many of the hearings which have already taken place, the matter of the effective date was of particular concern because these were the first reviews under the legislation. Accordingly, because the legislation did not specify when the first effective date was to be, there was a difference of opinion and the board ruled in many cases that the effective date was the date of application. Although the association still believes that this was not a fair and equitable ruling, most of these review dates have now been established and a pattern of review is developing. In summary, the addition of this section will not be of much assistance and the Surface Rights Association believes that it is actually detrimental to the negotiation process.

Now, Mr. Chairman, there were some matters also that were not in Bill 65 that we feel should have been addressed at this time and we would like to see them amended. No. 1, is on tortious acts and the Notice of Loss under section 45. The strict wording of section 45 has caused concern. In many instances, negotiations take place between the parties and the 90-day period is liable to slip by before the parties come to the point where no settlement is able to be made. Accordingly, the 90-day period is a dangerous limitation for an owner or occupant who is unaware of the statutory limitation. Accordingly, the Surface Rights Association would suggest that this 90-day period be extended to one year.

In most cases, it is difficult to state the amount of compensation or damage claimed. The Surface Rights Association would recommend that the word "estimate" be inserted prior to the word "amount" in line 6 of section 45.

The Surface Rights Association also feels that any spill report should be required to be filed under the Mines Branch. It should be deemed to be notice of a claim and the board should immediately have its investigation officer or environmental officer examine all spills. The Surface Rights Association would recommend that copies of all spill reports required to be filed under the Mines Branch should also be filed with the Surface Rights Board.

Section 43(3) also contains a statutory limitation which we feel is unrealistic in many circumstances. The amount of compensation cannot be determined until the next farm season. In the meantime, it's customary for negotiations to take place between the parties involved. Again, the Surface Rights Association feels that six months is a dangerous restriction on applications and this time limit should be extended to two years.

Section 16(3) - this section states that an operator shall compensate the owner or occupant for all damage suffered by the owner or occupant as a result of the need to enter upon lands for the purpose of repairing, maintaining, replacing and inspecting the works of the operator.

The operators argue that the definition of damage does not include compensation for inconvenience or nuisance. In many instances, the inconvenience and nuisance to the owner or occupant would be greater than any specific damages, such as crop loss. The most common loss would be the loss of time suffered by the owner or operator in dealing with the operator and inspecting the entry on the lands to determine if there is any damage.

A common example, Mr. Chairman, is a spill on a lease and oftentimes, the amount of damage to the crop is not that significant, but the time involved in going out and examining it and having to deal with the operator, making claims, requires more compensation than the actual damage. We think that should be taken into consideration. Similarly, when a portion of the field is required to do the restoration of a damage spill area, it interferes with the operations of the farmer, and compensation should be awarded or considered for that as well.

Section 53(3), we believe that section deals with mineral rights and should not even be included in The Surface Rights Act.

In summary, we wish to make some observation and recommendations. No. 1, there are several references in the act to matters prescribed by the regulations. To make this act complete, we feel that the necessary regulations need to be put in place. After all, it's been some time since the original act was in place and we haven't yet seen any regulations, and many of the sections, therefore, are meaningless.

No. 2, the Surface Rights Association is of the opinion that the amendments to the act are not the main solution to curing its complaints. The true issue is the result produced by the board and until the board sets on a course to provide just and equitable treatment to landowners, these amendments will not produce the desired results.

I just might comment at this particular time as well on the matter of the board. We seem to have a difference of philosophy between our association and the board. We feel that the board is there to protect the farmer, to see that he gets the just and equitable treatment. To this point and time, we do not feel that the board is supportive of the farmers' position. It is often in an adversarial position to the landowner.

The Surface Rights Association feels that the opportunities should not be lost to further improve the act so that Manitoba can catch up with Saskatchewan and Alberta in surface rights' matters. The legislation in both of these provinces has been amended on several occasions, and we feel that not enough attention is being paid to improvements in those provinces.

The proposals put forward by this association in 1985 have not been seriously dealt with by the Manitoba Surface Rights Association and we have not participated

in a debate on them, even though some of them, of course, have now been covered in Bill No. 65 and in this brief. The Surface Rights Association feels that its views should carry more weight than has been accorded them to date.

MR. CHAIRMAN: Are there any questions?
Mr. Parasiuk.

HON. W. PARASIUK: I just wanted to point out to Mr. McNeill that I'm the Minister responsible for the Manitoba Oil and Gas Corporation. I think it was wrong for Mr. McNeill to bring forward in the presentation a specific case of negotiation.

I want to inform you of that. That is best dealt through the negotiating process. I don't think it's proper to come forward to talk on a general bill and make a presentation, and refer to a particular case of negotiation.

Secondly, I'd like to inform Mr. McNeill that the Manitoba Oil and Gas Corporation operates on a businesslike manner and having had that raised by the member . . .

MR. CHAIRMAN: Order please.

I have to caution members of the committee that questions are for information. The purpose is to obtain clarification for the presenters; not to either debate with the presenters or provide information to the presenters. If members have information they wish to indicate to the committee, the proper time is on the clause-by-clause debate.

Mr. Downey.

MR. J. DOWNEY: Mr. Chairman, I have a couple of questions.

Mr. McNeill, the government made the decision to move the Surface Rights Board out of the southwest corner of the Province of Manitoba. Did that, in your opinion, have an impact on the individuals who were wishing to make representation to the board, or the availability of the board to the landowners? Did that deter their ability to have exposure to it, in your opinion?

MR. R. McNEILL: Probably the most significant effect is that we no longer have the easy access to the records that are contained in the office. One of the fundamental things that's in The Surface Rights Act is that the operators are required to file agreements with the board.

Those agreements provide a guideline to landowners and, accordingly, if the board is not in the southwest area where most of this takes place, they are not easily accessible or available. Certainly, it makes it more difficult for the landowner to state his case and prepare himself.

MR. J. DOWNEY: He would be of the opinion that it would be of an advantage fo the landowners in southwest Manitoba dealing with the surface rights, to have the board move back into the southwest area.

MR. R. McNEILL: Yes, sir.

MR. CHAIRMAN: Once again, I would caution members of the committee to please ask questions related to, either the presentations or the bill.

MR. J. DOWNEY: Mr. Chairman, on a point of order.

I believe that was part of the presentation that was made, if you were paying any attention.

MR. CHAIRMAN: Mr. Downey, for your information we're discussing a bill, which does not involve the consideration of the location of the board.

We do allow some leeway to presenters, in terms of the subject material they present, but I would suggest that perhaps committee members might wish to stick to our rules.

MR. J. DOWNEY: Mr. Chairman, I can't help but respond. I believe in your comments you indicated that anything that was part of the presentation we could comment on as well. If I look at the presentation, I see that as part of it and I would expect an apology from you, Mr. Chairman.

MR. CHAIRMAN: Mr. Downey, if you wish to challenge the Chair, there is a procedure available to challenge the Chair.

However, I would caution you in making your comments not to reflect on the Chair unless you're ready to follow that procedure. I've cautioned various people around this table, probably the majority of the people tonight, to follow the rules. I'm not being selective in who I reference. I'm only asking that everybody follow the rules. It would make my job a lot easier, it would make the proceedings of the committee a lot easier. So I would suggest, Mr. Downey, that we could follow the rules.

MR. J. DOWNEY: Mr. Chairman, I refer to page 16 of the brief.

Mr. McNeill, you've indicated that the proposed amendments only make things worse for the landowners, on the interim order procedure, which is being introduced. Have you discussed this previously with the Minister, and what has been his response? Page 16, No. 5, top paragraph.

MR. R. McNEILL: The discussions, I guess, that we've had with the Minister have been extremely brief on this matter. I don't think we've ever dealt with it in any great degree of detail. We have consistently, I think, since the early days of surface rights matters, always stated that we were opposed to the matters of interim orders and I can't recall offhand the Minister's response, other than what was contained in Bill 65.

MR. J. DOWNEY: Following on that, Mr. Chairman, we have a board of - I'm not sure how many members there are - five members of the Surface Rights Board and, having some knowledge of the oil activity in the southwest corner of the province, to allow the admittance of an operator onto a farmer's property with only one person adjudicating, it seems rather strange that that kind of power would be given to one individual and I notice an objection to it.

I want to just go back a little bit as well, not only in my talking to some of the surface rights owners do they feel that one person giving that permission is not adequate, but the very fact that before a compensation agreement is reached, it would be more acceptable.

Do you have a general comment as to why the Surface Rights Board has not spoken more strongly on that, as far as allowing an entrance without a compensation agreement prior to that entry?

MR. R. McNEILL: Our objection, of course, is that once an interim order is granted on a surface rights matter, then the industry representative is going to lose interest in following up on any further negotiations for compensation.

We feel that if that procedure is going to be followed, the whole board should be available to make the decision, and not just one particular member. I guess it's because the board represents various backgrounds: two of the board members are farmers, two are lawyers and one is a storekeeper; and one of the purposes of having that kind of a configuration is to provide some kind of balance and divergence of opinions on these matters.

We feel that if a farmer is to be treated fairly in this matter, that all of those persons should have their say, and we certainly do not like the idea of one person deciding whether the industry can enter on the lands or not. I'm not sure if I answered your question directly.

MR. J. DOWNEY: Basically, the point I'm trying to make is that - and I say this and I would ask you the question representing the surface rights owners - that to allow someone to enter onto your property or the people whose property you are representing, for the purpose of drilling for oil or recovering of a resource under the surface of that, that it can have irreparable damage, as far as the individual is concerned.

What you're saying, if I understand it correctly, that an individual who is totally unfamiliar to that situation can make the decision to allow that right of entry and not have a clear understanding of the implications, but as important is the fact that that individual doesn't know what compensatory payment they're going to get for that entry; and that should be clearly stated and it should have a broader viewing of individuals before that happens. That's basically what you're saying; is that correct?

MR. R. McNEILL: That's correct. There are certain matters such as water resources on a farmer's land, that when the oil industry comes, if they were to be granted an interim order without an extensive hearing, by the time the well gets drilled, it would then be too late to raise any meaningful objections.

MR. CHAIRMAN: Mr. Findlay.

MR. G. FINDLAY: Mr. Chairman, I would like to ask Mr. McNeill - in your brief you said basically that Bill 65 is tilted in favour of the operator. Is that not true that that's the way the old act was? Do you see any real difference in that situation in this new act? Is there any more protection in it for the farmer than there was before, or is there in fact maybe less protection now?

MR. R. McNEILL: The one significant improvement is the matter of using comparable settlements. The rest of the amendments basically did not come from representations or materials that the Manitoba Surface Rights Association provided.

We are suspicious of the fact that many of the rest of the amendments are coming from representations from the oil industry, and as we've stated in our brief, we are not happy with them. So one improvement, and other matters of the act that are not an improvement, in our opinion.

MR. G. FINDLAY: You mention comparables. The Minister does not have that in the presentation. It was introduced and is addressed in Second Reading. Have you seen the amendments he intends to propose on comparables and awarding of costs?

MR. R. McNEILL: I have seen a copy of the Minister's submission in Second Reading, but I haven't seen specific wording of the amendment.

MR. G. FINDLAY: I guess we'll wait and see what they say.

On the issue of abandonment, certainly, I understand you are not happy with the fact that abandonment basically is handled under The Mines Act. Is that right?

MR. R. McNEILL: That is correct.

MR. G. FINDLAY: How would you like to see it handled?

MR. R. McNEILL: We basically feel that the Surface Rights Board, the Department of Environment and the Department of Agriculture should have staff representatives do an investigation, attend on the site, discuss the matters with the owners and the operators, and be prepared to make a report and recommendation and basically carry the ball to see that the restoration is completed.

MR. G. FINDLAY: Just a bit of a comment, then. Really, you get four departments technically involved with this issue - Municipal Affairs, Agriculture, Environment and Energy and Mines. The Surface, in my mind, is involved with only three of them - not involving the mines people, and certainly I would agree with you fully, that the Surface should be in the hands of Agriculture and Environment.

In your experience, have Agriculture and Environment officials had any meaningful involvement to date with abandonment procedures or handling of spills?

MR. R. McNEILL: Only if a farmer has gone to, say, the local ag rep or something and asked for some advice as to whether a particular soil has been reclaimed, and perhaps the odd soil test has been taken at the request of a landowner, but to our knowledge, no official capacity or no official direction to have those people involved.

MR. G. FINDLAY: Are you aware that any department or any jurisdiction has laid down any guidelines for companies to use in the restoration of abandoned sites?

MR. R. McNEILL: No, I'm not.

MR. G. FINDLAY: I would gather, then, that you would recommend that such be laid down?

MR. R. McNEILL: Yes.

MR. CHAIRMAN: Mr. Bucklaschuk.

HON. J. BUCKLASCHUK: I just have two very short questions.

My understanding is that the purpose of the interim order is to determine who is entitled to exercise the right to withdraw mineral rights.

Is that your understanding of the purpose of the interim hearing?

MR. R. McNEILL: My understanding of the interim hearing is to allow the operator to enter on the lands prior to the determination of the rights and the compensation.

HON. J. BUCKLASCHUK: Mr. McNeill, you've made a number of references to what you perceive to be superior legislation in Alberta and Saskatchewan.

Do you have any idea of what the procedure is in those two provinces with respect to right of entry?

MR. R. McNEILL: Yes. I do believe that they have a cost procedure whereby they file deposits with the boards prior to any other entries or actions being taken, and those deposits are - I suppose theoretically - to be available to be applied toward subsequent compensations to be awarded.

HON. J. BUCKLASCHUK: But your understanding is there is no such thing as an interim hearing?

MR. R. McNEILL: Well, in effect, my understanding is that their procedures basically consist of the one hearing. That's my understanding of it.

HON. J. BUCKLASCHUK: And my understanding is that in those two provinces, the operator simply makes application to the board, and providing that the documentation and so on is in place as to the validity of their having the mineral rights, that is granted without any hearing?

MR. R. McNEILL: No, not without any hearing. There is a hearing, but they are required to deposit monies with the board and then there is a hearing shortly thereafter.

MR. CHAIRMAN: Seeing no further questions, thank you, Mr. McNeill.

Following the previous agreement, I'll call Mr. Phillip Frances next, the next out-of-town presenter.

MR. G. FINDLAY: Could I just ask Mr. McNeill one more question?

MR. CHAIRMAN: Perhaps we could revert back to Mr. McNeill's presentation then, Mr. Findlay.

MR. G. FINDLAY: In the event that some company is in the process of abandoning a site or has abandoned a site and goes broke, who is liable for the clean-up when the company goes broke?

MR. CHAIRMAN: Mr. McNeill.

MR. R. McNEILL: As far as we know, the landowner would get stuck.

MR. CHAIRMAN: Thank you, Mr. McNeill.

The next presenter is Mr. Phillip Frances, private citizen.

Mr. Frances.

MR. P. FRANCES: My name is Phillip Frances. I come from Virden and I'm a landowner and rancher in that area. I have a brief here. Probably you would consider it a bit lengthy, and I know the hour is late, but I didn't choose the hour.

First of all, let me say that we as landowners feel that Bill 5, The Surface Rights Act, was fairly well written. The acts of Saskatchewan and Alberta are very similiar and they have worked and are working. There are a few places where Manitoba's act could be improved. One of these areas, I believe, has been taken care of in proposing the act. This is where the board can now look at practically negotiated settlements between landowners and oil companies with the idea to use these in determining annual compensation.

I don't know the wording of this yet so that I can't promise whether the wording will be reasonable. This is the one good amendment in the proposed new act. Let's hope the board sees it this way.

However, it is not just this one area that has caused the act, Bill 5, not to work. It is not, generally speaking, the wording of the act that has caused the problem; it is the interpretation of certain areas of the act by those who administer it and the reluctance of our elected officials to give guidance in those areas.

Each time we landowners brought our cases before the board, we were frustrated by the board mainly because the evidence we gave was not listened to while the oil company expert's was. Whenever we gave evidence as to our costs or how we worked or administered our land, which conflicted with the oil company's expert, the expert's evidence was taken. We, as farmers and ranchers, are experts in our business and our testimony should be regarded as such. It was not.

The "purposes," as written at the beginning of the act, are not being carried out by the administrators of the act - namely, the Surface Rights Board of Manitoba - not according to the intentions of those who wrote the act. I'll cite two subsections under "purposes." These are the same in the original as in Bill 65, the proposed new act.

Subsection (b) - "to provide for the payment of just and equitable compensation for the acquisition and utilization of surface rights" - Just and equitable, to me, means that all of my losses, as well as my extra costs incurred by having an oil installation on my land, are covered by the settlement awarded by the board. This has not been happening.

And (d) - "to provide for the resolution of disputes between operators, occupants and owners arising out of the entry upon, use or restoration of the surface of the land" - the resolution of disputes means to me a satisfactory settlement according to the evidence presented at the hearings. Up until now, this has only been satisfactory to the oil company.

No costs have been awarded to any landowner in the case of a review. Without costs, the landowners

cannot afford the time or the costs of a lawyer to appear at hearings. The oil company can and does afford a very costly lawyer plus a costly expert for even those cases worth only a few hundred dollars to the landowner. This, to me, says the oil companies are happy with the way the board has been operating.

The confrontational courtroom style the board has chosen to use does not sit well with most of the landowners. If this style is continued, plus no costs, the board will not be used and the oil companies will continue to pay what they please and do as they please. I realize in Bill 65 there are sections 26(4) and 26(5). However, I don't believe they are the answer. I'll go into the cost sections, 26(2) through 26(5), later.

For the act and the board to succeed, there needs to be a mind-set, a wanting for the act to work by those put in place to administer and interpret the act. This must happen before the act, however worded, will live up to the expectations of those who wrote it and those it was written to protect - the landowners. You can make all the wording changes you like, but if the will is not there to make it work, it will not work.

I now intend to do a breakdown of sections 26(1) and 26(2) of Bill 5, The Surface Rights Act. In this breakdown I will be pointing out how the board has interpreted or not interpreted the various sections or subsections and how we landowners feel these areas should be interpreted and/or administered and how the proposed new act lives up to our expectations. We feel that since these sections or subsections were written into the act, they were put there to use. The appeal section so far has just been a delay process. I am glad it is proposed to be removed from the new act.

Section 26(1) of Bill 5 begins: "For the purposes of determining the compensation to be paid for surface rights acquired by an operator, the board shall consider the following matters . . . "The wording is almost identical in the proposed new act. It just cuts out the first four words, "For the purposes of," and inserts the word "in" and otherwise reads the same. You'll note the words "shall consider." This means to me to consider - at least to consider.

(Deputy Chairman, M. Dolin, in the Chair.)

Section 26(1)(a) - "the value of the land having regard to its present use . . . "- the proposed new act adds the words, "before allowance of surface rights." All those added words in the new act are going to do is give the board and the oil company a stronger case not to use this section in review cases.

How many years does an installation have to be there before the present use is as a site for an oil installation - 10, 20, 30, 40, 50, 100 years? Remeber, as the oil company lawyer pointed out at one of the hearings, we are only reviewing the lease site, not the quarter section.

Section 26(1)(b) - "the loss of use of the land or of an interest therein . . . "- the wording in the proposed new act just adds the words, "as a result of granting surface rights." The only reason we use this section is because of the granting of surface rights.

In this subsection the board has said they will only award the dollar amount that the landowner would have received had the installation not been there. They seem to be ignoring the latter part of the subsection which says, "or an interest therein." The oil company may have their tanks or pump or both there for 30 or more years, and during this time the landowner has no rights to this leased land but still pays the taxes. We feel an amount should be added to compensate for loss of interest in the leased site. At abandonment, these sites may be worthless and that will take care of the residuals.

Section 26(1)(c) - "the area of land that is or may be permanently or temporarily damaged by the operations of the operator" - in every award up to last fall, the board always said this subsection is not applicable because it cannot be determined until abandonment whether in fact any land has been damaged or temporarily damaged. How, at abandonment, are you suddenly going to be able to determine damage, permanent or otherwise, when a short time before you could not? Since abandonment now is effectively taken out of the proposed new act, the board will again ignore this subsection.

We have always felt there should be an award in this subsection at the time of review if evidence supporting this subsection was presented. However, the board saw it otherwise. But last fall, in one review case near Waskada, the board did award in this subsection. How did they determine damage, permanent or temporary, in this case if they were unable to in many others where evidence was presented?

There are, through the life of an oil well or battery site, several on-site spills. None of these on-site spills were ever reported. At the time of abandonment, how could the board, Mines Branch, landowner or, for that matter, the oil company document these spills or anyone prove they had occurred? Hence, we say a dollar amount be set in this subsection when supporting evidence is presented at the hearing in review cases. There needs to be some instruction given the board on interpretation or use of this subsection. Word changes in the act won't do it.

Section 26(1)(d) - "the increased costs to the owner and occupant, if any, by reason of the works and operations of the operator" - again, no change in the wording of the proposed new act. The board has awarded something in this subsection but only on cultivated land. The landowner who pastures or puts up hay on his land gets nothing under this subsection.

We believe that when a landowner testifies that because of the land used by the operator for installations, he must rent or otherwise acquire more land to keep his operation viable, all these extra costs should be awarded in this subsection. Included in these extra costs would be travel costs from one field to another; also, the part of the rental costs which are caused by having to rent because of the installations. If there are no installations, there are no extra costs. Again, the board needs to listen to the landowner expert instead of the oil company expert.

Section 26(1)(e) - "the adverse effects of the right of entry on the remaining land by reason of severance" - the proposed new act adds two words, "if any." Of course, there is adverse effect. You have cut into a landowner's field and effectively removed a piece of it. The board in the pilot cases, with prompting from the oil company lawyers, said they could not award any compensation in this subsection because of the word "severance." Their interpretation of this

subsection was, they said, that for severance to have taken place, a piece of land other than the leased land must be cut off or hard to get at.

We interpret the word "severance" to be referring to the lease site itself. By the very placement, nature and shape of the lease site, it is severed from the remainder of the land until abandonment, which could be 30, 50 or 100 years. Therefore, we feel an amount should be set for severance and adverse effect in every case, whether old or new.

In awards by the board in January of 1985 in I believe seven cases, they did award adverse effect to the tune of $500 per site. However, this was the first and only time. In Alberta, adverse effect is awarded regularly; the same is true in Saskatchewn. Why not in Manitoba? Is this fair and equitable?

Section 26(1)(f) - Payment or allowance for nuisance, inconvenience, disturbance and noise to the owner and occupant, if any, or to the remaining land that might be caused by, arise from, or in connection with the operations of the operator, and damage, if any, to any adjoining land of the owner, including damage to or loss of crop, pasture, fence or livestock and like or similar matters - the proposed new act deletes the first four words, "payment or allowance for" and begins with "the." So it's basically the same; I don't see that change in wording will make any difference.

We feel that this subsection has not been used as intended by those who wrote the act. Only the word "nuisance" and, on rare occasions, "inconvenience" was used by the board for the purposes of compensation. We feel this subsection should be used as it is written and intended. That is that the other descriptive words such as "disturbance, noise and inconvenience" should also be used to determine compensation. There is inconvenience - the inconvenience of having installations on your property. This may not have been one of the purposes you had set for your property when you acquired it - the inconvenience of having to work around or fence around that site. There is disturbance - the disturbance of having traffic on your property day after day, week after week, month after month, year after year.

There is the disturbance of service companies for the operator from time to time coming in to lay pipelines or dig up existing lines for repair. There is the disturbance of the power company coming in to repair or replace power lines. Yes, there is disturbance, there is noise, the noise of all those mentioned, plus the noise of the pump or treater working or both.

And yes, there is smell, at times a very strong smell. You do not have to be close to a battery site for the smell to be overpowering. If this smell, noise, disturbance and inconvenience were inside the Perimeter Highway, there would be a law to ban it already - you can be sure.

All of these things must be considered when reviewing an existing lease or, for that matter, a new lease, even in rural Manitoba. These other words have not been used by the board in the past and there is no reason to believe they will in the future unless the board is instructed to do so.

Section 26(1)(g) - In the existing act it says, ". . . the nature, type and quantity of any machinery, equipment and apparatus to be established, installed or operated by the operator."

In the proposed new act, this whole subsection has been removed. Why? Is the oil company not going to put equipment on the leases any more, or is the oil company going to be able to get a lease for an oil well and turn it into a battery site without paying any more for it? If so, we are going backwards instead of forward.

Up to now, the board has said it can only use this subsection on new installations. Now even these will get no compensation for equipment on the lease. We need this subsection to control if, for nothing else, the oil companies building on lease sites. The municipality gets taxes for every piece of equipment put on a lease site. Why should the landowner, who hosts the oil companies, get nothing? I feel that is unfair.

Section 26(1)(h) - which is now (g) in the proposed new act - "Where applicable, in the opinion of the board, interest at a rate prescribed by the regulations." There's no regulations but the board has consistently awarded interest on retroactive annual rent. The problem has been the board has been reluctant to award retroactive compensation beyond the beginning of the year of review even when the application had been in for two years. This fact has hurt many landowners who brought their cases before the board.

The oil company, on the other hand, when offering reviews privately, paid retroactively to when the act was made law, thus giving the impression to those not involved the board has set the stage and everyone is happy. This is not the case. The landowners could get considerably more money by not going before the board. On top of this, the board would not award costs, so the landowner was hit twice. First, less retroactive compensation; secondly, no costs for going before the board, although it costs them time and money to go before the board. No wonder the oil companies were happy with the way the board was working. It was working for them. They didn't have to bring in their very expensive lawyer and expensive expert when the dollar gains for the landowner were only a few hundred dollars.

Section 26(1)(i) - "Any other matter peculiar to each case, including the cumulative effect, if any, of the surface rights previously acquired by the operator or any other operators under a lease, agreement or a right of entry existing at the time of acquisition of the surface rights with respect to the lands." The proposed new act put this subsection as (h). The wording is only slightly different and I don't think will have any bearing on the meaning.

In the past the board has set a token amount for cumulative effect in this subsection, not set by the landowners' evidence presented at hearings, but seemingly pulled out of the sky. Landowners have said that cumulative effect increases as the number of installations increase in a given field, whether the field is a quarter section or larger. We feel the board should establish a sliding scale for cumulative effect. As the number of installations increase in a given field, so should the compensation in this subsection. The board has set a static figure; one for cultivated land and half that for pasture or hay land. We feel this is unfair because in a lot of cases the cumulative effect is greater in pastures because of the fencing. The cost of fences where there are oil wells, with built-up roads, can be very expensive and sometimes almost impossible to build.

Section 26(1)(j) - "Such other factors as the board deems proper, relevant and applicable." This subsection has been removed from the proposed new act. Agreed, the board has never used this subsection, but again, the board has ignored the evidence of the landowners. There has been a good deal of evidence presented to the board at hearings on the effects of having oil installations on your property and the lowering of the per acre value of this land because of the installations and their effect on the land.

There is also the aesthetics of having oil installations on your property. How many people in Charleswood or Silver Heights would accept them, as we know them in rural Manitoba, on their properties? Aesthetics do have a value even if the Surface Rights Board says they don't. I've heard of people, residents of Winnipeg and other cities, complaining that their property values were going down because of holes in their streets and roads. If aesthetics can make a difference inside the Perimeter Highway, why not outside in rural Manitoba? The board needs some instruction on aesthetics and other factors.

Now to the section on costs. Section 26(2), Bill 65 and Bill 5, are the same at the beginning. This section is worded very clearly that the board may award costs to anyone who contributed to or be reasonably expected to contribute to the board's decision. The subsection goes on to say, in part: ". . . taking into account the need for representation for a fair balance of interests."

Did the board, in not awarding costs to the landowners, feel the landowners did not contribute to a fair disposition of the proceeding? No. Again, the board only listened to the oil company lawyer who was against the landowners getting the costs; naturally - he was looking out for his client.

Yes, I see the proposed changes to section 26(2) in the proposed new act. With the same board administering the act, I don't believe the changes will help. First of all, why this 10 percent above or below deal? I don't see any of that in Saskatchewan's or Alberta's acts. Anyway, if we knew beforehand what the board was going to award, we would not be going before them. Why is the onus put on the landowner to know exactly the right amount to put on every section or subsection of the act?

It not only happens here but in part for the tortious act section where section 45 says, in part: "Notify the board in writing of the loss or damage and of the amount claimed by the owner." It doesn't say "approximate" amount, but "the" amount. I suppose if we, as landowners, are out in our figures by 10 percent, we will get nothing, right?

Yes, I have read the existing act and the proposed new act. I also have been before the Surface Rights Board on three different occasions. Once for one of the pilot cases; once on my own for a review; and once for a tortious act.

In the pilot case, I was awarded $968.70 for a 3.47 acre well and battery site. Before the review, I was getting $433.75. However, $250 of this award was later taken away by the same board, by amendment, without a hearing. That left $718.70 - $225 of that was cumulative effect for nine other wells on the same section. So that left me an increase of $59.95.

The second time I was in front of the board, they awarded me $17.50 less than the last offer of the oil company, which offer was made the day before the hearing, and the amount was stated by the oil company at the hearing. To add salt to my wound, the board only awarded retroactively to the beginning of the year of the hearing. The hearing was held in July, although my application for review had been in since the act was made law some two years previous. To rub the salt deep, the oil company, at the hearing, said they were willing to pay retroactively to application date. The board didn't seem to hear. It seemed to me the board was saying to me: Accept what the oil company is offering you or take less when you come before us.

The third time I tangled with the board, the tortious act case, I ended up with nothing - exactly what the oil company had offered. There was about $800 damage by the way. So much for my encounters with the board.

In none of these encounters did I receive any costs. The total rental increase, retroactive payments and interest through board awards for all my troubles came to $733.02 for a total land involvement of 11 acres. Remember, the pilot cases took several days to prepare, three days to be heard, and cost me several thousand dollars for lawyer and expert advice. What I received as a result did not even adequately pay my losses for having the oil installations on my property, let alone my costs for appearing before the board.

The board cost me money. Without costs, unconditional costs, the landowners cannot use the board without losing money. Therefore, what is the use of having a board? Only to give right of entry? The board cannot stop entry we are told. Unless some changes are made in the way the board administers and interprets the costs part of the act - and I don't think the proposed new act will make any difference - the board and secretary may as well be fired and this will save all of us some money. It will save the landowners many frustrations too. The oil companies then will be able to do as they please without going before the board, as they did before.

I must emphasize there is not too much wrong with the act as it is now. The use of comparables might help, but it will still be the interpretation and administration of the board that will determine if it is useful to the landowners or useful to the oil companies. If the board had set out to interpret the act as it was intended by those who wrote it and administered it with the landowners' rights in mind, for who the act was originally written, then the conflict could have been kept to a minimum. Change the act where necessary for law such as section 33(1). A change is needed here but no change in the proposed new act. Why?

As to the removal of the abandonment section from the proposed act except when there is a conflict as to the restoration of the land will make no difference to landowners or operators, because the only time the board becomes involved in an abandonment case is if the operator and landowner cannot agree - old act or new act. It is just as easy to get a signature from the board as from the mines branch, so why remove it?

The whole abandonment area of the act in relation to surface rights is a farce. Without some expertise in land restoration on the board and without some form of penalty in the regulations, the board as far as I can see cannot enforce its orders. The acts, old and new, say something about restore to its original condition,

and goes on to say in the proposed new act: and shall complete the abandonment and restoration in accordance with this act and the provisions of The Mines Act. What are the provisions of The Mines Act in relation to surface rights? And what is or would be in accordance with this act, except to original conditions? Who knows what that was?

I see in section 39(1) of the proposed new act where it says in part, "in a manner set forth in the order." That would indicate to me there will be some restoration expertise on the board. Am I right? Section 39(1)(c) says in part, "order the operator to pay a sum of money to the owner in lieu of restoration." Will there be regulations with penalties to enforce that?

Changes to the act are great if those changes are going to make a difference, but changes just so it seems better are useless. The act in the first place was put there to protect the landowner's rights. If it is not going to be interpreted and administered with these things in mind, then it is of very little use to the landowner. Costs, unconditional costs, when a landowner is forced to go before the board to protect his rights, must be ordered by the board because, as I have said before, without costs the landowner cannot afford to go before the board.

I thank you all for your time and patience, and I'll answer any questions that you may have.

MR. DEPUTY CHAIRMAN: Thank you, Mr. Frances.

Are there any questions of Mr. Frances?

The Member for Virden.

MR. G. FINDLAY: Thank you, Mr. Chairman.

Mr. Frances, your experience with the board under the old act has not been particularly good in your appearances before them. In all fairness, do you see any changes in this new act that will improve the procedures of a farmer appearing before the board?

MR. P. FRANCES: No. As I have stated in here, the small changes that are made in this act, other than the comparable section which I have not seen the wording of yet, will not improve the act as far as we're concerned.

MR. G. FINDLAY: I think you also said when you started your brief that the old act wasn't all that bad and when you read it, the wording seemed to allow some protection, just and equitable, and the purposes seemed to be written in a fashion that, if you took them for face value, they had some meaning.

I've been told on numerous occasions that the problem lies with the board and their interpretation and their attitude. What do you see as being necessary in order to change that problem that people have with the board?

MR. P. FRANCES: I feel that the Minister responsible, our government, should instruct the board that they are there to protect the landowners' rights, not there to protect the oil industry. The Mines Branch is there to protect the oil industry. The Surface Rights Act is there to protect the landowner. The oil industry has very large resources and it's prepared to spend many thousands of dollars on one case that is only worth hundreds to the landowner. The landowner cannot compete.

MR. DEPUTY CHAIRMAN: Any further questions for Mr. Frances? Thank you, Mr. Frances.

Our next presenter is Mr. Adam Turbak.

Mr. Turbak.

MR. A. TURBAK: The Manitoba Surface Rights Association has expressed itemized comments on specific elements of the proposed legislation. I agree with many of their positions.

Section 2 of Bill 65 and section 2 of the current act set out desirable purposes for which the act and the bill presumed to address. Unfortunately, neither have or will succeed.

The best intended legislation can only serve its purposes if the vehicle for implementation is adequate, knowledgeable, understanding and aware of the results of its orders and decisions. The Surface Rights Board has been, is now, and will be that vehicle. Most major board decisions to date have not carried out the purposes of the act and will not unless and until it recognizes it is the arm of the service owner whose basic legislative rights have been abused.

Farmers who must accept operators on their lands instantly lose their most important right of ownership immediately and continually. The board must be made to understand that if there is to be harmony in the two essential industries, the owner's rights must be obviously and strongly protected by the board and the legislation. Once the right of entry has been granted by the board, it is all downhill from there for the owner. Bill 65 has simply made this worse. Other oil areas - Alberta, Saskatchewan - have similar legislation, yet have few, if any, of the continuing problems of Manitoba owners. The reason has to be obvious.

While legislation can help an understanding board, it cannot solve all the problems. Unfortunately, government, board members, staff and operators seem to think that composition is the only main element. Not only the main element, but probably the only one. That is simply not so. Section 2 has equally important other criteria which seem by design or oversight to have escaped the board. Even as to compensation, the key phrase is "just and equitable." No amount of detail can replace or is necessary in Section 26 to result in a fair return. If the proceedings were seen as just and equitable, the calculations would not be very important.

The operators are perceived to have the ear of the government and many of the changes in Bill 65 seem to be tilted in their favour. Maintaining and further involving The Mines Act and The Surface Rights Act adds emphasis and reality to the perception. No other province has this lingering connection. Nothing seems to have been learned by the terrible mess the Mines Board created in the surface matters before 1983.

Unless the current atmosphere, created by the operators, the legislation and the board is quickly dispelled, owners in ever larger numbers will be compelled to avoid the board at all costs. Once there is no viable alternative, then the whole situation will become a serious problem to operators and government alike. Trust is a valuable element; it doesn't arise or disappear overnight. A greater effort than Bill 65 is needed to revive that necessary trust.

The harm already done by operators universally using adverse board awards as the basis for their new leases

or renewals of old leases throughout the fields will take years to correct, if ever. This is particularly true if owners collectively become frustrated further with the board and refuse to take their disputes to it as a foregone conclusion.

The only right of ownership that seemed to be left to a farmer forced to accept oil operation on his own land is to grin and bear it. Bill 65 makes it harder to do either. In surface rights matters, Manitoba seems to have decided to start far behind Saskatchewan and Alberta, and then deliberately erode the position of the owner, one amendment after another.

Abandonment - this is a specific example of how legislation is created to protect the interest of the operator to the added disadvantage of the owner and eventually, through reduction of the capability to produce, all citizens of the province. Restoration is the main concern. It is the operator who creates the conditions to make restorations necessary. His destruction of the land, previously capable to produce, begins long before he decides to abandon.

Unless steps are taken upon entry to create the ability to restore, little can be done at the time of abandonment. Nothing is to be found either in The Mines Act or The Surface Rights Act as the elements of restoration. Yet, Bill 65 simply sets out the guidelines for operators and, later, the board on this subject, as restoration in accordance with this act and the provisions of The Mines Act.

Not a single line is provided to guide anyone of how restoration is to be completed. This fits in fine with the wishes of the operator, for all that he wants to do at this point is to be done with it and go on to some other piece of then productive land to have his way and then leave it too, and all with the apparent approval of the government.

If Bill 65 is to fulfill the purposes of the act, as set out in section 2, then all the surface rights that are going to be acquired by operators, Crown corporations, Manitoba Telephone System, Manitoba Hydro, provincial pipelines, etc., should come under The Surface Rights Act. The problems to the surface owner are the same, no matter who he has to share the surface with.

If that is not the intent, then the government is going about amending the act in a manner which will enable them and operators to acquire the surface rights with as little interference from the landowner as possible.

Again, justice will appear to have been done, but not necessarily so.

MR. DEPUTY CHAIRMAN: Thank you, Mr. Turbak. Questions?

The Member for Arthur.

MR. J. DOWNEY: Mr. Chairman, I have a couple of questions for Mr. Turbak.

Mr. Turbak, it seems apparent that some of the problems have been with the makeup of the Surface Rights Board. I'm as well aware of the fact that you were, as a knowledgeable farmer and a knowledgeable person associated with the oil industry, at one time on the Surface Rights Board. How long were you on the Surface Rights Board?

MR. A. TURBAK: Till I got fired.

MR. J. DOWNEY: You mean to say that you, a knowledgeable person, a farmer, and a man knowledgeable about the oil industry was fired by this government as a board member?

MR. A. TURBAK: That's right.

MR. DEPUTY CHAIRMAN: I would suggest to the Member for Arthur that the questions should deal with at least the presentation. The matters are not relevant. Please try to make the questions relevant to the matters at hand.- (Interjection)- Well, I didn't ask the member's opinion. I am suggesting that is the rule. The Member for Arthur is well aware of the rule. If you would please restrain yourself to the bill and to the presentation made by Mr. Turbak, we'll get along fine.

The Member for Arthur.

MR. J. DOWNEY: Mr. Deputy Chairman, I am dealing with the bill. It is the Surface Rights Board. There is a board appointed by the government that's part of the bill. I'm asking Mr. Turbak questions dealing with board appointments and his involvement with the board, Mr. Deputy Chairman, and I have one further question.

Mr. Turbak, were you given any justifiable reason as to why you were fired from the Surface Rights Board?

MR. A. TURBAK: None whatsoever.

MR. J. DOWNEY: Thank you, Mr. Deputy Chairman.

MR. DEPUTY CHAIRMAN: That question was out of order, but thank you.

The Member for Virden.

MR. G. FINDLAY: Thank you, Mr. Deputy Chairman.

Mr. Turbak, on page 2 of your brief, you mentioned trust, the farmers having a lack of trust in the board and its operations, the procedures they use and what not, and that you see them avoiding the board now in terms of going for settlements. The previous speaker indicated that in his experience of going to the board, he actually ended up with less than he had before he got there.

With the proposed amendments that the Minister is supposed to introduce tonight, dealing with costs, awarding of costs and the use of comparables, do you think that will help to return some of the trust that farmers need to have in this board?

MR. A. TURBAK: Not if the present board operates under the same manner it has. It will use those comparables to the advantage of the oil company.

MR. G. FINDLAY: What you're saying now is - or have been saying - that the intention of the board is to speed-up and facilitate the development in the oil industry and not necessarily to give just an equitable treatment to the landowners?

MR. A. TURBAK: It appears to be.

MR. DEPUTY CHAIRMAN: Any further questions? Seeing none, thank you, Mr. Turbak.

Any further presenters from out of town? The Member for Arthur has done his presenting.

The next member we have is Mr. Walter Kucharczyk. Not here.

Mr. Rick Brown, Chevron Canada Resources Limited.

MR. R. BROWN: Good evening, honourable chairman, honourable members, ladies and gentlemen.

My name is Rick Brown. I'm a land representative with Chevron Canada Resources Limited, and I'd like to apologize for two of my co-workers who were supposed to appear before the board but couldn't make it - Messrs. Pokrant and Matishen (phonetic).

We have a number of issues, which are relatively housekeeping or draftsmanship that I'd like to just briefly touch on. Section 17, it says that I'll forward a copy of the assignment to the board, and an operator to file agreement with the board, and the owner or occupant. We'd like to see that changed to: That a notice of assignment be sent to the parties.

Subsection 18(1) is a Waiting Period. We'd like to see inserted under the Waiting Period, a waiver clause, because many of the landowners, as you know, have had a lot of experience with oil in southwest Manitoba. For some of them, it causes them trouble as far as to meetings out, to get by the three-day waiting period, and also it would be nice to see if that was added in without taking away the rights. If the landowner did not want to waive, he would still have his rights there.

Section 42, the removal of caveats as part of the provision to the complete abandonment process, in that area there are a couple of points that it doesn't cover. One is partial surrenders. You still must maintain a caveat but you're still removing a partial surrender just to basically fix that up to cover for those bases also.

A few points that I'd like to elaborate on - there are about six of them and it's not too long. One is the rental review period, and that's a three-year rental review right now. It's section 46(1), called "Determination of compensation where no agreement." Through your rental review, we'd like to see it changed to a five-year rental review.

Basically, it's to reflect the changes in the economy, and over the course of a life of a lease, a long-term 25-50 years, inflation moments are relatively moderate over the long term on a gradual, and during periods of deflation such as now, in the cost of prices to the farmer, the operator is not going to go to the board to have each and every lease taken down as it's too expensive of a prospect. It's too time consuming and no landowner would voluntarily make a wise financial decision to lower his costs.

So to make the difference between a three-year and five-year review, if you look at it over 10 years, there would be two reviews conducted over 10 years, whereas under the existing format there would be three reviews, which is one-and-a-half times the costs that are incurred with the review. It's very time consuming in areas of computer programming, computer time, land records, land administration, filing, field office work and so forth. So we'd like to see that changed.

The next section is section 48(2) which deals with "Board orders final." By taking away the right to appeal compensation, a couple of assumptions should be made, and one is that the Surface Rights Board is the best expert in determining the compensation and the appeal process is too expensive in relation to matters that are in conflict.

The first assumption denies the natural course of justice in that a check system is in place so that abuses or misinterpretations can be corrected. The second assumption allows only one opportunity for a hearing on compensation, and this will result in situations that will cause the parties to be most prepared because you only get one shot at it. You will involve legal counsel, appraisers and expert witnesses and, ultimately, the tribunal system will be more expensive for all concerned. We'd consider it desirable to have the right of appeal in regard to compensation and ask that you reconsider this matter.

Section 46(1) - determination of compensation where there's no agreement - we urge that you consider an upper limit for this, something like $5,000 or $10,000 to be placed on the board's jurisdiction to award damages for tortious acts. Anything over this limit could very well be a very serious matter and should be in the jurisdiction of the courts.

For the board to be called upon to deal in matters of large, severe damages with substantial sums of money involved is to place an unrealistic burden within the jurisdiction of the board. Coupled with the new proposed change for the appeal process as far as damage is awarded, neither party in a very substantial case would have any recourse at that point to appeal those damages as set forth by the board.

Under Part III - Right of Entry and Compensation - in 1983 it was felt that because a large backlog of cases would prevent the inclusion of a definite time frame for which an application for immediate right of entry would be brought before the board for a hearing, in a vast majority of cases the major reason for not coming to an agreement revolved around matters of compensation.

A matter of compensation is a distinct different matter that should be dealt with separately. The board should be, under section 27(3), able to issue an immediate right of entry in matters of dispute that are regarded in compensation. As it stands now, for the interim order, when an application is made and the landowner disputes it and submits his application of dispute, the board shall have a hearing. There isn't an allowance for the board to determine if they have to have a hearing because if the matter is a matter of dispute, that is in conflict, they still will have to have a hearing to determine right of entry and then another hearing to determine compensation. So in matters that the major reason for not coming to agreement revolves around compensation, the board should be allowed to issue an immediate right of entry.

As it stands now, there is a great discrepancy between some of the leases that are paid for, basically new leases, and there are some reasons for that. That's because the act does not provide a time frame. Without a time frame, an operator scheduling for acquisition of surface rights is faced with uncertainties. It becomes in the best interst of the surface owner to delay the operator because operators tend to pay higher prices than what is considered just and equitable compensation when faced with diminishing time schedules, expiring mineral leases, financial commitments, seasonal work schedules, general loss of revenues, and the owner incurs relatively little cost

for initiating this delay. Consequently, the surface owner will more or less buy his way on because he doesn't have any specific time frame from the moment he applies for the right of entry when he could figure that he would have a hearing date set forth. Without a definite time frame for an application for immediate right of entry to be heard from its date of application, if you don't know how long it's going to take you, the act will become a shadow of its intention as stated in section 28, to provide for a comprehensive procedure for acquiring and utilizing surface rights. We'd like you to consider inserting a time frame in that matter.

(Mr. Chairman in the Chair.)

For the termination of compensation under section 26(1), also coupled with section 2(b), the act states that the purpose is to provide for just and equitable compensation for the acquisition and utilization of surface rights, and to fulfill this purpose section 26(1) is set out to determine compensation.

I understand that comparable leases are considered to be an addition to this and if this is the case, which I'm not really totally familiar with as Bill 65, the copy I have doesn't include that; but if this is the case, the board awards reflect just and equitable compensation and these are used as a guideline or a price structure, then both parties can realize what to expect in regard to compensation.

If comparable leases are allowed to stand, then it's pertinent that section 68 of the regulations spell out what comparable leases are. For instance, if a lease is taken to buy your way on to land because you don't have an immediate right of entry under the old act, is it a comparable lease with a lease that has been based on board awards because you've paid over an extra to get on to avoid the board and to avoid time frames.

So anything that was taken previously isn't really justifiably favourable comparison matters because one person is paying for something so that he won't lose something and he's paying over and above that. But anyway, there are numerous reasons why an operator will pay more than what a basic fair and equitable price structure reflects, and add an increased compensation figure to this price structure, basically you're buying your way on to the land.

The board in the future will be obligated to consider this agreement in determining what is just and equitable compensation. If any weight at all is given to this agreement, then the board price structure will result in basically an upward sliding scale.

A major question that I have is, is it just as equitable for a fair and impartial board to be legislated to be influenced by outside parties' agreements, and is it just for parties before the board to have any part of their compensation determined by agreements which may reflect extra payments to avoid going to the board in the first place.

By inclusion of this into the act it would almost inadvertently imply that the surface rights board is not capable of determining just and equitable compensation on its own accord, and if you're implying that and then back to the appeal process where you say that they're the experts at it, it's a very confusing situation.

Next is the cost structure. Now if this is in, and you have a sliding scale, it's very hard to guess at what weight is going to put on other agreements and to come within existing guidelines. If the cost structure is such that you must come within 90 percent of the board award, or else have costs levied against you, well, obviously, your inclination is to guess 90 percent or higher, which very easily will take you over 100 percent, let's say.

So now you probably very easily come to an agreement when you start getting up into those figures and then, in turn, that figure is used back against you in points where you come dead on in-between 90. If you slip up on a narrow margin, then you're hit with costs and, as a lineman, that was bad news for me.

In summary, I would like to thank you for letting us present our views and hope that you consider these matters because they are important matters to be considered and they are conflicting matters which may not make your board and your act proceed as smoothly as what we all hope to see it proceed as.

Thank you.

MR. J. DOWNEY: Mr. Chairman, I have a couple of questions of Mr. Brown.

Mr. Brown, Chevron are a fairly oil company in this country. Do they do quite a bit of oil-well work - drilling and production - in Saskatchewan and Alberta?

MR. R. BROWN: Very little in Saskatchewan at the present time; quite a bit in Alberta.

MR. J. DOWNEY: Basically, they do operate in all three provinces - is that correct?

MR. R. BROWN: That is correct.

MR. J. DOWNEY: Basically, they have to live up to the rules or the legislation in Alberta and Saskatchewan . . .

MR. CHAIRMAN: Perhaps I could ask that individuals be recognized so that we can keep the records for the Hansard. It's going to be very difficult for them to get the transcript.

Sorry, Mr. Downey, would you . . .

MR. J. DOWNEY: The question is, Mr. Chairman: In the operation that is taking place in Saskatchewan and Alberta, Chevron have to live up to the legislation that's in place in those provinces?

MR. R. BROWN: Yes.

MR. J. DOWNEY: We've heard testimony tonight, Mr. Chairman, that the surface rights owners would like to have comparable legislation to Alberta and Saskatchewan to give them equity with the landowners there.

Would you and your company, Mr. Brown, have any difficulty if the legislation was the same in Manitoba as it is in Saskatchewan and Alberta?

MR. R. BROWN: I don't think we'd have difficulty with the legislation, no.

MR. J. DOWNEY: Mr. Chairman, I have one further question.

Your company takes strong objection to the board using privately negotiated agreements within the province. I understand the figure of 90 percent of agreements are negotiated privately. Would that not be a fair - in your mind or in anyone's mind - a fair return for other individuals to get?

You've made the case that there are extenuating circumstances; for example, a lease may be running out or there may be some other reason why the landowner may be holding out, but could that not be taken into account in the settlement by the board?

If, in fact, they were to use - and I'll use this for an example - suppose that company A was on a quarter section or a lease adjacent to it, the land type may be the same - it may be cultivated land - what would be wrong with using the comparison on similar circumstances? Would there be any major problem with that?

MR. R. BROWN: Yes, there would, because you would have other people that you would have no control of negotiating on your behalf and then you have to live by their negotiations. Now that's not a very fair way to negotiate and come to a determination to have people that you don't even know their names, you don't even know what they're negotiating, you don't know who they're sending to negotiate, you don't know if they're making mistakes, you don't know what the payments reflect. I think it would be very hard, it would be like if somebody went and negotiated your wage and if somebody came and said that they would do it for a cheaper price and you had no chance to discuss it, that you were just automatically awarded the lower price - the lower the person was to pay, the lower the price you would have.

That can theoretically work in reverse, even though it's not practical or hasn't been seen to work in reverse, but it's being used now as a tool to give an upward spiral to the act. The whole idea of it is because people have always come and taken what is just and equitable compensation and add an extra amount to that for reasons of their own choosing. Then to turn around and say: Well, they paid it so it's just and equitable. It may not be just and equitable and they would be making the decisions and the agreements for you, so I don't think it is.

MR. J. DOWNEY: Mr. Chairman, the testimony that I've been hearing and the discussions I've had is that, without using the comparable privately-negotiated agreement as a base from which to work, we're seeing settlements or adjudications of the board which are of the opposite, that the landowners are getting absolutely ridiculous settlements for comparable pieces of land. Do you think that is fair and equitable, when people in the same community, giving up the same kind of land for the same purpose, that there should be such discrepancies as we've seen? Do you not think there should be some equitability to this thing and that the board should be able to use a comparable settlement, privately negotiated, to bring some equity to the business; or do you think that it should range anywhere from $500 a site, for example, to $2,000 a site for neighbours? Do you think that's a fair and equitable thing for using land for the same purpose?

MR. R. BROWN: I think that what you're trying to say is that you don't believe that the board has come up with fair and equitable answers to the question. I think that the fairness and equitability is that the losses that are incurred are replaced, but they're not replaced in the form that they're incurred, they're replaced on a monetary value.

Now, these values have been decided by a third party because, obviously, the parties involved couldn't come to a decision as to what was fair, there are two different scales to that. Consequently, their third party came in and it was decided by that third party. Now, that figure has been used as a guideline.

Now a major reason for the neighbour across the road getting that extra money is because the act failed to provide a coherent right-of-entry time frame. That time frame has not been present in this act before, or in the old Surface Rights Act, or in Bill 65, so consequently people, to smooth things over, will always offer someone a better deal than they can get anywhere else, and they'll take it.

As soon as they take that deal, that high price becomes tomorrow's low price and everybody wants it. But is the price necessarily fair and equitable? No. It's just that the guy who got the lower price is fair and equitable. The guy who got the high price got a really good deal.

MR. J. DOWNEY: Mr. Chairman, through you to Mr. Brown.

Do you honestly feel - and this is without reflection on any individual who currently sits on the board, Mr. Chairman - that a retired civil servant living in Winnipeg, that a storekeeper, that farm people who do not live within the area in which the people are affected, having no experience, absolutely no real feeling for what the people who have oil wells or oil activity on their land, can honestly and fairly adjudicate or pass a decision on the impact that an oil well has on those individual rights, and that they should not have the ability or the knowledge of privately negotiated deals to make their decision by? Do you feel they are totally competent in judging on behalf of the people who are affected?

MR. R. BROWN: Am I to answer that?

MR. CHAIRMAN: I should mention that people presenting before the committee don't have to answer questions. That might have been described as a slightly rhetorical question. I didn't rule it out of order, but it certainly is rhetorical. You don't have to answer it if you don't want to.

MR. R. BROWN: I think that the selection of the board members is actually beyond my expertise at this point.

MR. CHAIRMAN: Any further questions?
Mr. Findlay.

MR. G. FINDLAY: Mr. Brown, you did not think there was anything wrong with settlements being just and equitable and, certainly, in presentations that I've had given to me indicate that there are a lot of people that are unhappy with the settlements that are achieved for old sites as opposed to new sites. The rough figures are $2,000 for a new site and $1,000 for an old site.

And you, as a land man, can you tell this committee why those settlements are so far apart?

MR. R. BROWN: I think that the settlements are almost identical except for in a few cases of companies outside of our company that may have been paying over and above bonus structure, but the other sites are relatively the same because our sites that we acquire and the old sites that we pay for are all based on the same types of criteria set out in section 26.

MR. G. FINDLAY: To move back to the comparables - and you have already answered some questions on it - you were saying in many cases figures that might be used as comparables have been beefed up because a company wanted to improve their chances of getting on or whatever. Whenever a hearing is held and the comparables are put on the table for use, you are there and you are represented by lawyers, and the company has lots of opportunity to point out the very shortcomings you feel that there is with a comparable.

On that basis, what's wrong with comparables being offered for comparison?

MR. R. BROWN: Because when those agreements are conducted by another party, you have no idea what makes up that price structure, so you can't really compare it. All it is is just a number on a lease. There is no breakdown on other leases of what they're paying for or what they're paying extra for. You don't have any idea what you're comparing at that point.

MR. G. FINDLAY: You're operating somewhat in Saskatchewan and a fair bit in Alberta. Between the three provinces, how comparable are the rentals that you pay in this province with similar types of leases in those two provinces?

MR. R. BROWN: On a per-acre basis, it's pretty comparable through Saskatchewan, but, of course, we haven't had a lot of experience in Saskatchewan; Alberta, particularly the south and east part. Once you get around the Red Deer and Edmonton areas, things change there. Now once you get into the Peace River country, that's where Alberta has had a lot of trouble with the double price structure. One is a comparable method known as a global, and the other is the four heads compensation in Alberta. The southern board, obviously they use a lot of four heads representation compensation which is very similiar to here. The global effect has basically been unit agreements that are area agreements that have been driven up in price so that you can avoid going to the board on those ones.

MR. G. FINDLAY: In your mind, has the Surface Rights Board functioned to your liking?

MR. R. BROWN: In some matters, certainly not, on others, I was happy to see that the results came out as they did.

MR. G. FINDLAY: In what ways were you not satisfied with the board?

MR. R. BROWN: On figures that were allocated for head lands.

MR. G. FINDLAY: I guess the one thing that really concerns me is, there's every once in a while a lot of evidence that there's not a good relationship between the oil industry and the landowner. In your mind, what do you think is the problem there?

MR. R. BROWN: I think that one of the problems, the biggest problem in Manitoba is the fact that it's not a matter of just and equitable compensation, it's a matter of what someone else might have got - whether it be in Alberta, whether it be in Saskatchewan, whether it be their neighbours. But that problem has another side to it, and it hasn't been addressed or looked at. It's only been looked through one way.

The other way is, is that there's also people that may not have gotten as good a deal as what the person who is looking at it has, and they've consequently chosen to ignore looking at both sides or the full range of what the situations involve and what the compensations ranges are and why they're there.

The other matter that has caused a lot of tension and confusion is the fact that a lot of landowners think that The Surface Rights Act is to protect them, and when in reality, The Surface Rights Act is to deal with both owners. The other thing is, is that a lot of surface owners don't understand that there's two certificates of title to the land. One happens to be on top of the other. And that's a bit major.

MR. G. FINDLAY: Yes, Mr. Chairman may rule me out of order but, the landowner is only concerned about the top one and what the Surface Rights Board in their mind is there to protect; it's not to be worried about what's underneath. That's for The Mines Act to worry about. That's why they feel that they have reason to be unhappy with the lack of action of the board to protect that surface from the actions that are going on now and from the actions that will occur as a result of abandonment.

Do you not understand that the landowners' concern is with just the surface and the future of that surface as a result of your actions in the process of extracting the oil?

MR. R. BROWN: Yes, I can understand why they think that.

MR. CHAIRMAN: Are there any further questions? Seeing no further questions, thank you, Mr. Brown.

The next presentation is Mr. Bob Douglas from the Keystone Agricultural Producers.

Mr. Douglas.

MR. B. DOUGLAS: Mr. Chairman, and members of the committee.

I'm representating the Keystone Agricultural Producers. I appear before you this evening to express the support of our organization of the views expressed by the Manitoba Surface Rights Association, relevant to your consideration of Bill 65, The Surface Rights Act.

While we do not intend to address the bill in any sort of detail, I would like to make a number of brief comments, particularly from the perspective of agricultural producers.

We believe it important, in this entire discussion, to give full recognition to the fact that the agricultural landowner has little or no choice regarding whether or not well sites are located on his property. It is, therefore, essential that the controlling legislation and any procedures provided for under it make adequate provision for an agricultural landowner to be treated fairly in any dealings of this nature.

Currently, much of the unhappiness or dissatisfaction being expressed by farmers in Manitoba with the well sites on their property seems to result in two broad areas, i.e., the adequacy of the compensation, and the adequacy of efforts to restore land upon which spills may have occurred, or where well sites are abandoned. Both of these areas are of extreme importance to the landowner.

In the area of compensation, we believe that the full recognition must be given, not only to the farmers' loss of production revenue on any land involved in the well site, but also to the degree of inconvenience experienced by him because of the presence of the well site and the access to it.

Certainly because of the disruptions experienced, the level of compensation for the use of the small parcels involved must be a good deal higher than any level which would be struck if consideration were given only to the per-acre value which might apply if the entire property were to be sold.

In the matter of establishing fair levels of compensation, it would appear only reasonable to us that information and precedence, with respect to the contracts negotiated earlier, or levels of compensation established in other locations, be taken into consideration.

Adequate attention must also be paid to the husbandry of the land involved in well sites and its potential use again in the future for agricultural purposes. This refers, of course, both to the action taken by the companies in the case of accidental spills and the restoration of sites in the event of abandonment. Appropriate regulations must be established and enforced.

Much of any unhappiness and dissatisfaction which our organization here has expressed, by agricultural landowners with well sites, seem to take the form of criticism with respect to their treatment in situations in which the Manitoba Surface Rights Board acts as a mediator or adjudicator. It is our view that some considerable attention to improving the relationship between the board and the agricultural landowners is both warranted and necessary.

Agricultural landowners, for the most part, find the hearing process of the board to be particularly onerous. It is our opinion that in consideration of the formal and quasi judicial nature of the board's hearings held to date provisions should be made for the farm landowners appearing before the board to be assisted with their related costs in an attempt to ensure that their interests are adequately represented.

We would further submit that specific provisions should be made for the membership of the Manitoba Surface Rights Board to include a person, or persons, familiar with agricultural production and its various and particular vulnerabilities.

We believe this could be very beneficial, not only to the interest of ensuring fair treatment for farm landowners and the health of the land, but also toward enhancing the relationship between the landowners and the board.

Your anticipated sincere consideration of our views in your deliberations concerning Bill 65 will be appreciated.

Respectfully submitted on behalf of the Keystone Agricultural Producers.

MR. CHAIRMAN: Are there any questions?

Mr. Findlay.

MR. G. FINDLAY: Mr. Chairman, I'd like to ask Mr. Douglas, going back to page 2, talking about farmers' loss of production and the kind of compensation that maybe should be paid, is he aware of any studies that have been done by outside interest groups or outside parties to establish what might be considered fair compensation in this province or any other province?

MR. B. DOUGLAS: Well, Mr. Chairman, I can't before you here recall or give you an exact example, but there's no doubt that's easy to do; it's not hard at all. It's done for this purpose and other purposes all the time.

MR. G. FINDLAY: You mentioned abandonment. Do you believe that the obtaining of the Certificate for Abandonment should be handled by the Mines Branch or should it be handled by either Environment or Agriculture? What would be your choice?

MR. B. DOUGLAS: I really don't have a strong position. It's not something that we have really looked at, so I really couldn't comment, but I wouldn't see any reason why the board wouldn't handle it because they deal with the other matters.

MR. G. FINDLAY: Well, in theory, the board is supposed to have the expertise to establish the entry and it should also be able to establish then the procedures for exit, but as it stands now, as you're aware, it's under The Mines Act which is a completely separate group of people. If something goes wrong on the site, the way I understand the act, the onus falls on the operator then to pursue the board by means by appeal. Do you feel that that's fair that the onus then falls on the owner of the land, rather than the operator, if something is not done properly in terms of clean-up?

MR. B. DOUGLAS: Well I think that every situation is somewhat different and we aren't particularly critical, because I think when they spill - we had the most recent one the Mines Department did move rather swiftly, which we were afraid that may not have happened, but really what we're interested in is getting a system that's equitable, fair and acceptable to the landowners and put in place and operate. Whether the board itself has the expertise on it or if they don't, they should get it in terms of knowing what should be done, relevant to the agricultural landowner in the province.

MR. G. FINDLAY: Are you aware of any guidelines for clean-up of spills or clean-up of sites?

MR. B. DOUGLAS: No, I'm not aware, Mr. Chairman.

MR. G. FINDLAY: Further then, one more question. You said that in a recent spill, and this would be the one last spring dealing with a 20-acre space and it's a first drilling, you say that they appeared to have moved swiftly. Are you aware of any evidence that there was an actual clean-up of a satisfactory level?

MR. B. DOUGLAS: Mr. Chairman, from my position as a staff person, no, but the elected and directors who were working it would be familiar, but I'm not.

MR. CHAIRMAN: Seeing no further questions, thank you Mr. Douglas.

The next presentation is from Mr. Robert Puchniak from Tundra Oil and Gas.

MR. R. PUCHNIAK: Thank you, Mr. Chairman, ladies and gentlemen.

It looks like I'm going to have to change my remarks a little bit. They're dated July 15 and it's now the 16th, and the salutation is "Good Evening," and it's "Good Morning." You people ought to be commended for putting up with all the commentary this evening, now this morning.

By way of introduction, Tundra is a local Manitoba company which operates exclusively in the southwest corner of our province. We currently have approximately 80 wells in existence and are in the process of drilling another 15 in the current year. Our annual surface rentals to landowners and occupants amount to more than $100,000 and comprise more than 10 percent of our annual operating costs.

With figures of that magnitude, needless to say, we have a very keen interest in this province's surface rights legislation. The proposed new Surface Rights Act is to be commended for simplifying well abandonment procedures and for eliminating the concept of a universal lease form, which neither the industry or landowners liked.

On the other hand, Bill 65 attempts to break some new ground in a way which is potentially very harmful to the industry and, ultimately, the landowners. It was suggested by the Honourable Minister of Municipal Affairs in the Legislature on June 15 that section 26(1) be rewritten so as to compel the Surface Rights Board to consider so-called comparable leases when determining compensation at a hearing.

On the surface, this addition seems harmless, but inevitably its effect will be to increase surface compensation by reference to the exceptional cases where operators have paid exorbitant entry fees in order to gain immediate surface access. They might have a drilling rig available for only a limited time frame and need to get on as quickly as possible, or they might be faced with an imminent expiry of their petroleum lease, etc., etc.

These unusual precedents will undoubtedly be brought forward as a reason for higher compensation. If we have been paying first-year bonuses of $4,000-$6,000 per well site, for instance, does it make sense that Tundra should be saddled with the fact that another operator got itself into a corner and had to pay $8,000-$10,000.00? To our knowledge, no other provincial Surface Rights Act in Canada has introduced this element to compensation. The issue has been debated and consciously omitted as a compulsory determinant of compensation. There is no reason for Manitoba to pioneer in this respect. Any time the rules of the game in our province are more onerous than those existing elsewhere, the players will avoid Manitoba and drill elsewhere. We strongly recommend that today's proposed addition to section 26(1) be rejected.

The other change to which we draw your attention is section 26(4) where the Surface Rights Board must award the costs of the hearing to the owner when compensation offered by the operator is less than 90 percent of that ultimately determined by a board hearing. This section has lots of problems and I'm pleased to hear that the Manitoba Surface Rights Association agrees.

First of all, how is compensation defined? Is it the first-year bonus, the annual rental thereafter, or a combination of both? For purposes of clarity, the first-year compensation for right-of-entry is normally three times the subsequent annual compensation.

Secondly, if the operator is offered more than 90 percent of the ultimate board determined amount, should not the owner or occupant be forced to pay the costs of the hearing? Otherwise, landowners are encouraged to bring all matters to the board without risk of paying the other party's costs.

All costs incidental to any proceedings of the board should remain at the discretion of the board. They are appointed with reference to their level of competence, they don't need hard and fast formulas to guide them. To the best of our knowledge, costs in our judicial system are awarded at the discretion of the judge. Is there any need to vary this practice when considering the Surface Rights Board as an arbiter of disputes in the oil business?

I've limited my remarks to two specific areas of major importance. There are other areas with which we have problems, such as duplication in compensation criteria, lack of regulations, and timing delays in right-of-entry orders. However, I'm ignoring these in the hope that you will focus on two very substantial problem areas, being section 26(1) and 26(4). Neither of these sections appears in other provincial surface rights legislation and both will work to increase our surface costs.

Surface compensation by all companies in this province are already more than adequate. Tundra has recently drilled seven wells in the Daly area, paying total first-year compensation in excess of $40,000 for 29.97 acres. This yields an average rate of compensation equal to $1,337 per acre. The same land has a fair market value of about $250 per acre.

Our costs for surface rent have quadrupled over the past five years as a result of The Surface Rights Act and as a result of a very vocal Surface Rights Assocation. Have farm land values quadrupled over the past five years?

Another factor which this committee should consider is that Manitoba is a marginal oil producing province and has not been blessed with the resources that are found in our neighbouring western provinces. The average well in Manitoba produces about two cubic meters a day of oil. This compares to three cubic meters a day in Saskatchewan and nine to ten cubic meters a day in Alberta. With lower revenues we cannot afford to have legislation which puts us at a cost disadvantage. Otherwise, oil companies will explore elsewhere and our provincial economy will suffer.

Thank you for your consideration. I hope we have conviced you to make a couple of changes before finalizing this bill.

MR. CHAIRMAN: Thank you, Mr. Puchniak.
Are there any questions?
The Member for Virden.

MR. G. FINDLAY: One question. Did I hear you say that you would favour having regulations put in place?

MR. R. PUCHNIAK: Yes. It's strange but we had the previous Surface Rights Act in existence for three or four years and never had any regulations and I think it's about time that we had the same introduced.

MR. G. FINDLAY: I agree with you completely.

MR. CHAIRMAN: Thank you, Mr. Puchniak.
Mr. Minister.

HON. J. BUCKLASCHUK: I have one question to address if I may.
You've indicated a desire to have regulations to the act, and I guess my question would be, what would you expect the regulations to have in them?

MR. R. PUCHNIAK: I see there are provisions in Bill 65, for example, under 68(d) it says that the Lieutenant-Governor-in-Council may make regulations related to prescribing elements of compensation to be considered by the board in addition to those mentioned in 26(1), including formula and criteria. If there's any such formula and criteria we would like to know about it.
As one example, we're talking here about prescribing forms of leases and renewals thereof. What is the form? Anyway, I don't recall the comments of the Surface Rights Association on that matters but I would assume that all parties concerned would like to see some regulations.

MR. CHAIRMAN: Thank you, Mr. Puchniak.

MR. R. PUCHNIAK: Thank you.

MR. CHAIRMAN: That finishes the briefs on Bill 65.

BILL NO. 68 - AN ACT TO GOVERN THE SUPPLY OF NATURAL GAS IN MANITOBA AND TO AMEND THE PUBLIC UTILITIES BOARD ACT

MR. CHAIRMAN: On Bill 68, Mr. Haig or Mr. Meronek from the Western Gas Marketing Limited.

MR. R. YOUNG: Mr. Chairman, gentlemen, my name is Robert Young. I'm a senior partner in a Calagary law firm and I act as outside regulatory counsel for Western Gas Marketing, which is a subsidiary of TransCanada Pipelines. Mr. Haig has been acting through his law firm in Winnipeg as our Manitoba agent but he won't be appearing this evening.

MR. CHAIRMAN: Okay. So you will be speaking for both Western Gas Marketing and TransCanada Pipelines?

MR. R. YOUNG: Western Gas Marketing is the marketing arm of TransCanada Pipelines, a wholly-owned subsidiary.

MR. CHAIRMAN: All right.
Then proceed, Mr. Young.

MR. R. YOUNG: If I might, Mr. Chairman, I would like to distribute the hard copy of our presentation.

MR. CHAIRMAN: Is Mr. Murray appearing also, or are you appearing for him?

MR. R. YOUNG: Mr. Chairman, if I might, Mr. Murray is in-house counsel for TransCanada Pipelines and Western Gas Marketing. He is with me this evening, but the presentation will be made by Mr. Craig Frew, who is Vice-President of Operations of Western Gas Marketing Limited.
I would like to call upon Mr. Frew.

MR. CHAIRMAN: Mr. Frew.

MR. C. FREW: Mr. Chairman, members of the Legislature, we are grateful of the opportunity to come here to express our opinions on Bill 68 and the implications that that bill has to the gas industry and to us in particular and we're here to answer any questions that you may have.
A brief introduction. Mr. Young has mentioned that Westerns Gas is the wholly-owned subsidiary of TransCanada Pipelines. We were formed as part of deregulation to administer all of TransCanada Pipelines. We were informed it's part of deregulation to administer all of TransCanada's purchase and sales contracts with both domestic and export customers.
The natural gas industry in Canada has historically been based upon legally-binding contracts, similar to the ones that we have between our producers and our purchasers. In fact, TransCanada was, for many years, the sole supplier of gas to the consuming provinces east of Alberta. These contracts formed the basis of the long-term committed reserves and the security of supply that had been the basis for this industry.
In order to assure and attain this long-term security, TransCanada has incurred financial obligations by the way of take or pay payments. Since 1977, we have incurred approximately $2 billion worth of prepaid with our producers. This money will be recovered by the year 1994.
In addition, the principal and carrying costs of the financing of that money will be recovered over time from the sales volumes of gas supplied by producers to TransCanada.
We are now entering a new environment of deregulation, a highly competitive environment. The very secure supply of natural gas to Western Gas Marketing is not under attack, unlike the supplies that we understand are planned to replace those existing sources in Manitoba.
TransCanada has the largest supply in North America, and irrevocably dedicated to it. We deal with approximately 750 producers in the Province of Alberta. We also hold long-term valid removal permits from Alberta sufficient to supply all of our existing and future commitments.

In addition, we have a diversity of markets and supply which allows us to optimize the costs and offer services which some other people are unable to offer. The Western Accord, which started the deregulation process for natural gas in the October 31, 1985 agreement on natural gas markets and prices was really the first step in a move to "more flexible and market-oriented pricing regime for marketing of gas in Canada."

The October 31 agreement still provides a blueprint which is being followed by the Federal Government and the consuming provinces in moving towards a truly deregulated gas industry in Canada. The blueprint is also consistent with the efforts that are occurring in the United States. We're really entering a continental energy-type system for natural gas in North America.

The October 31 agreement provided for a one-year transition which would allow full deregulation to be implemented on November 1, 1986. The principles, and I will reiterate these principles, which were fundamental to the whole process were that we would have market responsive pricing regime. We would have open transportation access to gas systems. You would have respect by governments for existing contracts. Producers would have greater access to markets, consumers would have greater access to supply. There would be less government regulation, an orderly transition that was supposedly fair to all parties involved and that the new regime would promote favourable investment, employment and trade with the added advantage of energy security.

It was clearly implicit in the October 31st agreement that existing long-term agreements would continue to be honoured by all parties. The National Energy Board, who governs the movement of gas through Canada, has also indicated that self-displacement of long-term contracts by a distributor would not be recognized as a legitimate basis on which to apply for relief for demand charges. In other words, a distributor who currently buys gas could not go into the marketplace and intentionally displace his existing contracts and apply to the National Energy Board for relief of current tolls and tariffs.

The negotiations which occurred with Manitoba, which are at the heart of the direction of Bill 68, were undertaken in earnest in May of 1986. After six months of difficult negotiations, pricing agreements were signed on October 23. Negotiations in these agreements were based upon a market response approach, approach as contemplated in the October 31st agreement, and tried to give to the Manitoba distributors a flexibility that would be required in their markets to ensure they could compete with alternative energy sources.

It was clear from the outset though that negotiations were based on continued recognition by all of existing binding contracts. These contracts will remain in place until as late as 1995. Those contracts also have served to ensure that there is a secure supply of gas available to Manitoba to at least that date.

During the whole process, there was a lot of compromising between both parties. I would like to point out that the gas pricing agreements reached with Manitoba are similiar in structure to those agreements in Ontario and Quebec. It has been reporded wrongly that there was no price break given to Manitoba in these agreements. This is just simply not so. The agreements provide for potential saving in the Manitoba market of about $32 million per year.

The details of the pricing agreement are listed in the handout that you have received. I only want to emphasize two major points. The agreement was a two-year agreement. It had a base price which was equivalent to the old price that was in place prior to deregulation and it would be adjusted to provide any protection for the consumers in Manitoba of any changes in the transportation costs between Alberta and Manitoba for the full two years of the agreement.

The one very controversial part of the pricing structure was the 20 cent reduction which would be available to Manitoba consumers if the motive fuel tax was removed. This tax amounted to approximately $12 million a year of direct cost to the Alberta producers. It's significant that this tax replaces a sales tax that was approximately $1.2 million a year. It was implemented after the deregulation process had begun.

Western Gas Marketing, as producers, and the Alberta Government maintain this tax is excessive and unfair. As you can appreciate, the movement of one government to usurp monies that have been given up in a process of free negotiation at the expense of the people giving it up is a totally unpalatable type of movement.

The agreements also provided for contract optimization, which is a transportation subsidy. Prior to deregulation, the Federal Government was subsidizing the price of transportation to eastern Canada - we agreed to continue to do that. Other suppliers will have to pay that themselves. If the Government of Manitoba gets transportation, it will have to pay it itself.

In addition, total discount funds available for marketing efforts would have amounted to about $17.1 million - $17.5 million, I should say.

Taking all these factors into consideration, the blended cost of gas for Manitoba would have been about $2.32 a gigajoule, about $2.46 an mcf, significantly lower than the regulated price of $2.79 or the $3.00 per mcf quoted regularly in Manitoba.

It's important to note that the Public Utilities Board in Manitoba, after lengthy and exhaustive hearings in February and March, approved the rates that were a result of the gas purchase agreements negotiated.

Parties have governed themselves accordingly since the date of the board decision and have advised each other that all conditions precedent to the implementation of the gas pricing agreements have been satisfied. The gas pricing agreements are therefore fully implemented and effective, according to their terms and conditions from November 1, 1986, up and to including October 31, 1988. People here suggest that these agreements are not in place for that two-year time frame.

Bill 68 and its implications - the extreme measures proposed by this bill fly in the face of unfolding deregulation in Canada and in the United States and is totally contrary to the action of the Canadian Government, other producing provinces in Canada and some of the consuming provinces.

The bill strikes at the heart of the deregulation process. Manitoba can't expect to be able to abrogate its present contractual commitments and purchase "spot gas" which may be currently available at some lower prices, and at the same time enjoy protection that they have been seeking with the National Energy

Board for long-term security of supply, and not pay for it.

Section 28(1) specifically: The October 31 agreement provides for a negotiation of prices in a more flexible market-oriented regime. In section 28 of the bill, the Manitoba Government can unilaterally fix the cost of gas notwithstanding any negotiated agreement between parties. This is unacceptable to the producing industry - unacceptable business practice, too.

It also provides for retroactive rate setting. This practice is clearly contrary to well-established principles of regulatory law and it will make it extremely difficult for business to function with any degree of confidence in Manitoba. Parties have already acted on the board order which approved the gas cost arising from the gas pricing agreements. There is no mechanism of retroactivity to get money from the existing contracted holders if there is some retroactivity that takes place under this bill.

Section 32: Again, I'd reiterate that the entire gas industry is based upon legally-binding contracts. Section 32 of the bill suggests that the Public Utilities Board would not be bound to recognize or give effect to existing contract terms. This provision undermines the entire basis for conducting business in the industry. The Alberta producers and TransCanada have taken on long-term commitments based upon these agreements and have a secure long-term supply of gas available at reasonable prices.

The Manitoba Government now intends to take advantage of this without having to pay a fair price. Additionally, the government has been promoting onerous government-mandated surplus tests to protect their customers without requiring long-term contracts to match that level of protection.

Section 58.I: This portion of the bill provides that petitions can be made to the Lieutenant-Governor-in-Council respecting board orders of the Public Utilities Board. The bill provides that the Lieutenant-Governor can make any changes to such orders that are seen fit. This is totally inappropriate and has the effect of providing a second overlapping route of appeal from the order of a board. In effect, it makes the Lieutenant-Governor-in-Council an alternative court of appeal for the Public Utilities Board.

This problem is compounded because the government is not impartial in its actions. The government's bias will be even more pronounced as it is sole shareholder of the Manitoba Consumers Gas Corporation proposed to take over the gas industry in Manitoba.

These factors will not inspire any confidence in suppliers of gas and its regulatory and legislative environment will be totally impractical and unacceptable to reasonable business persons attempting to do business in Manitoba.

Additionally the bill, although it's silent on this, implies that there will be no access from any other source into Manitoba. One of the fundamantals of the deregulation process and one of the principles is that there will be open access to transportation in the consuming provinces. Other consuming provinces are implementing legislation to compel transportation and the Government of Manitoba with this bill would be drawing a barrier around the province, attempting to isolate it from the movement toward deregulation. It is suggested that in the long run the industrial sector in Manitoba will end up in a disadvantaged and isolated position as compared to their competitors in other provinces and this will stymie industrial growth in this province.

In conclusion, this proposed bill and the position that the Manitoba Government is taking puts at risk the whole deregulation process which is being pursued by the Federal Government and various provincial governments in good faith since October 31, 1985. It is definitely contrary to the spirit of deregulation, that a provincial government should at this time move strongly into the area of control of natural gas and the distribution of natural gas within this province by the purchase of a local distributor.

The Hon. Marcel Masse stated in a June 22 speech to the Canadian Gas Association and I quote, ". . . bucking the North American trend to reduced government involvement in energy market is shortsighted and counterproductive. Consumers cannot demand both the lowest possible prices and the long-term protection afforded by denying producers full market access." Mr. Masse clearly also stated that it was never the intent of the agreements that existing contracts would not be honoured.

Furthermore on July 6, press release by the Federal Government and the three producing provinces reaffirm the principles of deregulation as I quoted earlier in my talk and stated that governments should respect existing contracts.

The Alberta Government is on record as stating it will not permit gas to leave the province at prices so low that the industry would be decimated with no reasonable or fair return for the people of Alberta for their resource. The Government of Alberta in the board hearings and elsewhere has indicated that it would refuse removal permits where long-term contracts are not being honoured. There is also a possibility that if the Government of Manitoba should pursue the present course of action, Alberta would have no option but to reregulate the price of gas within Alberta for export out of the province.

It is the citizens and industries of Manitoba which will be at risk as a result of these proposed measures. In the long run, it is a shortsighted decision for Manitoba to abandon the largest, most secure supply of gas in North America and to move to a less reliable supply at a time when government mandated protection is being reduced by deregulation. These actions will certainly alienate Manitoba from the producing provinces and the Federal Government, perhaps other consuming provinces.

If the Government of Manitoba refuses to allow Western Gas, or anyone else who has contracts to sell gas in Manitoba at the price contained in the Gas Pricing Agreements, then in essence they will have expropriated contractual rights without providing any compensation. Western Gas Marketing then would have to consider its legal recourse at that point in order to protect its own interest and that of its contracted producers.

Further, any retroactive changes would not directly affect the gas pricing agreements as I mentioned earlier and, in fact, the parties at risk, if a lower retroactive commodity price were mandated by the government, would be the Manitoba distributors.

Another difficulty with this retroactive situation would be that in fact under the Alberta legislation, Western

Gas Marketing would have to take any changes in price back to its producers for approval by them and I can assure you that wouldn't happen. Effectively, if the government becomes the owner of the Manitoba distributors, the taxpayers of Manitoba will be subsidizing natural gas consumers in the province to the extent of any retroactive reduction in the commodity cost of gas.

It is therefore respectfully submitted that it would not be in the best interests of Manitoba that the bill be adopted as written.

Thank you, Mr. Chairman.

MR. CHAIRMAN: Are there any questions for Mr. Frew? Seeing no questions - pardon me - Mr. Enns.

MR. H. ENNS: Throughout the brief, Mr. Frew, you've underlined time and again that sanctity of contract, and certainly I think most of us around this table would want to share that concern with you and your company.

You indicate to this committee that certainly in this country at least, if forced to the wall, that contract being broken, your company would have little or no option but to exercise recourse to, I suppose through the courts, to be duly compensated for losses believed to be sustained if those contracts were broken. Is that a correct impression?

MR. C. FREW: That's correct, Mr. Enns.

MR. H. ENNS: I appreciate your appearing as the marketing arm of Western, which is, I believe, the wholly-owned subsidiary of TransCanada Pipelines?

MR. C. FREW: That's correct.

MR. H. ENNS: As such, you have been doing business over the past number of years with our distributor here in the Province of Manitoba, Inter-City Gas. If Inter-City Gas was being totally acquired, it's assets of Inter-City Gas were being totally acquired by the proposed action of this government through this bill, my interpretation of that would mean that we would then become not only the owners of its shares, the owners of its debts, but also the owners of its contracts, but that isn't quite the case is it? We are only acquiring less than 10 percent, I believe, some 7 percent or 8 percent of the assets and obligations of Inter-City Gas.

Inter-City Gas continues on very strongly as a corporate entity in this country. How would your interests be affected if indeed Inter-City Gas honoured the contracts that you feel are operable to the Manitoba section, but not necessarily delivered the gas to Manitoba? Do you understand the question that I'm asking?

MR. C. FREW: I think that's true, Mr. Enns.

MR. R. YOUNG: My name - I think you were out of the room - is Robert Young, acting as counsel for Western Gas, and perhaps I can give you my legal view that might help.

MR. CHAIRMAN: Mr. Young, please proceed.

MR. R. YOUNG: Our contracts are with the Manitoba distributors, with Greater Winnipeg Gas and with the Manitoba subsidiary of Inter-City Gas. So with regard to the gas that we sell into Manitoba, the 50 bcf, our contracts are with those corporate entities.

So if, in fact, the Government of Manitoba acquired the shares of those corporate entities, as I understand they plan to do, then as the situation would remain the same and we would still have the contractual relationship between TransCanada Pipelines and the, as I refer to them, the Manitoba utilities, we would look to the Manitoba utilities to perform the obligations that exist under those contracts.

MR. H. ENNS: Well, I thank you for that explanation. That was something that was troubling me. You appreciate the complex structures of corporations in these days. So there is no doubt in your mind that, legally, those contracts are with the Manitoba division of, if you want to use my term, a subsidiary of Inter-City Gas.

Originally we had different gas producers, several gas producers, Greater Winnipeg Gas, but at the time, as I understand it, of your last negotiations with Manitoba distributors, you were in effect just negotiating with Inter-City Gas?

MR. C. FREW: Maybe I can shed a little bit of light, Mr. Enns, on that.

The two utility companies that we deal with in Manitoba - Greater Winnipeg Gas and ICG (Manitoba) - they are separate entities performing their function in the Province of Manitoba.

Greater Winnipeg Gas, as you point out, had producers at one time. Greater Winnipeg Gas decided at one point in time that it thought it could do a better job of buying gas than TransCanada, and it went on its own in Alberta to pick up some supply. As you may recall, the history behind that was dismal. Those producers couldn't supply the gas; TransCanada offered to pick up those contracts and supply commitments that were made to Greater Winnipeg Gas, and I can't recall the exact date that occurred. I think it was around 1974 or 1975, somewhere in that time frame.

MR. H. ENNS: But the legal opinions, gentlemen, that you are giving this committee is that those contracts entered into with Manitoba distributors had to be lived up to?

MR. C. FREW: Yes, that's most certainly our position.

MR. H. ENNS: So, when I read in the paper today, and when I listen to the Minister proposing this measure, indeed the government talking about having secured long-term, in their terms, 15-year supplies from other gas producers in the last little while, again, in your expert opinion, are you suggesting that Manitobans may end up having to pay for two sets of long-term agreements of gas?

MR. R. YOUNG: I have enough trouble advising my own client so I wouldn't want to comment. All I can say is our position is clear.

We have valid, binding contracts in place between TransCanada Pipelines and the two Manitoba utilities, ICG (Manitoba) Ltd., a separate company, and Greater

Winnipeg Gas Ltd., another separate company, and we expect them to fulfill their contractual obligations to us.

MR. C. FREW: If I may ask a question. The question of whether or not you may have to pay for two sets of gas, most definitely we think you'd have an obligation with us. We're somewhat suspect of the ability of the other suppliers to actually have that gas under contract. They definitely have what appears to be a 15-year contract with the Government of Manitoba. That in no way implies that they have 15 years of gas supply available backing that up.

I would like to point out that additionally there is undertakings in those agreements, as we saw the summaries of them, that those companies would have to go in front of the Alberta Government and get permits because they have permits today. Those permits expire, as we know it, in one year's time - some of them - and that may be very difficult at that point to get those extended.

MR. H. ENNS: Just pursuing this a little further. We are being asked, as Manitobans, and the Legislature is being asked, we don't know precisely the amount, what the cost of acquisition of Inter-City Gas assets in the Province of Manitoba will be, but they reputedly range from $160 million, to $180 million, $175 million; and I appreciate that it would be difficult for you at this hour, or on this kind of notice, to be able to answer the question that I want to pose, knowing the will of this government and knowing what governments can do, if determined. What you are suggesting to us, that we will have to buy our way out of your contract.

Is there any way, at this time, that you would put a cost on that? I appreciate the very nature of the agreement is the prices are negotiated, the long-term supply is the contract. We have the quantity of gas under contract, but not the price, so that would be difficult to do, but certainly I would assume that, if the government proceeds, you and your people will be doing precisely that to determine your loss, and to determine a fair compensation.

MR. R. YOUNG: I wouldn't want to have it said that our position is that anyone would have to buy their way out of a contract with TransCanada Pipelines. Our position, simply put, is that we will expect and require that people with whom we contract fulfill those obligations.

MR. H. ENNS: Well, I appreciate you're acting as legal counsel, but to this little ranch from Woodlands, I understand you, I think.

MR. R. YOUNG: I have a little ranch down at Niverville back home, so we talk the same language I think.

MR. H. ENNS: On another matter, on page 5, I think in your presentation, to either of you gentlemen - Mr. Frew, perhaps - much has been made in this province, and, of course, made in a highly politically-charged way, about the rip-off that Manitoba consumers have experienced, thanks to your doing business with this province over the past little while and, in particular, this year, very, very specific figures have been mentioned.

The Premier and the Minister repeatedly tell us that we are on the verge of saving $50 million in this province, $150 per average household, $1,400 to $1,600 per small business, per annum. I think it's a bit of an eye-opener to members of the committee to look at these prices that you are saying, taking into consideration the full utilization of the discounts available to Manitoba under the agreement just signed, that we, in effect, are looking at a price much lower than that that is being currently talked about, which you are correct when you describe the $3 price, we were down to $2.32 which, in effect, means that there could be a savings to the Manitoba market of some $32 million. Does that correctly reflect the situation that we would be going into this year?

MR. C. FREW: That's correct, Mr. Enns.

I'd like to make another couple of comments on that. Obviously, we didn't do the job we should have done in explaining the terms of the agreement. A lot of people that we talked to weren't interested in listening but, other than that, these prices that are quoted - and I've expressed them in gigajoules, I think the ones that are talked are cents per mcf, the $3 per mcf and our price actually is $2.46 an mcf. Those prices are quoted, if you wish, as equivalent Alberta border prices, which is where one of the fulcrum points of the pricing was in the old regulated pricing regime.

I think it's very significant to note that a lot of the subsidies and the discounts that we offered related to transportation, getting that gas from the Alberta border to Manitoba. If Manitoba, or any other shipper is going to try and move that gas, because Manitoba has no storage, because Manitoba has a very poor load curve, they will be paying for approximately twice as much capacity on the system as what they actually need. The cost of transportation, because you need that volume during the winter - it won't be used in the summer and you can do nothing else with it because you have no storage. The costs and the resulting saving to the consumers of Manitoba, I think, need to be reviewed in substantial detail before you could assume that there is, in fact, any cost saving.

We don't know the current details of the pricing agreements with your suppliers, or the proposed suppliers, so it's very difficult for us to say. But I think the savings are small, particularly if you were to consider the cost of borrowing for buying the utilities and the potential loss in taxes, for instance, since you'll get because ICG won't have anything to pay.

MR. H. ENNS: One further question on the matter of pricing. I suppose what certainly has bothered me, and I know that it's an understandable concern for anybody in Manitoba and, indeed, Canada, we are told that gas that is coming right into the perimeter of our city, and then moving south, is available at considerably lower prices in Minneapolis or in the American market. That, of course, is a very emotional kind of an issue with Canadians. When we are led to believe that we are being denied because of our slower approach to deregulation, or for whatever reasons, fairer and lower prices of our - speaking as a Canadian - gas than is being enjoyed by American users to the south of us.

Why can't we or why aren't we being offered the same, or why didn't you negotiate, or why didn't Inter-City Gas negotiate, on our behalf similar contractual prices that are being enjoyed say in North Dakota and in the Minneapolis market?

MR. C. FREW: Mr. Enns, you're probably specifically speaking of what we call the Mini-gasco deal, which was one that we announced had been signed with a utility in the United States.

The utilities in the United States fully recognize the significance of the supply they can tap into with deregulation and the ability to get that under long-term secure contracts. We had offered the similar arrangements or identical arrangements for that matter, for what we offered Mini-gasco to ICG after the term of the current agreement. Mini-gasco, as you probably maybe don't know, is not flowing today. The agreement was into the future, so no gas has flowed under that.

In addition to that, the prices for gas which we had negotiated with Manitoba were virtually identical to those negotiated with Ontario and Quebec. Between those two provinces, they consume about 700 billion cubic feet a year of our gas. They felt the agreements were substantial and significant. As you can appreciate, the total savings resulting from the renegotiation of the contracts amounted to some $600 or $700 million a year, and less revenues to our producers in Alberta. They were not interested, as you can well appreciate, in volunteering those price reductions. But I can guarantee you that there was no discrimination with Manitoba.

Aside from the 20 cent per gigajoules reduction because of the motive fuel tax, which was a retaliatory type action because of the implementation of that tax on gas moving through the province which wasn't going to reside in the province, it's an analogous situation to Alberta saying they're going to add a tax onto Manitoba grain going through the railroad system in Alberta. That would be totally unpalatable.

MR. CHAIRMAN: Do you have any further questions, Mr. Enns?

MR. H. ENNS: Leaving aside for a moment some of your other editorial comments about the wisdom of the action that was being contemplated by the province at this time with respect to what it will do, with respect to our position with producing provinces, with other provinces, potential isolation position that it would leave us in. But is that really the case? You are sellers of gas and you are movers of gas. Does it make any difference to you if you sit down and negotiate with Mr. Wilson Parasiuk and the Lieutenant-Governor-in-Council for 50 cubic feet of gas or with anybody else? Is that not a fair question to ask?

MR. C. FREW: No, it makes no difference who we sit down and negotiate with. What does make a difference is if the government is trying to institute or implement a bill which would expropriate or move us totally out and then not want to negotiate. Those are two different circumstances. Whether it is negotiating with a member of the government of some person of a public company, it makes no difference, no.

MR. H. ENNS: Your comments, with respect to the very real powers that the Lieutenant-Governor-in-Council is undertaking under this act in establishing rates, changing orders, as a monopoly organization to some extent with respect to the pipeline, with respect to, in our case, the Inter-City Gas distributor, you have appropriately operated under the regulation of the Public Utilities Board, which at rate hearings sets rates, sets orders, sets, I assume, among other things, allowable returns to investment. That whole function becomes a government function under this bill. How would your relationship carry on under those circumstances?

MR. R. YOUNG: If I might answer that. You've touched upon what perhaps gives us the gravest concern of all this legislation. It's the new right of appeal from a PUB decision directly to, if you will, the government. For instance, The Public Utilities Board Act of Alberta allows for appeals from a finding of the PUB in Alberta to the Court of Appeal on questions of law and jurisdiction. Your present PUB Act here goes a step further and allows an appeal to the Court of Appeal on a question of fact. Fine, we can live with that. But what you now have, you now have a scenario that can be developed, where the Government of Manitoba acquires the utility, compels us, if we want to sell gas to Manitoba, to negotiate with that utility.

Let's say we negotiate a price for the sake of argument of $2 - just pick a figure out of the air - and somebody, citizen at large, doesn't like that. They then go ahead, even though we have dealt and negotiated with a Crown corporation, the citizen at large then appeals to the Public Utilities Board. There's a regulatory lag; this takes three or four or five months. The Public Utilities Board comes up and says well, considering the circumstances, we find the $2 to be a fair price. This concerned citizen, motivated by whomever or for whatever reason, then has a right to petition to the government again. Now we've had a regulatory lag of perhaps nine months a year.

The government then looks at it, and let's say for a matter of argument, that the price of gas has dropped somewhat, the government can then say well, even though our Crown corporation struck a deal with you for $2 a unit nine months ago, we now have the benefit of hindsight. You can't get out of the contract, but we can now say and exercise to this right of appeal, we can now impose a price on you of $1.50. I, quite frankly, when I consider that scenario, and if you're talking long-term contracts, I don't know any responsible gas-supply company that can make a deal when they face that sort of scenario as a possibility, and that's one of our greatest concerns.

MR. H. ENNS: I asked you a moment ago whether you would have any difficulty doing business with a new Crown corporation. You seemed to indicate no, that you wouldn't have any difficulty, but you're suggesting to me in your response right now, that this particular clause would provide you with any supplier considerable difficulty, is that right?

MR. R. YOUNG: If I might, Mr. Enns, we would have no problem doing business with anybody. But the next

question imposed - in view of this appeal procedure, would we have problems doing business with a Crown corporation? - I think the answer has to be a very strong yes, we would. The Crown corporation itself, we have no problem doing business with, but when that company that we're dealing with and you want to strike a deal with, and we know they have the wherewithal to revisit the deal through this appeal procedure a year later and change the price even though we're bound by the price, that gives us a great deal of concern.

MR. H. ENNS: Thank you.

HON. W. PARASIUK: I have a number of questions.

Does TransCanada Pipelines believe that there is any distinction in terms of pricing between large users and families?

MR. C. FREW: The distinction occurs between the terms of delivery. You don't make any distinction with a particular end user, you make a distinction of the terms of delivery.

HON. W. PARASIUK: Can you explain that further, in terms of what you mean by terms of delivery?

MR. C. FREW: Under the current procedure, there is the attempt to define a core market, which is the market that is supposedly that which requires protection, mandated protection. They require 15-year security of supply. These are the people like homeowners, hospitals, etc., people who need gas supply guaranteed, who aren't really in a position to go out and negotiate independently to get the economies of scale.

On the other hand, you have large industrial customers, who maybe don't want to make a gas purchase commitment for 15 years. They may be in business the next year; they may not be in business the next year. They only want to make a one or two-year commitment. In addition to that, they probably are requesting the gas at what's called a very high load factor or a constant rate of take. That scenario provides for a different price to that kind of a sale. That's the distinction that's made. There's no distinction between end users as such. The distinction is in the terms of delivery, whether it's a one-year spot sale, whether it's a best effort sale, whether it's guaranteed or whether it's a firm 15-year commitment.

HON. W. PARASIUK: Earlier on you said that there was a two-year contract with Manitoba according to your legal interpretation. Is there any variation between that contract and contracts that you've signed for lower prices within larger industrial users across Canada?

MR. C. FREW: I'm sorry, I'm not quite sure if I understand that.

HON. W. PARASIUK: Earlier in your testimony, you indicated that there was a two-year contract with ICG in terms of price from your legal interpretation. Do you have contracts of that nature, one or two-year contracts that aren't spot prices with large industrial users that would be significantly lower than the price that you offered Inter-City Gas?

MR. R. YOUNG: I just want to be sure we understand the question and give a proper response.

MR. C. FREW: I may not be able to fully explain this.

We don't sell gas directly to the end users. We sell it all through the distributors. The agreements that we have with the distributors are all similar in that they have different kinds of potential agreements with different types of customers, very similar to electrical rates where they have large industrial rates, spot rates, etc. It's not an uncommon phenomenon.

HON. W. PARASIUK: In that process of selling through the distributors, has it not turned out that large industrial users have, in fact, received gas or offers to get gas at prices in the order of about $1.65 where residential families pay something in the order of $3.00?

MR. C. FREW: I think your numbers are slightly wrong, as we have indicated.

There is no question that large industrial users get cheaper rates than small users. That stems across the country in every kind of distribution system and every kind of electrical system.

HON. W. PARASIUK: The reason why I ask that is because Alberta and you, yourself, today have raised the notion of core market.

When the accord was signed and Pat Carney had a press conference and released all the technical materials, there was no indication of a distinction between industrial market or industrial users and core users. Indeed, we have material from the Federal Department of Energy and Mines and Resources that says that there is no distinction between any of those users. Indeed, Pat Carney at the press conference indicated that groups of families - householders - could, in fact, get the same price through direct purchases as large industrial users could get.

Where do you get the term "core market"?

MR. C. FREW: Well, it's certainly not one that we coined ourselves.

I think you're missing one of the fundamental points. That is that there are different types of commitments required by different kinds of users. Supplying those types of commitments costs different amounts of money. That's why a 15-year guarantee of reserves in the ground and producing a reserve at a rate that is going to deplete that reserve over 15 years costs that producer a lot more money than it does for somebody who can produce that reserve over a four- or five-year period. That's the distinction.

One of the fundamental principles of deregulation was that the surplus test - if I can digress into the surplus test because it's related to the core market - Canada had mandated a surplus test of 25 years before any gas could be exported to the United States. In other words, keep 25 years of supply available for all Canadian consumption before you can export any gas out of the country. That was a terribly onerous and burdensome commitment to put on the producing industry. That was done when prices were regulated and the regulated prices no doubt reflected that.

Now, if people can go and contract for their own requirements and ensure they have their own security

of supply under the kind of commitments that they're prepared to make, different kinds of deals will be made for different levels of security and for different lengths of contract.

There's concern that some people will go out on their own and not perform in the best interests of their customers. That's why they're prepared to suggest that there should be a mandated core market surplus test to protect those customers who perhaps may not protect themselves.

HON. W. PARASIUK: Mr. Frew, the evidence that we have indicates that the terms of the contracts that the distributors have offered to the large industrial users are virtually the same in terms of supply, security of supply, as the terms that are offered to the families in Manitoba.

MR. C. FREW: I can't speak for a specific inference to Manitoba, but I have a fair bit of understanding of what happens in most of the provinces.

As we understand it, the majority of our contracts with industrial users - we don't have them directly; they're through the distributors - but we understand the majority of the large users are for six months to one year. There is no contract with a residential customer and that's why somebody has to mandate the protection. He hasn't got a contract; that's why you have franchises. That franchise holder has got the responsibility to protect that market.

HON. W. PARASIUK: So you are saying that any large industrial user in Manitoba who signs a 6-month or a 12-month contract does not have necessarily security of supply of natural gas into the future?

MR. C. FREW: He has a six-month contract. That's all he has.

HON. W. PARASIUK: So I can sit here as the Minister of Energy and Mines and say that a large cement company or any large company that puts themselves at risk if they have a six-month contract, because they will not get the natural gas because there is not sufficient natural gas in Canada to supply them two years from now, three years from now or four years from now?

MR. C. FREW: That's the theory of deregulation, yes. But, in fact, if those people wish not to pay for the security of supply that some of the customers need that they deem they don't, they take the risk and they have the option. Now in your own province and in each jurisdiction, they can mandate the kind of protection that they want, but it appears as if the other provinces feel it's in the best interests of their industrial customers to allow that mechanism to work.

HON. W. PARASIUK: Is it not true that right now we have something like at least a 15 year, 25 year supply of natural gas in Canada to supply our needs?

MR. C. FREW: I know we have ourselves about a 25-year supply behind our requirements. We have been serving the Canadian market, so I think you could infer from that that there is enough gas around today, if it's contracted for, to supply that. We have long-term contracts with our producers that guarantee us the delivery of that. It doesn't necessarily mean it's guaranteed to any particular customer at this point.

HON. W. PARASIUK: So that if there is a 25 year supply of natural gas in Canada, then I can have a bit of comfort as the Minister of Energy that these large industrial users that have contracted for six months will indeed get natural gas nine months from now or 14 months from now?

MR. C. FREW: It's all a matter of price, that's correct.

HON. W. PARASIUK: And their price right now is substantially less than the residential families.

I'd like to ask you a question regarding the point you raised about the motive fuel tax. We used to have a sales tax, and I believe Saskatchewan has a sales tax. How do you levy the cost, or how did you levy the cost of the Manitoba sales tax, and how do you levy the cost of the Saskatchewan sales tax? Is it seen as a system cost that is paid by all the consumers of natural gas across Canada, or is it a special charge that you levy against Saskatchewan users or, previously, Manitoba users?

MR. C. FREW: Those are just treated as system costs.

HON. W. PARASIUK: Right. So when we had a tax that existed before, levied by a province, that was treated as a system cost and paid for by the entire system in Canada; but when there was a motive fuel tax legally passed by this Legislature, within our constitutional right, you determined that should only be applied against Manitoba users?

MR. R. YOUNG: If I might respond to that, that tax under the net-back pricing system, and bear in mind, you have to be pragmatic about these things, we have our producers moving into the area of deregulation and they've been looking at a sales tax of some $2 million or $3 million, and the first thing they see coming out of deregulation is a tax with a different name that moves from $3 million to $11 million, so they're going to bear the extra $8 million. That doesn't make them the happiest folks in the world. Bear in mind; we act as agents for our producers.

Under the net-back pricing arrangement, when we strike an arrangement, a tentative arrangement, with any distributor, we take it back to our 650 producers, who have 2,500 contracts with us, and we require, under Alberta legislation, under the net-back pricing arrangement, their approval.

So I want to make it clear that when, you know, you say TransCanada or, more appropriately, Western Gas Marketing says this or says that, we are reflecting the view of the producers who, in fact, with the Alberta Government, own the gas.

So the motive fuel tax, I mean it wasn't just something that someone dreamed up to complain about. The agreement that we have now, if the Province of Manitoba removed that motive fuel tax, the entire benefit of that 20 cents would flow through to your consumers. That's a clause in the existing agreement.

HON. W. PARASIUK: Earlier on, when you were commenting on the motive fuel tax, you indicated that this would be analogous to a tax on the movement of grain, I believe you said. I'm not sure if you're aware that there is in fact a diesel fuel tax levied by Saskatchewan, which is pretty significant. There is a diesel fuel tax on locomotive fuel levied by Manitoba that has not lead to CPR or CNR establishing special rates for farmers in Manitoba or Saskatchewan for the movement of grain that those locomotives in fact move.

MR. R. YOUNG: Well, I would suggest that the impact on the producer, on the net back system, is entirely different and of a far greater concern then the tax you've just alluded to. I think you're mixing apples and oranges. I think it would be more like a transit tax where someone in Alberta, every time a rail car came through and I went out and shot a little bit of grease on the wheel of a rail car and said, well, this is passing through our province, so we're going to be picking up something for that.

HON. W. PARASIUK: Mr. Young, earlier, I think it was you or Mr. Frew talked about the Mini-gasco contract and you indicated that'll flow in the future. Won't that flow on November 1, 1987?

MR. C. FREW: That's the first potential date that it could.

HON. W. PARASIUK: That's right. Is it a 10-year contract?

MR. C. FREW: It's a 15-year contract.

HON. W. PARASIUK: A 15-year contract.

What is the price in the first year?

MR. C. FREW: I'm not sure exactly what the price is. I know we checked the price that would have occurred in that contract versus what was being paid by the consumers in Canada in the Manitoba district, and in fact it was higher on an annualized basis.

HON. W. PARASIUK: I would like you to be very clear on your answer in that respect because I've had meetings with Mr. Orr in this respect. I raised this matter with him. He was going to get back to me with the particular price which he did not do.

We have had an independent analysis done by a number of companies with respect to what that contract price is, and I think it would be useful if you went back and checked your numbers and possibly got back to me on that, because our analysis indicates that the price is significantly lower than the price that Manitobans are being charged right now and that is a very fundamental matter in this.

MR. C. FREW: I would suggest that your calculations are wrong. They may have been lower in one month or another month, but from November 1, 1986, I would suggest that the prices will be very comparable.

HON. W. PARASIUK: I thought, Mr. Frew, that you said the gas hasn't flowed, and it will flow on November 1, 1987?

Is it not based on an alternative price in the United States?

MR. C. FREW: I'm not totally familiar with the details, but there are alternative gas supplies in the United States and it may also track alternative energy sources. What I was suggesting was that if you calculated under the terms of the contract the prices in that and referenced them to the same delivery point, the price would be approximately the same.

In the future, we would expect that the price of gas under that contract would escalate much quicker than the price of gas in Canada, so we're fully prepared to offer that contract. If you wish to have your gas purchase costs related to the gas cost in the United States, we'd be more than happy to offer you that kind of a contract.

HON. W. PARASIUK: I'd be certainly interested in having you check into those numbers and getting back to me on them.

You started off by saying that the price was higher and now I think you're saying that it might be the same. I think we should check those prices out very carefully because I had received an earlier commitment that I would get a confirmation of what those prices were. I don't make them public. That is not the process by which the NEB has been operating in terms of confidentiality of contract prices.

But I have indicated that to the representatives that I would like them to send me those prices in confidence to determine whether in fact those prices are indeed lower as our analysis indicates.

MR. R. YOUNG: Mr. Orr has given that undertaking to the extent that we can jog the mind of the man who hired me and who Mr. Frew works for.

MR. C. FREW: If I may, Mr. Chairman.

There is no reason why we would want to sell gas more expensive to Canadian customers than we would any other customer. We would sell gas to whoever wishes to buy it under the same terms and conditions irrespective of where their end use is or who they are.

You're now talking about comparing the pricing arrangements in a contract that was negotiated in the middle of 1986 with one that would be negotiated today potentially. You've got to be very careful, you know, that things change. People agree to different things long term. I think at one point in time you'll find that one price is better and then you'll find that the other price is better under the other one. But there's no attempt to discriminate in where the gas is sold and by what prices.

HON. W. PARASIUK: Yes. I think we've received some differing answers this evening with respect to what the price of the Mini-gasco contract is. It started off being higher. It's ended up being the same or it might be a situation where one shouldn't compare what might have been negotiated in the middle of 1986 with what might have been negotiated a few months ago. Is that a signed contract?

MR. C. FREW: It's a signed contract. There's again in it conditions precedent that have to be satisfied

before gas flows and most of them relate to regulatory approvals in the United States.

HON. W. PARASIUK: In terms of the evidence that you have supplied us, you say that the price is higher than the price we are being charged in Manitoba?

MR. C. FREW: That's correct. We did some calculations to determine what the average annual price of gas would be.

HON. W. PARASIUK: Is this the calculation for the first year of the contract?

MR. C. FREW: This was just comparing the prices that would have occurred if the contract had been implemented in November of 1986.

HON. W. PARASIUK: No, no. I was asking what the price will be as of November 1, 1987 as compared to the price for Manitobans as of November 1, 1987.

MR. C. FREW: No, we haven't calculated that. We don't know what it is yet. It depends on factors into the future.

HON. W. PARASIUK: Mr. Young, are you saying that you've negotiated a price that you don't know? You've negotiated a contract with Mini-gasco in the United States and you don't know what the price is?

MR. R. YOUNG: No. If I might, something slipped through the cracks here.

Mr. Frew indicated to you that our calculation was on the one hand looking at what we know the Manitoba price is for 1986, on the other hand, doing a calculation as to if gas had flown under the Mini-gasco contract during 1986 how those prices would compare. We will get the figures back to you, comply with Mr. Orr's undertaking, but my understanding is that it's a formula price that can't be determined till we know what certain prices are in the United States at the time the gas was flowing.

HON. W. PARASIUK: I would like to remind you that when you went before the Public Utilities Board, you asked for a two-year regime for prices in Manitoba which meant that you were talking about a system whereby gas would be flowing at a certain price as of November 1, 1987, and that you have also signed a contract with Mini-gasco to flow gas as of November 1, 1987. It is tied to pricing in the United States. You should have an idea within about 5 or 10 cents what that pricing should be.

MR. C. FREW: I would like to suggest though, too, that the prices in the United States and the formula that we have would lead our prices to be higher next year than it would have been this last year. We will get the numbers for you.

HON. W. PARASIUK: But you are still saying the prices that one would charge would be higher in the United States as of November 1 than they would be here.

MR. C. FREW: I'm sure if we said that - on a one-year basis, when you calculate the cost over a whole year of taking gas under either contract, our analysis showed that the United States, at this particular contract, would not have resulted in lower prices.

HON. W. PARASIUK: Western Gas Marketing gave numbers as to what the prices were and what the contractual arrangements were to their producers because you had to get producer approval.

Are those the same numbers that we're talking about today?

MR. C. FREW: Those are the same numbers, yes.

HON. W. PARASIUK: Because that's the basis on which we've done our analysis, on the basis of the numbers that you provided the producers in Alberta.

MR. R. YOUNG: We only have one set of numbers.

HON. W. PARASIUK: I also want to ask whether in fact in that contract you streamed the gas; that is, that large industrial users in the United States charged a certain price and residential families will be charged the different price as is the way the contract was negotiated in Manitoba?

MR. C. FREW: I don't believe there is any streaming.

HON. W. PARASIUK: So there's no streaming in the United States; there's no distinction between industrial and core users in the United States with respect to this gas sold?

MR. C. FREW: As I mentioned before, it's not a distinction so much as of the end user as the type of service. We're prepared to offer the same agreement to Manitoba, if that's your desire.

HON. W. PARASIUK: I assume that you operate in Ontario. Is that correct? Do you sell gas in Ontario?

MR. C. FREW: Yes.

HON. W. PARASIUK: Have you found the system there sufficient? It doesn't pose major risks in terms of your being able to carry out business; it doesn't frighten you, the system that exists in Ontario?

MR. C. FREW: No.

HON. W. PARASIUK: Fine. Are you aware that the sections that you have said would create difficulties for you in Manitoba, namely, an appeal from the Public Utility Board to Cabinet, was drawn from the Ontario legislation?

MR. R. YOUNG: Well, it might well have been, but, to speak quite frankly, we haven't had the same - I'm trying to be quite Christian about this - difficulties in Ontario that I'm afraid that some of us at least perceive was experienced here. The other point is, to my knowledge, we're not going to be facing a negotiation with a Crown corporation in Ontario.

HON. W. PARASIUK: What we have is a situation where Ontario has for a number of years had an appeal to the Cabinet, Mr. Young.

MR. R. YOUNG: Don't misunderstand me. It's not necessarily the appeal to the Cabinet alone that gives me some heartburn. What gives me some heartburn is, first of all, dealing and negotiating with a Crown corporation, and then, having struck a deal with that Crown corporation, having a subsequent appeal to the Cabinet.

HON. W. PARASIUK: Well, your heartburn is all on the basis of anticipation.

And you also say that this is in fact a piece of some type of retroactivity by bringing this about. Is that correct?

MR. R. YOUNG: Well, as I undestand your legislation, I'd really like to have explained that I'm in error, but what I understand the legislation in fact to effectively do is that after this legislation is passed, within 28 days, anyone who was involved in the PUB hearing that we just went through is given this new right of appeal to the government.

HON. W. PARASIUK: Just to clarify - you're against any type of retroactive type of legislation. Is that correct?

MR. R. YOUNG: I'm sorry?

HON. W. PARASIUK: Are you against, then, the retroactivity aspect of this legislation?

MR. R. YOUNG: I'm against that aspect of it.

HON. W. PARASIUK: So you're against retroactivity in legislation?

MR. R. YOUNG: As a regulatory lawyer, it doesn't make me all that comfortable, but I understand there are certain appropriate applications of retroactive legislation. I just don't happen to think in the context of what has happened here in the last year that it's appropriate that this particular section be put in that gives that right of appeal from the very decision that we spent three weeks or four weeks down here before the PUB.

HON. W. PARASIUK: Mr. Young, are you aware that in Alberta they had a system whereby they had removal permits that were available to producers and that prior to our bringing in our legisation, Alberta brought in legislation which has given the Alberta Government the power to retroactively impose conditions on removal permits that had been in existence for one, two or three years?

MR. R. YOUNG: I'm aware of that.

HON. W. PARASIUK: Is that appropriate use of retroactive legislation?

MR. R. YOUNG: Well, I haven't seen them do that yet, and I might suggest that there is a fundamental difference between the legislation you pass here and the legislation that the Alberta Government passes. The one thing we cannot forget is the resource we're talking about - the natural gas - is owned in part by the Alberta Government and in part by the producers, and I suppose if the Alberta Government takes steps making it necessary to produce their resource, I would think that is probably appropriate.

HON. W. PARASIUK: And if we take steps in Manitoba to ensure that we have fair pricing, which is not excessive, which is not discriminatory, that we take that from a public interest point of view, would you find that to be appropriate?

MR. R. YOUNG: I don't know where this debate is getting us.

HON. W. PARASIUK: Going a bit further, I'd like to ask a question of Mr. Frew.

You said that the price that was negotiated after deregulation was the preregulation price with discounts offered to particular users. Wasn't there any change in the market when deregulation was brought about? Wasn't there any market force at play?

MR. C. FREW: The general terms of the pricing provisions in the contracts were that the base price was reduced by 20 cents a gigajoules for all gas delivered. Again, with the exception of the Manitoba situation because of the motive fuel tax which was 20 cents tacked on again, there was recognition that market responsive pricing at that point meant to ensure that it was competitively priced with alternative fuels. Manitoba has got very, very high alternative fuel costs. The price of natural gas is much lower than the equivalent price of electricity and there isn't hardly any fuel gas to be competitive with, so in terms of those kinds of market forces, in fact the price should have gone up. What market forces you may be talking about are supply forces, not really market forces, that you would be referring to supply responsive pricing.

HON. W. PARASIUK: The Federal Government, Mr. Frew, has indicated that they don't see any type of distinction between gas to gas competition in terms of the market price of gas, and gas to alternative fuel competition which is the position that you are putting forward as being the market mechanism for the determination of price. Where did you get that definition that market price is determined by gas versus alternative fuels?

MR. C. FREW: Well, certainly the impression that our company had in all of the build-up to the process, they had discussions with the consumers, the producing provinces were in the summit meetings, in behind, putting their information in. That was quite clearly as we understand it the thrust of the direction of deregulation. Now, it has turned up that there's much more attempt to get gas to gas competition than was anticipated and that's one of the problems. People are still prepared to accept that.

HON. W. PARASIUK: You have indicated your legal positions with respect to the contract and you've done that in answer to questions by my colleagues in the Opposition.

I would like to inform you that we do, in fact, have our legal considerations and we seek legal opinions

from across the country with respect to those contracts, and we intend to proceed on the basis of the, I think, excellent legal advice we've received from different parties, and obviously there is a difference of legal opinions between your legal opinion and the legal opinions that we have arrived at, but it is certainly not our intention to abrogate the contracts, but to live with them within the spirit of the accord.

MR. CHAIRMAN: Are there any further questions? Mr. Enns.

MR. H. ENNS: Coming back to the American contract that we've been talking about - Mini-gasco - we have, in the Province of Manitoba - in fact this Minister, with whom you've been engaged in discussion, has negotiated a 12-year contract with Northern States Power, a sale of a sizeable block of hydro energy. It has a high component formula based on alternative American coal which is the alternative form of generated power in there.

Is that somewhat analagous to - you say that your contract has formulas in it and those conditions will vary from year to year. You are not being difficult with us when you say to us that you have to look at it in any given 12-month period or 6-month period as to what precisely the price will be. Is that a reasonable comparison? We don't know. We take the Minister's word for what we're going to start getting for our power in 1993 that we are going to start sending down to Minneapolis.

It has a big formula factor in it with respect to, in that case, capital costs of a thermal plant that they didn't have to build because of it. They based it on the last plant they just built, plus about an 80-percent factor related to American coal prices then prevailing at the time of that contract.

I take it that your pricing formula has other alternative or supply-type forces at work?

MR. C. FREW: Yes, the general direction of the contracting is that you determine the marketplace that's being served and their alternatives, and of course you try to maximize your return, as I am sure you are with your electrical rates. You then determine what alternative sources or alternative supplies they have, and try and peg your price so that it attracts the competition so that you are always competitive. That's the intent of these things is to continue to remain competitive.

It sounds like it's a very analagous situation to tracking of costs in another area - yes - our gas sales contracts. I'm not sure explicitly what the Mini-gasco one attracks, but I know it attracts other gas in that area because if that market is served by alternative suppliers of gas, we have to match that price to be competitive in that market. Otherwise, you don't sell it.

MR. H. ENNS: One final question, gentlemen. I think it's an extremely important question. I want to be absolutely clear that the committee is understanding you correctly.

You are indicating to this committee that a same or similar deal that has been referred to as the American contract could have been offered to us in Manitoba?

MR. C. FREW: That's correct. We have offered the same contract that would start in effect, though, after the end of the pricing agreement in our existing contract, which is November 1, 1988. We're prepared to replace it with the other one at that point in time.

MR. H. ENNS: So from November '88, you negotiated a new pricing contract. If a new Crown corporation or Inter-City Gas prevailed, you are saying to this committee that the same type of a contract that has been alluded to in our legislative debates about this as being so attractive to our American customers was made and could be made available to Manitoba customers?

MR. C. FREW: I'd like to add one point. That's correct, and I think one of the difficulties, though, one of the things that Manitoba would have to be very careful of is their load factor considerations. That contract would offer good - well, if you have a low-load factor, that contract would be high prices. And Manitoba has a low-load factor. Mini-gasco has the ability to take this gas at a high-load factor and therefore optimize their costs.

If Manitoba was to do that, they would have to take it at approximately a 50 percent load factor which they have now. That is going to substantially increase the unit cost of the actual delivered gas.

MR. R. YOUNG: If I might, I'd point out one other thing; that with the legislation we are now facing, we would be somewhat concerned that we wouldn't face the scenario that I outlined before, and because of your low-load factor, even though the PUB was persuaded and understood, that for whatever reason, in due course, the Lieutenant-Governor-in-Council said no.

MR. H. ENNS: Thank you, gentlemen.

MR. CHAIRMAN: Are there any further questions? Mr. Parasiuk.

HON. W. PARASIUK: Yes, I just have one final one with respect to the load factor.

I believe the load factor for Mini-gasco was something in the order of 60 percent load factor. Is that correct?

MR. C. FREW: I'm not sure what it is. I'll take it that it is - sure. I'd be surprised if it's expected to be that low.

HON. W. PARASIUK: I believe that Manitoba's is in the order of 50 percent, so we're talking about possibly a 10, 20 percent difference.

MR. R. YOUNG: But I believe your summer-load factor is significantly lower than that. I believe your summer-load factor is about 30 percent.

HON. W. PARASIUK: We'll annualize those. They have been done through the analysis. Just to confirm one final thing - you said that you made the offer to ICG that you would in fact provide that?

MR. C. FREW: Yes. I wasn't involved in the direct negotiations. I know that the offer was made, and that's

all I can say, but they're certainly prepared to make it again.

MR. CHAIRMAN: Are there any further questions? There being no further questions, thank you.

MR. R. YOUNG: If I might, Mr. Chairman, thank you for hearing us through this evening. The road to deregulation has been a lot rockier than we all thought it was going to be, but I think progress is being made.

Thank you.

MR. CHAIRMAN: Thank you.

The next presentaton is the Manitoba Federation of Labour. I believe Mr. Wilf Hudson will be making the presentation.

Mr. Hudson.

MR. W. HUDSON: Mr. Chairman and Ministers.

Mr. Russell was not able to be here tonight, and so, in the interest of time, I'm not going to present a brief. I'm just going to make a couple of comments.

First of all, I would like to say that the Manitoba Federation of Labour has approximately 80,000 members affiliated to the Manitoba Federation of Labour and that the employees of Inter-City Gas are members of the Energy and Chemical Workers Union, also affiliated to the Manitoba Federation of Labour.

I would just like to say on behalf of the Manitoba Federation of Labour that we do endorse the actions of the government in taking over the gas distribution for the City of Winnipeg. We also are sure that the gas consumers of Manitoba will reap the benefits of your initiative.

Thank you.

MR. CHAIRMAN: Are there any questions for Mr. Hudson?

Thank you for your brief presentation.

BILL NO. 58 - AN ACT RESPECTING THE ACCOUNTABILITY OF CROWN CORPORATIONS AND TO AMEND OTHER ACTS IN CONSEQUENCE THEREOF

MR. CHAIRMAN: Proceeding then to the bills before us, we have one bill for which there were no public presentations. It's Bill No. 58, An Act Respecting the Accountability of Crown Corporations and to Amend Other Acts in Consequence Thereof.

It's a fairly lengthy bill. What is the intention of the committee - page by page, bill by bill?

Mr. Doer.

HON. G. DOER: Mr. Chairman, there are some amendments that I passed on to my critic opposite - if I could have those distributed.

MR. CHAIRMAN: What is the intention of the committee; I repeat once again? Amendments and then bill as a whole? -(Interjection)- Okay, we will deal then with the amendments and the the bill as a whole, subject to any amendments.

First amendment - Mr. Dolin.

MR. M. DOLIN: I'd just like to check with the critic. Have you seen - do you approve the amendments? Do you want to move the amendments as a whole or go over them one at a time.- (Interjection)- One at a time then.

MR. CHAIRMAN: I believe the normal procedure would be to introduce each individual amendment and we would deal with the bill as a whole afterwards. It would be easier if we dealt with the amendments separately.

Mr. Dolin.

MR. M. DOLIN: I move

THAT Bill 58 be amended by adding thereto immediatey after subsection 24(1)the following subsection:

Refunding and repayment of loans.

24(1.1) Notwithstanding subsection (1), where approval has been given for the borrowing of money by an Act of the Legislature, no further Act of the Legislature is required for

(a) the repayment, refunding or renewal of the whole or any part of any loan raised or securities issued by the Corporation under the authority of that Act; or

(b) reimbursing the consolidated fund for moneys advanced by the Minister of Finance to the Corporation by way of loan under the authority of that Act; or

(c) the payment of the whole or any part of any loan or any liability or of any bonds, debentures or other securities or indebtedness whose payment is guaranteed or assumed by the Corporation under the authority of that Act.

(French version)

IL EST PROPOSÉ que le project de loi 58 soit modifié par l'insertion, après le paragraphe 24(1), de ce qui suit:

Remboursement des emprunts.

24(1.1) Malgré le paragraphe (1), lorsqu'une loi de la province permet l'emprunt de sommes aucune autre loi de la Législature n'est nécessaire pour que soit effectué:

a) le remboursement ou le renouvellement de tout ou partie d'un prêt que la Corporation a obtenu ou des valeurs mobilières qu'elle a émises en vertu de cette loi;

b) le remboursement au Trésor des sommes que le ministre des Finances a avancé a la Corporation par voie de prêt en vertu de cette loi;

c) le paiement de tout ou partie d'un prêt ou d'une dette ou d'obligations, de débentures ou d'autres valeurs mobilières ou dettes dont le paiement est garanti ou assumé par la Corporation en vertu de cette loi.

MR. CHAIRMAN: The English and French version as printed - is there any discussion on that amendment? Pass.

The next amendment - Mr. Dolin.

MR. M. DOLIN: I move
THAT subsection 24(5) of bill 58 be amended by striking out the words "this section" in the 2nd and 3rd lines thereof and substituting therefor the words and figures "subsection (1)".

(French version)

IL EST PROPOSÉ que le paragraphe 24(5) du project de loi 58 soit modifié par la suppression des mots "présent article" et leur remplacement par "paragraphe (1)".

MR. CHAIRMAN: Is there any discussion on this amendment? Pass.
Mr. Dolin.

MR. M DOLIN: I move
THAT subsection 24(8) of Bill 58 be struck out and the following subsection be substituted therefor:

Mechanical reproduction of seal and signature.
24(8) The seal of the Corporation may be engraved, lithographed, printed or otherwise mechanically reproduced on any bonds, debentures or other securities to which it is to be affixed and any signature on any bonds, debentures or other securities, and on the coupons, if any, attached thereto, may be engraved, lithographed, printed or otherwise mechanically reproduced thereon.

(French version)

IL EST PROPOSÉ que le paragraphe 24(8) du projet de loi 58 soit supprimé et remplacé par ce qui suit:

Reproduction du sceau de la Corporation.
24(8) Le sceau de la Corporation peut être gravé, lithographié, imprimé ou reproduit autrement à l'aide d'un proicédé mécanique sur les valeurs mobiliéres, notamment les obligations et les débentures, sur lesquelles il doit être apposé. Toute signature sur ces valeurs mobiliéres et sur les coupons, s'il en est, qui y sont joints, peut être gravée, lithographiée, imprimée ou reproduite autrement à l'aide d'un procédé mécanique.

MR. CHAIRMAN: Pass.
Mr. Dolin.

MR. M. DOLIN: I move
THAT subsection 24(10) of Bill 58 be amended by adding ", with the approval of the Minister of Finance," immediately after the word "or" in the 4th line thereof.

(French version)

IL EST PROPOSÉ que le paragraphe 24(10) du projet de loi 58 soit modifié par l'insertion, aprés le mot "ou" à la quatriéme ligne, des mots "avec l'approbation du ministre des Finances".

MR. CHAIRMAN: Pass.
Mr. Dolin.

MR. M. DOLIN: I move
THAT Bill 58 be amended by adding thereto immeditely after subsection 25(1) thereof the following subsection:

Refunding and repayment of loans.
25(1.1) Notwithstanding subsection (1), where approval has been given for the borrowing of money by an Act of the Legislature, no futher Act of the Legislature is required for
(a) the repayment, refunding or renewal of the whole or any part of any loan raised or securities issued by the Corporation under the authority of that Act; or
(b) reimbursing the consolidated fund for moneys advanced by the Minister of Finance to the Corporation by way of loan under the authority of that Act; or
(c) the payment of the whole or any part of any loan or any liability or of any bonds, debentures or other securities or indebtedness whose payment is guaranteed or assumed by the Corporation under the authority of that Act.

(French version)

IL EST PROPOSÉ que le projet de loi 58 soit modifié par l'insertion, aprés le paragraphe 25(1), de ce qui suit:

Remboursement des emprunts.
25(1.1) Malgré le paragraphe (1), lorsqu'une loi de la province permet l'emprunt de sommes aucune autre loi de la Législature n'est nécessaire pour que soit effectué:
a) le remboursement ou le renouvellement de tout ou partie d'un prêt que la Corporation a obtenu ou des valeurs mobiliéres qu'elle a émises en vertu de cette loi;
b) le remboursement au Trésor des sommes que le ministre de Finances a avancé à la Corporation par voie de prêt en vertu de cette loi;
c) le paiement de tout ou partie d'un prêt ou d'une dette ou d'obligations, de débentures ou d'autres valeurs mobiliéres ou dettes dont le paiement est garanti ou assumé par la Corporation en vertu de cette loi.

MR. CHAIRMAN: Pass.
Mr. Dolin.

MR. M. DOLIN: I move
THAT Bill 58 be amended by adding immediately after section 39 therof the following section:

Fiscal year end of corporations.
39.1 Notwithstanding any other Act of the Legislature or the by-laws of any Crown corporation named in the Schedule, the fiscal year of a corporation to which Part 1 applies shall end on such day in each year as may be

fixed by the Lieutenant Governor in Council and where the Lieutenant Governor in Council does so, the Act of the Legislature or the by-laws, as the case may be, shall be deemed to be amended to give effect to the order of the Lieutenant Governor in Council.

(French version)

IL EST PROPOSÉ QUE le projet de loi 58 soit modifié par l'insertion, après l'article 39, de ce qui suit:

Fin de l'exercice des corporations.

39.1 Malgré toute autre loi de la Législature ou les réglements administratifs des corporations de la Couronne mentionnées à l'annexe, l'exercice des orporations visées par la partie I se termine annuellement le jour que le lieutenant-gouverneur en conseil peut fixer par décret, auquel cas la loi de la Législature ou les réglements administratifs, selon le cas, sont réputés être modifiés en conséquence.

MR. CHAIRMAN: Mr. Derkach on the amendment.

MR. L. DERKACH: This is a section that I have some concern with because of the fact that now Crown corporations are going to come before the committees and the timing of the annual reports is going to be done by the Lieutenant-Governor-in-Council. My concern here is that we may have another situation like we had with the Manfor situation where in fact the annual report was withheld for some 15 months and was withheld until after an election.

I would like to have perhaps an explanation of what the intent here was, if the Minister wouldn't mind doing that for me.

HON. G. DOER: Actually, it's the intent of the legislation and the Crowns that are covered by this act is to have more timely information before the Legislature.

For example, in the case of the telephone system, we have a situation where the year-ends are in such a way that the annual report being discussed before the legislative committee is a year old, even greater than a year old; and if we can move the annual dates, for example, to December 31 for one year only, for a nine-month period, and get those in line, we can start dealing in the usual spring Sessions of the Legislature with the issues and numbers that are much more current that we have in some of the Crowns in past.

I note that in the Spivak's Task Force, too, they also outlined the fact that the Legislature is dealing with reports in a very untimely basis, and they conclude, I think accurately so, "This is completely unsatisfactory and should be remedied."

We haven't got all the operational considerations dealt with in terms of some of the Crowns in terms of moving some of the annual year-ends. Some of them are covered by Order-in-Council now - for example, the Manitoba Public Insurance Corporation; others are covered in specific sections of the Legislature. It is our intent to have more timely information brought before the Legislature. At the same time we're going to be consulting with the CEO's and the chief financial officers so that we don't, by decree, deal with something that is operationally not in the best interest of Manitobans.

MR. L. DERKACH: What assurances can we have from the Minister that there will be no manipulation of the timing of annual reports and of information coming to the legislative committees?

And I simply ask the question because of the fact that we have seen this happen in the past where it was more convenient for government to withhold information during certain periods of time and then come forth with the information, for example, after an election.

What assurances do we have that this will not happen again?

HON. G. DOER: Some examples, quite frankly, that have been cited in this alleged manipulation in past, I think, are quite frankly factually correct. One of them, for example, the numbers were filed with the Public Utilities Board at the end of February, which were public documents that became an issue of information and when in fact the information was available to the public.

Also, the other factor is that there is going to be a consolidated statement from the holding company that would give not only the government but all members of the Legislature more timely information for the consolidated statements based on the December 31 year-end which is already in the bill. So that would also be another way of getting information.

A third way in which all of us, I hope, will get better information - I've said this just the other day when we were dealing with the bill - is that there's been too much information, I believe, shared between audit companies working directly with the management of Crown corporations and somewhat negotiating what is in those audit statements rather than having a situation where the shareholders, i.e., the public, gets greater information.

This is a situation that is not unique to Manitoba. We have a situation where the ethics groups of auditing companies are now looking at this situation in places such as the collapse of the banks in Alberta and the fact that that information - the terrible loans that were being made that had no chance of being collected, even though they were known by auditors, were not being reported by auditors to their shareholders. I think that that is an area which we plan on improving for the benefit for all members of this Legislature.

We are looking at other ways of getting more information from audit companies, and some of this has been developed with the Provincial Auditor, it's been developed with the Department of Finance and a holding company, where we'll have much greater information not only to ourselves as government, but to you as Opposition, and the public, because it hasn't been adequate.

MR. L. DERKACH: One of the concerns again that we have is the fact that because of the timing of annual reports and the fact that this leads into legislative review of Crown corporations, we wonder just what kind of accountability there will be to the legislative committees. We have seen in the last couple of weeks where, as Opposition members, we have not been able to gain adequate information through the legislative committee

review because Ministers have blocked staff from coming forth and answering questions which have been posed.

I had discussions with this Minister, and he indicates that it is up to the Minister in charge to determine who will answer questions during the review process.

HON. G. DOER: I want to be perfectly honest on this. The bill provides that the board will report to the Minister and the Minister will report to this Legislature. Certainly this amendment doesn't affect that at all. The Minister will report to the Legislature, will present the report before the standing committee, will sit in this chair and answer the questions of the Opposition in terms of that annual report, and will decide who is the most appropriate person to answer questions on behalf of the Crown corporation they are accountable for.

I certainly don't want to Americanize the British parliamentary system in terms of ministerial accountability to this legislative committee. I found, notwithstanding the partisan shots across the bow in the last number of days with the committee hearing, that the problem in my mind wasn't - we got into a huge debate about who was going to answer and then we spent less time getting answers to questions that were being posed. The questions that were being posed weren't being answered. The debate became who was going to answer them.

That, to me, is a ministerial prerogative and clearly, under the bill, is stated as such. That's why I made this amendment.

MR. CHAIRMAN: I would just point out to members of the committee, both members who have spoken on this particular amendment, that this may be an interesting matter to discuss at some point in time, but it doesn't relate to the amendment. Can we direct our comments to the amendment?

MR. L. DERKACH: I was going to say, with all due respect, we could sit here for a long time and argue this. I would simply indicate that we will oppose this section of the bill.

MR. CHAIRMAN: All those in favor, please indicate by saying aye; all those opposed to the amendment, please indicate by saying nay. In my opinion, the ayes have it.

That is the last amendment, I believe.

The bill as a whole, as amended—pass.

MR. H. ENNS: One amendment that should have been put in there is that there's no reference to the super Minister.

BILL NO. 65 - THE SURFACE RIGHTS ACT

MR. CHAIRMAN: The next bill is Bill No. 65, The Surface Rights Act. Shall we deal with this in the same manner as we have with the previous bills - no less effectively?

Mr. Dolin, I believe you may have some amendments for us again?

MR. M. DOLIN: I'm wondering if the critic has seen them; if he has any problem with them as printed. If not, I would move the amendments as printed and the French.

MR. CHAIRMAN: All of them?

MR. M. DOLIN: Yes.

I move

THAT subsection 6(13) of Bill 65 be struck out and the following subsection be substituted therefor:

Appointment of secretary and employees.
6(13) The secretary of the board and such other permanent officers and employees as may be necessary for carrying on the business of the board, shall be appointed as provided in The Civil Service Act.

(French version)

IL EST PROPOSÉ que le paragraphe 6(13) du project de loi 65 soit supprimé et remplacé par ce qui suit:

Nomination d'un secrétaire et d'employés
6(13) Le secrétaire de la Commission ainsi que les autres cadres et employés permanents dont elle a besoin pour l'exercice de ses activités sont nommés conformément aux dispositions de la Loi sur la fonction publique.

THAT clause 26(l)h) of Bill 65 be struck out and the following clause be substituted therefor:

(h) any other relevant matter that may be peculiar to each case, including
(i) the cumulative effect, if any, of surface rights previously acquired by the operator or by other operators under a lease, agreement or right of entry existing at the time the surface rights were acquired with respect to the subject lands, and
(ii) the terms of a comparable lease agreement that a party may submit to the board for consideration.

(French version)

IL EST PROPOSÉ que l'alinéa 26(1)h) du project de loi 65 soit supprimé et remplacé par ce qui suit:

h) toute autre question pertinente et propre à chaque cas, y compris:
(i) l'effet cumulatif, s'il y a lieu, des droits de surface acquis antérieurement par l'exploitant ou par d'autres exploitants aux termes d'un bail, d'un accord ou d'un droit d'entrée existant au moment de l'acquisition des droits de surface concernant les biens-fonds assujettis,
(ii) les termes d'une convention de bail comparable qu'une partie peut soumettre à la Commission pour qu'elle l'examine.

THAT subsection 26(4) of Bill 65 be amended by deleting all the words that follow the word "reasonable" in the 15th line.

(French version)

IL EST PROPOSÉ que le paragraphe 26(4) du project de loi 65 soit amendé par la suppression de la derniére phrase.

THAT section 17 of Bill 65 be struck out and the following subsections be substituted therefor:

Operator to file agreement with board.
17(1) Every lease or agreement entered into after the coming into force of this Act between an operator and an owner or between an operator and the occupant, if any, with respect to any surface right shall be in writing and a copy of the lease or agreement shall be filed by the operator with the board within 30 days after the date of execution thereof.

Operator to file and deliver notice of assignment.
17(2) Within 30 days of an operator making an assignment of a lease or agreement described in subsection (1), written notice of the assignment shall be given by the operator to the board and to the owner or occupant, if any.

(French version)

IL EST PROPOSÉ que l'article 17 du project de loi 65 soit supprimé et remplacé par ce qui suit:

Dépôt de l'accord auprès de la Commission.
(17(1) Tout bail ou accord conclu aprés l'entrée en vigueur de la présente loi entre l'exploitant et le propriétaire ou entre l'exploitant et l'éventuel occupant à l'égard de droits de surface est fait par écrit. L'exploitant dépose une copie du bail ou de l'accord auprés de la Commission dans les 30 jours suivant la date de sa signature.

Avis de la cession
17(2) Au plus tard 30 jours aprés avoir cédé la bail ou l'accord visé au paragraphe (1), l'exploitant fait parvenir un avis écrit à cet effet à la Commission et au propriétaire ou à l'éventuel occupant.

THAT section 19 of Bill 65 be amended so that the reference to section 17 is deleted and a reference to the subsection 17(1) is substituted therefor.

(French version)

IL EST PROPOSÉ que l'article 19 du project de loi 65 soit amendé de façon que le renvoi à l'article 17 soit remplacé par un renvoi au paragraphe 17(1).

MR. CHAIRMAN: On the amendment, which combines all the different motions on these two sheets, as printed in both languages - Mr. Findlay.

MR. G. FINDLAY: On the amendment under 26(1)h), item (ii) there, the terms of "a comparable lease agreement that a party may submit to the board for consideration," does that restrict it to one comparable lease that one party can submit or can both parties submit several comparable leases? Does there need to be a restriction?

HON. J. BUCKLASCHUK: I'm advised that single includes the plural in terms of agreement. When we say "a party" . . .

MR. G. FINDLAY: It would mean "parties."

HON. J. BUCKLASCHUK: "Parties." I suppose we could ask Legislative . . .

A MEMBER: In all statutes, the single includes the plural.

MR. CHAIRMAN: No one said we had to be grammatically correct. Okay, any further discussion?

MR. H. ENNS: The amendments passed, as printed.

A MEMBER: No - "amendment."

MR. CHAIRMAN: The amendment. In this case single includes the plural, right. Okay, pass. Bill, as amended, as a whole—pass.

BILL NO. 68 - AN ACT TO GOVERN THE SUPPLY OF NATURAL GAS IN MANITOBA AND TO AMEND THE PUBLIC UTILITIES BOARD ACT

MR. CHAIRMAN: Bill No. 68, An Act to Govern the Supply of Natural Gas in Manitoba and to amend The Public Utilities Board Act. What is the intention on this particular bill? -(Interjection)- Same procedure. Okay, the amendments as printed in English and French have been moved. It will be one motion, I guess.

MOTIONS:

THAT Bill 68 be amended by striking out the definition "Corporation" in section 1 and substituting the following:

"Corporation" means the Manitoba Natural Gas Corporation established by section 2; ("Corporation")

(French version)

IL EST PROPOSÉ de modifier l'article 1 du projet de loi 68 par le remplacement de la définition de "Corporation" par le suivant:

"Corporation" La Corporation manitobaine du gaz naturel constituée aux termes de l'article 2. ("Corporation")

THAT Bill 68 be amended by striking out the headings immediately preceding subsection 2(1) thereof and substituting the following headings:

THE MANITOBA NATURAL GAS CORPORATION ORGANIZATION AND POWERS

(French version)

IL EST PROPOSÉ de modifier le projet de loi 68 par le remplacement des titre et intitulé placés avant l'intertitre du paragraphe 2(1) par les suivants:

CORPORATION MANITOBAINE DU GAZ NATUREL ORGANISATION ET ATTRIBUTIONS

THAT subsection 2(1) of Bill 68 be amended by striking out the words "The Manitoba Consumers Gas Corporation" and substituting therefor "the Manitoba Natural Gas Corporation".

(French version)

IL EST PROPOSÉ de remplacer, dans le paragraphe 2(1), "Corporation des consommateurs manitobains de gaz" par "Corporation manitobaine du gaz naturel".

THAT the English version of section 7 be amended by deleting the word "admitted" in the 9th line thereof and substituting therefor the word "omitted".

(French version)

IL EST PROPOSÉ de remplacer, dans la version anglaise de l'article 7 du projet de loi 68, "admitted" par "omitted".

THAT Bill 68 be amended by adding thereto immediately after subsection 14(1) the following subsection:

Refunding and repayment of loans.
14(1.1) Notwithstanding subsection (1), where approval has been given for the borrowing of money by an Act of the Legislature no further Act of the Legislature is required for

(a) the repayment, refunding or renewal of the whole or any part of any loan raised or securities issued by the Corporation under the authority of that Act; or
(b) reimbursing the consolidated fund for moneys advanced by the Minister of Finance; or
(c) the payment of the whole or any part of any loan or any liability or of any bonds, debentures or other securities or indebtedness whose payment is guaranteed or assumed by the Corporation under the authority of that Act.

French version)

IL EST PROPOSÉ que le projet de loi 68 soit modifié par l'insertion, aprés le paragraphe 14(1), de ce qui suit:

Remboursement des emprunts.
14(1.1) Malgré le paragraphe (1), lorsqu'une loi de la province permet l'emprunt de sommes aucune autre loi de la Législature n'est nécessaire pour quo soit effectué:

(a) le remboursement ou le renouvellement de tout ou partie d'un prêt que la Corporation a obtenu ou des valeurs mobiliéres qu'elle a émises en vertu de cette loi;
(b) le remboursement au Trésor des sommes que le ministre des Finances a avancé à la Corporation;
(c) le paiement de tout ou partie d'un prêt ou d'une dette ou d'obligations, de débentures ou d'autres valeurs mobiliéres ou dettes dont le paiement est garanti ou assumé par la Corporation en vertu de cette loi.

THAT subsection 14(6) of Bill 68 be struck out and the following subsection be substituted therefor:

Mechanical reproduction of seal and signature.
14(6) The seal of the Corporation may be engraved, lithographed, printed or otherwise mechanically reproduced on any bonds, debentures or other securities to which it is to be affixed and any signature on any bonds, debentures or other securities, and on the coupons, if any, attached thereto, may be engraved, lithographed, printed or otherwise mechanically reproduced thereon.

(French version)

Il EST PROPOSÉ que le paragraphe 14(6) du projet de loi 68 soit supprimé et remplacé par ce qui suit:

Reproduction de sceau de la Corporation.
14(6) Le sceau de la Corporation peut être gravé, lithographié, imprimé ou reproduit autrement à l'aide d'un procédé mécanique sur les valeurs mobiliéres, notamment les obligations et les débentures, sur lesquelles il doit être apposé. Toute signature sur ces valeurs mobiliéres et sur les coupons, s'il en est, qui y sont joints peut être gravée, lithographiée, imprimée ou reproduite autrement à l'aide d'un procédé mécanique.

THAT subsection 14(8) of Bill 68 be amended by adding ", with the approval of the Minister of Finance," immediately after the word "or" in the 4th line thereof.

(French version)

IL EST PROPOSÉ que le paragraphe 14(8) du projet de loi 68 soit modifié par l'insertion, aprés le mot "ou" à la quatriéme ligne, des mots ",avec l'approbation du ministre des Finances,".

THAT subsection 14(11) of Bill 68 be amended by striking out the words "this section" in the third line thereof and substituting therefor the word and figures "subsection (1)".

(French version)

IL EST PROPOSÉ que le paragraphe 14(11) du projet de loi 68 soit modifié par la suppression des mots "présent article" et leur remplacement par "paragraphe (1)".

THAT clause 29(2)(b) be amended by adding the words "on behalf of the purchasing agent so designated" immediately after the word "gas" in the 2nd line thereof.

(French version)

IL EST PROPOSÉ d'insérer à l'alinéa 29(2)(b) du projet de loi 68, aprés "dans la province", ",pour le compte de l'acheteur nommé,".

THAT section 118 of The Public Utilities Board Act as set out in section 32 of the Bill be amended by deleting the last line thereof and substituting the following:

"with effect from the date on which the order is stated to be effective".

(French version)

IL EST PROPOSÉ de remplacer le dernier membre de phrase de l'article 118 de la Loi sur la Régie des services publilcs, édicté par l'article 32 du projet de loi 68, par "à compter de la date de prise d'effet prévue à l'ordonnance."

MR. CHAIRMAN: Is there any discussion on the proposed amendments?

Mr. Parasiuk.

HON. W. PARASIUK: Yes, the amendments are a combination. We are changing the name to the Manitoba Natural Gas Corporation so as to avoid any type of conflict with Consumers Gas Corporation in Ontario.

There is a typo that is corrected on the second page. Page 3 has the same financial provisions as was amended for The Crown Corporations Act that we just passed. Page 4, there's a typo there - ", with the approval of the Minister of Finance,". Page 5 is a typo - "subsection" versus "section." On page 6 is "on behalf of the purchasing agent so designated." That's after the word "gas." The last amendment is that this would be in effect on the date in which the order is stated to be effected.

MR. CHAIRMAN: The motion is to approve the amendments, as printed, both English and French—pass.

The bill as a whole, as amended - Mr. Enns.

MR. H. ENNS: Mr. Chairman, before we pass the bill, I want to just comment very briefly what's missing from the bill and reiterate some of the concerns that I had at Second Reading about the bill.

The bill deals extensively, as you would expect it to do, with all the necessary powers, acquisitions, descriptions of what this is all about, but nowhere in the bill, Mr. Chairman, not even in the preamble - there is no preamble to the bill.

The bill begins with definitions and the very first definition defines the word "acquisition," and that is my difficulty with this bill. I see no declaration of principle in this bill that I was looking for in this bill, that indeed I was moved to support in principle.

This bill doesn't make any commitment at all to treating the distribution of natural gas in what I call the true public utility manner that would justify in my mind, although not in the minds of my colleagues, the action that is being contemplated by this bill. I regret that even that little tokenism could not have been inserted in the bill.

We're asking Manitobans and in this particular case, as so many of my colleagues have made abundantly clear on Second Reading, many Manitobans will be asked to guarantee, which is a portion of the bill, upwards to $200 million that may well be involved. It may well be considerably higher if after some of the testimony we heard tonight, we find ourselves having to buy ourselves out of an expensive contract, a 15-year contract or a contract that runs to 1994.

We have not been given, Mr. Chairman, the specifics about what it is we are acquiring in terms of dollars and cents. We have been given assurance that some time before December 15, long after this Legislative Assembly has concluded its work, we finally will be informed as to what we are committing ourselves to.

I find that objectionable as a legislator and I find it objectionable, Mr. Chairman, that I don't sense and I don't read in this bill the kind of motives that I think could be justifiable in terms of the action contemplated by this government. I regret that's not in the bill.

The bill appears to be a mechanical description of how to take over an existing private corporation in the Province of Manitoba, providing this service principally in our urban centres - no commitment even in principle to attempt to bring about in actual fact, by statute, some of the more lofty ideals referred to when the subject matter was introduced in the House by the First Minister; no suggestion that with the province now owning the two major energy suppliers - natural gas and hydro - that there is some commitment to an integrated system that would at least reach out to treat all Manitobans fairly, in some cases with the most appropriate energy source.

That's not, in my judgment, the way you rationalize the acquiring, the acquisition, of a private business that has for many years served the province reasonably well; it's paid its taxes. There has to, in my judgment, be a greater purpose to what the Minister is contemplating, what is being contemplated under this bill; and I say it with some regret, Mr. Minister, I don't see it in this bill.

Thank you, Mr. Chairman.

HON. W. PARASIUK: I don't want to prolong the discussion. I merely want to point out to the Member for Lakeside that the Premier in his statement indicated the major objectives of the integrated natural gas policy, this legislation being only a part of it, and that commitment was made as a major policy statement by the Premier, as were commitments made by the government in which the Member for Lakeside served. There were certain commitments or positions taken not as legislation but rather as policy statements. I

think if he goes back through Hansard, he'd find that there were a number of instances when that was done. As a matter of policy, there might have been some legislation that came with the policy, but certainly those policy statements were made.

With respect to the question of extension, we have indicated that there will be a study done. There will be public input. Those will be through the public process. One could not even contemplate pursuing that, as the Member for Lakeside himself has said, unless one had public ownership of the utility.

So I don't think there is a major disagreement in principle; nor do I believe that there is a major disagreement with respect to intent between the government and the Member for Lakeside. There may be a difference in degree with respect to extension. Certainly, this provides a vehicle for that major question to be addressed, I think, in the appropriate spot, in the public forum, because it is a major set of policy decisions.

MR. CHAIRMAN: Any further discussion?

Seeing no further discussion, the bill, as amended - pass?

A MEMBER: Yeas and Nays.

MR. CHAIRMAN: I'll ask for Yeas and Nays on this.

All those in favour of the bill, as amended, please indicate by saying aye; all those opposed, please indicate by saying nay.

In my opinion, the ayes have it.

MR. CHAIRMAN: Bill No. 68 is passed.

BILL NO. 73 - AN ACT TO CONTINUE BRANDON UNIVERSITY FOUNDATION

MR. J. DOWNEY: Mr. Chairman, on Bill No. 73, I have some amendments to propose.

MR. CHAIRMAN: Yes. Can we first get the same confirmation of procedures as we have with the other bills. (Agreed)

Okay, please proceed, Mr. Downey.

MR. J. DOWNEY: I move, seconded by the Member for Charleswood, that the amendments be added as printed and distributed. And French, yes.

MOTIONS:

THAT section 3 of the English version of Bill 73 be struck out and the following section substituted therefor;

Membership.

3 The foundation shall comprise the persons who are, from time to time, directors of the foundation.

(French version)

IL EST PROPOSÉ de remplacer la version anglaise de l'article 3 du projet de loi 73 par ce qui suit:

Membership.

3 The foundation shall comprise the persons who are, from time to time, directors of the foundation.

THAT subsection 7(1) of Bill 73 be amended by adding the words "of whom three shall be members of the Board of Governors of Brandon University" after the word "persons" at the end of the subsection.

(French version)

IL EST PROPOSÉ de modifier le paragraphe 7(1) du projet de loi 73 par l'insertion, aprês "membre", de "et dont trois sont membres du conseil des gouverneurs de l'Université de Brandon".

THAT subsection 7(2) of the English version of Bill 73 be amended by adding the words "or her" after the word "his" and before the word "place" in the 13th line therein.

(French version)

IL EST PROPOSÉ de modifier la version anglaise du paragraphe 7(2) du projet de loi 73 par l'insertion, aprês "his, de "or her".

MR. CHAIRMAN: The amendments have been moved, both the English and French versions, as printed—pass; the bill as a whole, as amended—pass.

That's the business before the committee.

Bills be reported.

Committee rise.

COMMITTEE ROSE AT: 2:25 a.m.