First Session - Thirty-Fifth Legislature

of the

Legislative Assembly of Manitoba

STANDING COMMITTEE

on

LAW AMENDMENTS

39 Elizabeth II

Chairman
Mr. Jack Reimer
Constituency of Niakwa

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MANITOBA LEGISLATIVE ASSEMBLY
Thirty-Fifth Legislature

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LEGISLATIVE ASSEMBLY OF MANITOBA

THE STANDING COMMITTEE ON LAW AMENDMENTS

Wednesday, January 16, 1991

TIME — 8 p.m.

LOCATION — Winnipeg, Manitoba

CHAIRMAN — Mr. Jack Reimer (Niakwa)

ATTENDANCE - 11 — QUORUM - 6

Members of the Committee present:

Hon. Messrs. Connery, Cummings

Ms. Cerilli, Messrs. Edwards, Helwer, Martindale, Reimer, Rose

* Substitutions:

Mr. Cheema (The Maples) for Mr. Carr (Crescentwood);

Mr. Praznik (Lac du Bonnet) for Mr. Stefanson (Kirkfield Park);

Mrs. McIntosh (Assiniboia) for Mrs. Vodrey (Fort Garry)

APPEARING:

Mrs. Sharon Carstairs, MLA for River Heights

WITNESSES:

Harold Syrett, Friends of Oak Hammock Marsh

Helen McCullough, Winnipeg Water Protection Group (Winnipeg)

Deanna Martz, Manitoba Naturalists Society

David Taylor, Concerned Citizens of Manitoba

Harry Mesman, Manitoba Federation of Labour

Ronald L. Carter, Private Citizen

Jack Dubois, Manitoba Eco-Network

Brian Pannell, Manitoba Environmentalists Inc.

Len Sawatsky, Private Citizen

Bryan Johnson, Private Citizen

Peter Miller, TREE

Harvey Williams, Canadian Parks and Wilderness Society

MATTERS UNDER DISCUSSION:

Bill 24, The Environment Amendment Act

* * *

Mr. Chairman: Will the Committee on Law Amendments please come to order. Bill 24, The Environment Amendment Act, is being considered today.

Committee Substitutions

Mr. Chairman: Before we proceed, we have resignations of Members for the standing committee. I wish to bring before you the resignations of Rosemary Vodrey, Eric Stefanson and Jim Carr.

Mr. Edward Helwer (Gimli): Mr. Chairman, I would like to move that the Member for Lac du Bonnet (Mr. Praznik) replace the Member for Kirkfield Park (Mr. Stefanson), and that the Member for Assiniboia (Mrs. McIntosh) replace the Member for Fort Garry (Mrs. Vodrey).

Mr. Chairman: Is that agreed? Agreed.

Mr. Paul Edwards (St. James): I move that the Member for The Maples (Mr. Cheema) replace the Member for Crescentwood (Mr. Carr). (Agreed)

Mr. Chairman: The Standing Committee on Law Amendments for this evening consists of Mr. Cheema, Ms. Cerilli, Honourable Minister Connery, Honourable Minister Cummings, Mr. Edwards, Mr. Helwer, Mr. Martindale, Jack Reimer as Chairman, Mr. Rose, Honourable Minister Praznik and Mrs. McIntosh.

It is the custom to hear the briefs before consideration of the Bill. What is the will of the committee?

Ms. Marianne Cerilli (Radisson): Before we begin hearing the presentations to the committee, I would like to ask the Minister a couple of questions considering the extraordinary circumstances that we are experiencing tonight with what is going on in the Middle East.

* (2005)

I think it is of an interest to all of us if we would make an agreement that we would only hear the

presentations of people here tonight and not prolong the committee hearing tonight beyond that, that we would hear the people tonight, try and limit the debate and carry on tomorrow night, since there already is a scheduled public meeting tomorrow night and go through clause by clause tomorrow night.

Hon. Glen Cummings (Minister of Environment): Mr. Chairman, I would concur that we should try and hear the briefs before us tonight. I presume that will consume a greater part of the evening, and we could do clause by clause tomorrow night. It is not, however, my choice or individual Members'; that has to be the concurrence of the committee.

Mrs. Sharon Carstairs (Leader of the Second Opposition): Mr. Chairman, I am not a Member of this committee, but I think all of us for the last two hours have been listening to a history that could be excessively damaging to the environment, so it is particularly appropriate that we are gathered here tonight to discuss an environment Bill.

I would ask for a moment of reflection for all Members and all individuals gathered in this room, because no matter what our feelings about this war, there is going to be the loss of life. Many of those who lose their lives are going to be innocent people on all sides. Each of us pray in our own way, but if we could take just a moment to express in our own way silently our feelings about tonight.

Mr. Chairman: Is there agreement? (Agreed)

(A moment of silence was observed)

Ms. Cerilli: Considering that the Minister has already agreed to limit the committee tonight to just hearing the presentations, I am wondering if, considering that we would like to know the Minister's plans for the Bill—we appreciate that we are having two nights of committee hearings—I would like to ask the Minister if he would also table any planned amendments tonight that he has for the Bill considering that there might also be further amendments based on the hearings. I wonder if the Minister could table any plans tonight for amendments that he has prepared.

Mr. Cummings: Mr. Chairman, normal process would be to hear the presentations and have the input of the public and their thoughts on a Bill that is before the Legislature.

I can indicate that we have worked rather diligently since this Bill was first presented to the Legislature. We now have in hand draft regulations that would go out for public discussion. While they cannot be part of this discussion in terms of tabling them in relationship to the Bill, I certainly intend to make them available to the Members of the committee and the public and provide that information additionally, but I would prefer to hear the presentations and the discussion before we get into the clause-by-clause discussion of amendments or changes to the Bill.

Mr. Chairman: Before we proceed then, can we agree on adjournment time this evening?

Mr. Cummings: I would ask the committee to not set a definite time for adjournment, but that we start to hear presentations. We can make a judgment as the evening proceeds and as we get closer to seeing what time is needed for presentations. We can make a decision at that point. I would urge the committee to take that approach.

* (2010)

Ms. Cerilli: I would just like to clarify as well, if there are individuals who are registered to present but are not here tonight, if they will be allowed to present tomorrow night.

Mr. Chairman: Is that the will of the committee?

Mr. Edwards: I certainly agree with that. I would prefer not to go way long into the evening as has been done at prior committee sittings. I think in fairness to the people who have come forward, we do have tomorrow night set aside. If there are people who can present tomorrow night, I do not think we should be in any rush necessarily to hear them all tonight at all cost.

Mr. Cummings: Well, Mr. Chairman, I do not know as we should prolong this debate, or we are necessarily going to shorten the time we have to hear presentations. I would encourage the committee and the people who wish to present this evening, for us to be able to hear as many as possible, and I would hope all of the presenters, so that when we get into clause-by-clause discussion there will be ample time for that, or we will find ourselves going to the small hours tomorrow night. I suggest that we start with the presenters as quickly as we can.

Mr. Chairman: I have a list of persons wishing to appear before this committee: Helen McCullough,

Winnipeg Water Protection Group; Deanna Martz, Manitoba Naturalists Society; Harold Syrett, Friends of the Oak Hammock Marsh; David Taylor, Concerned Citizens of Manitoba; Harry Mesman, Manitoba Federation of Labour; Ron Carter, Private Citizen; Jack Dubois, Manitoba Eco-Network; Harvey Williams, Canadian Parks and Wilderness Society; Len Sawatsky, Private Citizen; Bryan Johnson, Private Citizen; Peter Miller, Private Citizen; Brian Pannell, Manitoba Environmentalists Inc.; John Shearer, Private Citizen; Kemlin Nembard, University of Winnipeg SAFE; Cyril Keeper, Private Citizen; Ken Emberley, Private Citizen; Bill Hunter, Private Citizen; Jenny Hillard, The Consumers Association of Canada (Manitoba); Wayne Neily, Manitoba Environmental Council; Dennis Breed, Canadian Public Interest Organization.

I understand that there are out-of-town presenters here tonight. Is it the will of the committee to hear from these gentlemen first? Agreed. It has been agreed to hear Mr. Harold Syrett first.

Mr. Harold Syrett (Private Citizen): I will start on page 2. Mr. Chairman, ladies and gentlemen, the Friends of Oak Hammock Marsh feel that this is a definite forward step of considerable import for all Manitobans, this public input to Bill 24 and its regulation. We want to express our appreciation for this opportunity to express our concerns on this matter before you here today.

The Friends of Oak Hammock Marsh came into being immediately after the CEC hearing on the Ducks Unlimited application for an environmental licence to construct their office headquarters in Oak Hammock Marsh. Its executive members had made presentations at this hearing and subsequently united to pursue this issue at the R.M. of Rockwood by-law amendment hearings and the South Interlake Planning District hearing.

We have initiated legal proceedings to quash the by-law amendment and have appealed the issuing of an environmental licence to Ducks Unlimited Canada. We have been active in the consideration of Bill 24 and its regulation with other environmental groups under the umbrella of the Manitoba Eco-Network. Many of its members hold membership in various other environmental groups and have extensive experience with environmental matters.

The executive statement by Friends of Oak Hammock Marsh is just under the cover. The Friends of Oak Hammock Marsh are in full agreement with the position paper presented to the Minister of Environment (Mr. Cummings) by Brian Pannell on behalf of the Eco-Network and the participating groups.

* (2015)

The content of our document is based upon our familiarization with the Ducks Unlimited application for an environmental licence. Of the numerous similar situations that we encountered, we have related only five of them here to emphasize the validity of our recommendations.

It is our contention that The Environment Act and its regulations must be free of all political and vested interest influences to be meaningful. Federal and provincial Governments are notorious for the playing at politics with our environment. This document will substantiate this statement.

This document will show that the Minister of Natural Resources (Mr. Enns) improperly indicated Government approval of the project on the very day that the public notice of the CEC hearing appeared in the local paper along with his improper letter of approval. Urban Affairs concerns were ignored and improperly presented to the public at the CEC hearing. The Department of Environment concerns were never tabled at the CEC hearing for public consideration.

There is every likelihood that the CEC were briefed on what the outcome of the hearing should be, and the Bovey Report, an independent appraisal that was very critical of the DU EIA, was never submitted to the public for their consideration, nor was the CEC reconvened to consider the report.

The Friends of Oak Hammock Marsh contend that the Government's handling of the Ducks Unlimited Canada hearing indicates malfeasance and that the process was so fundamentally flawed that it rendered The Environment Act and its regulations a useless vehicle in the protection of our environment.

Our recommendations appear on page 26, and upon reviewing them, which I shall do, one cannot help but ascertain that with their inclusion in Bill 24 and its regulation that a more just and meaningful piece of legislation will appear.

Page 26, Recommendations, Bill 24:

The Friends of Oak Hammock Marsh recommend:

1. All members of the panel, including the chairperson, be persons who are unbiased and free of any potential conflict of interest relative to the proposal under review.
2. All members of the panel be free of political influence.
3. All members of the panel must have some special knowledge and experience relevant to the anticipated environmental effects of the development under review.
4. There shall be no delegation of assessment to another jurisdiction.
5. That there should be public consultation prior to amending the Act.
6. That The Environment Act be reviewed and amended in 1991.
7. That a proponent provide intervener funding and that these funds shall come under the jurisdiction of the panel.
8. That allocation of intervener funds shall be done by the panel as early in the process as possible.
9. The panel shall set its own terms of reference with public input.

* (2020)

Recommendations, The Environment Act Regulation:

1. That the Technical Advisory Committee (TAC) be abolished or report directly to the panel.
2. That the present CEC be abolished and replaced for each proposal by a panel as outlined above.

Thank you.

Ms. Cerilli: Mr. Syrett, it seems like you have a considerable amount of experience in working to protect the environment. From your experience, how has political involvement or influence hampered environment assessments in the past?

Mr. Syrett: The feeling of the group in presenting this paper, that this paper has documents in it that come from file 3127, that is the file in the Environment office, and these documents that are in here substantiate the fact substantively and contain examples of Government interference with the process.

As I stated in the recommendations, any panel considering an environmental issue must be free of political interference. That is one of the recommendations we have as far as TAC is concerned. It must be at arm's length.

I do not know if I have answered your question.

Ms. Cerilli: To clarify then, what would be the things you would recommend that would ensure that environment assessments become less likely to have political influence?

Mr. Syrett: They are contained in this list of nine points in our recommendation. I think this is adequate, because this will put the process at arm's length.

Ms. Cerilli: Do you think that the Ducks Unlimited proposal would have gone as far as it did without political influence?

Mr. Syrett: No. It would have never got that far.

Ms. Cerilli: Can you explain that a bit more, please?

Mr. Syrett: It is the contention of the Friends that the Department of Natural Resources is in place to protect the environment, and this proposal, when put forward, should have been immediately returned. There are a number of documents in existence, and I will quote some of them.

The South Interlake Planning District has a development plan. It is a book about yay thick. In this book, it says various things of what shall be done and what shall not be done. One of the policies in this manual is that land in Wildlife Management Areas, when taken out of Wildlife Management, shall return to the zoning of the area that it is in. Oak Hammock Marsh is in an A-80 zone. This A-80 is agriculture. Therefore, this land will be taken out of Wildlife Management as defined by The Wildlife Act, as defined in the South Interlake Planning District manual, its principles, and in the rural municipality of Rockwood's by-law.

* (2025)

It is also stated in the original working plan by the working group that set up the marsh in 1974. It is also stated in various other documents emanating from the Department of Natural Resources.

In this planning manual in the South Interlake Planning District, it contains a section that delineates a half-mile buffer zone around the marsh. It definitely states that no commercial or residential construction shall take place in this buffer zone.

Early in the history of the marsh, there was a company by the name of Zacarias Realty that attempted to build a commercial development on the east side of the marsh. At that time, Ducks Unlimited and the Department of Natural Resources went to bat and they had it quashed. That is what the buffer zone is all about now.

The unfortunate thing with this proposal is that this Government is set on ignoring the buffer zone, and they are trying to plunk in the middle of a marsh a concrete jungle and turn it into a commercial operation.

Mr. Morrison at the CEC hearing, the very last night—it is all contained in Volume X, it is in the public registry—there were two people sitting at that hearing other than Ducks Unlimited and the Department of Natural Resources. Mr. Morrison stood up and said: We have to get into the marsh to do business; we have to attract the American people who come up here; we do not get them now; in fact I know we do not get them because our office is in the wrong place; we used to get them on Pembina Highway when we were there, but we know we do not get them now; we have to be in the marsh so that we can advertise it in our publication, north, south, and let the Americans know what a wonderful thing this is so that when they come into Winnipeg they will come and see us; we know we are not getting them now.

They did consider three other places, but that was not the place to do business. There were concerns raised by the Planning Branch, municipal, metropolitan and urban, but these were never adequately put forward at the CEC hearing.

The Friends of Oak Hammock Marsh are rather concerned about this Government's action, about their misinterpretation of wildlife management. If constructing, if plunking, a corporate headquarters of a private company that lobbies this Government for funds and then takes those funds to build its headquarters in the marsh is protecting wildlife, that problem really bothers the Friends of Oak Hammock Marsh, that approach by this—did I answer your question?

Mr. Cummings: I have just one question. I am willing to understand that you may have made the statement without having thought entirely about the contents of what you were saying, but you at the opening of your presentation charged that the CEC may have been briefed.

Mr. Syrett: That is right, sir.

Mr. Cummings: Sir, I suggest you had better provide some definition of what you are referring to, because you are challenging a very credible organization, people who have acted independently and in good faith, and I would only ask that you consider the gravity of what you are saying.

Mr. Syrett: Could we turn to page 13, please, on my document, dated February 28, 1990, to Larry Stratchan from Norman Brandson, Director of Environment Management Services. The writing on this in pen at the bottom of the page I think you will find belongs to D. Peterson, who answered it.

* (2030)

The second paragraph on page 14 states: If my appraisal of the document is correct—he is talking about the Ducks Unlimited environment impact assessment—good enough for a decision in principle, but if that decision is yes then more work required before we have enough info to draft detailed licences - then is the CEC aware of what is required of them? In other words, is it not really the go or no-go decision that concerns them? If so, should they not be made aware so they will not take the tack that they do not have enough info to draft a licence?

The answer to that came on March 14, on page 15, and it says: No, I see no need to require further assessment work. I feel that the document is in fact complete and am prepared to say so. However, Ducks Unlimited are progressing along with the design details and will be providing me with more information. I see no need for more work before we can draft a licence. I do not see the hearing as merely a go or no-go decision. The only requests for more information that I am aware of is for alternatives that Ducks considered and for a more complete assessment of the "human carrying capacity" of the Marsh. I have requested and received further information requested by MEC on alternatives. As for an assessment of the carrying capacity of the Marsh I have not found a method of doing this. I am having a meeting with the TAC representative and Natural Resources wildlife staff and will be posing the question.

This is signed by D. Peterson whom this letter was directed to by Norman Brandson, and the writing at the bottom of page 13 is by Mr. Peterson. It is indicated, as I said in my summation, there is an indication that, in paragraph 2 on page 14, they were

briefed. For your information, I was asked to appear before the CEC on the writing of their new terms of reference. I did read this to the chairman of the CEC and the members present. I got a mixed response, but I also had some very, very red faces. One member said, "You understand that we talked among ourselves." I said, "Yes." Then he said, "But one would hope what we talk about would not be put on paper."

There is every indication here, Mr. Cummings; I am not just drawing this out. These are only five of a multitude of TAC mismanagement. I say, quite assuredly, and I think I am on firm ground that—and I had confirmation of this from the CEC. I will not tell you who, but I said, "You know, it is too bad this had to be a political decision," and this man on the CEC said, "Yes, it was a political decision." I cannot give you names. Did I answer your question?

Mr. Cummings: No. I disagree with Mr. Syrett's interpretration, but obviously that is something that we can debate at another time. I think it is unfortunate that we would quote someone whose name we cannot use as stating that there was a political decision.

Mr. Syrett: This document, sir, came from public record. It is in a public registry, and it is open to the public. It has been around for a long time, and a number of people have seen it. We cannot say definitively what I would like to say, but we can say it appears that.

Mr. Chairman: Thank you, Mr. Syrett.

Mrs. Helen McCullough, Winnipeg Water Protection Group. A brief has been circulated to everybody, so you may begin at any time.

Mrs. Helen McCullough (Winnipeg Water Protection Group (Winnipeg): Mr. Chairman, Members of the committee, fellow Manitobans, what is the most important issue facing Canada today? I wrote that question 10 days ago, but the answer provided by the Brundtland Report is as accurate today as it was then. The issue according to that esteemed report is survival and the need to change our present method of decision making. However, when asked what the most important issue facing Canada today was, in a recent Maclean's-Decima poll, the environment ranked in third place at 9 percent behind the economy at 21 percent and the GST at 23 percent.

This shows that only 9 percent of those surveyed in that poll presently understand the difference between cause and effect. If we ignore cause and only react to end results such as a slumping economy and increased taxation, we will never get out of the mess into which our environmental decisions have led us.

The failure to understand that our economy and our future prosperity are founded on preserving and protecting our environment has taken us along a downward path of environmental exploitation towards the point at which our environment will no longer sustain development. To continue along that path will not only destroy our economy, it will destroy humanity as a species on this planet. If you consider that to be an overstatement, I invite you to read the 1987 Brundtland Report, Our Common Future, by the World Commission on Environment and Development.

A very good consumers guide for the public to that report is now available in paperback for $9.99, excluding GST. There is no business having GST on anything that informs the public about the environment, including CBC programs which inform the public about the environment. The title of this report is Preserving our World, by Warner Troyer, and it should be required reading for all politicians beginning with those in Revenue Canada.

The report with which there is no serious scientific dissent clearly spells out the dangers on continuing on our present course and warns that the time frame in which to secure survival is short. In other words, if we continue to neglect the cause of our present woe, we can expect much worse effects in the future: global warming, violent climatic change, famine, drought, floodings, massive numbers of environmental refugees and pandemic illness spread through contaminated drinking water.

The Brundtland Report is much more than a warning. It offers the solution, a path to prosperity and continued growth through sustainable development. Good environmental practices are also good economic policy. Unfortunately, while playing lip service to this concept, there is every indication that certain elements within Governments do not understand it and will therefore continue along the downward path waving the banner of sustainable development—their version.

If we follow this course we can expect to worry about much more than the GST and the economy. We will all quite literally be struggling to survive. What can we do? Again, the report has the answer.

In the words of Madam Gro Harlem Brundtland, the chair, survival is everyone's business. The first step is to become an informed participant. Unfortunately, the public had very little opportunity to become informed participants in the present issue of Bill 24 because of the speed in which it was introduced.

* (2040)

Bill 24 provides for joint environmental assessments with federal and other provincial jurisdictions to replace the present separate federal and provincial processes. Public hearings in Manitoba supported the principle of joint assessments, provided that the joint process combined the strongest elements of the federal and provincial processes. It is the unanimous concern of the Manitoba environmental community that Bill 24 in its present form will represent the weakest, not the strongest, aspects of environmental assessment.

A strong environmental assessment process is essential and fundamental to ensure sustainable development as defined by the Brundtland Report. Sustainable development is the key to future economic prosperity, not only for Manitoba but for all of Canada. We can no longer afford to repeat the expensive environmental mistakes of the past. The cost to the taxpayer is too high, not only in dollars but in the growing threat to our health and to the health of our children posed by pollution in our air, our water and our food.

In terms of water pollution alone, it will cost billions of dollars to clean up major waterways including the Fraser, the St. Lawrence and the Great Lakes, which are so polluted that they endanger the health of the eight million Canadians who depend on them as a source of drinking water.

If a strong process of environmental assessment had been in place in the past, taxpayers might now be spared the monumental cost of cleanup. A strong environmental assessment process is now essential to ensure that better decisions are made in the future.

The Winnipeg Water Protection Group in conjunction with other environmental groups has already made detailed presentations to the Government of Manitoba on amendments to Bill 24. These are outlined in a copy of a December 14, 1990, letter to the Minister of Environment (Mr. Cummings), and the committee has been provided with a copy of that letter. As stated in those presentations, Bill 24 should be amended as follows:

1. Clause 13.1(b) should be deleted. There should be no delegation of the environmental assessment process to another jurisdiction. If a project has any potential to affect Manitoba, then the standards of this province must be applied rather than the standards of another province or municipality.

2. Section 3(c) of the regulations is unacceptable, as it does not provide that the panel will be free of political influence. The panel must be independent. There is absolutely no point in conducting an environmental assessment if the panel is not free from political control. Panel members must be impartial and free of any bias or conflict of interest. In addition, panel members should have special knowledge and experience relevant to the anticipated environmental effects of the project under review. Otherwise the scientific presentations of independent experts will not be fully understood by the panelists, forcing them to rely on the technical expertise provided by the Technical Advisory Committee, TAC. Since the TAC is a political body, this will effectively compromise the independence of the panel if they do not have their own expertise.

It is not appropriate to include the TAC in the regulations, Section 3(b). If the TAC is included as the Government's source of independent expertise to the panel, then the public should have access to all TAC notes, minutes, et cetera, to ensure that the independence of the panel is not compromised in any way.

Panel members should be appointed jointly by the Ministers of the relevant jurisdictions. The panel should be able to set its own terms of reference after public consultation. Section 3(c) should be changed since it allows the Minister to set the terms of reference. This could result in the panel being forced to take a much too narrow view of the project.

For example, if the project were to discharge toxic effluent into a body of water, the panel should be allowed to review all possible aspects of that discharge, including modifications to its source. I might point out there that from Winnipeg Water Protection's point of view, we did have the opportunity to see this working of terms of reference, which the public may not completely understand, but when we were replying to the terms of reference for the proposed mine on Shoal Lake, we were very

grateful that we had wide terms of reference there, and so too were the City of Winnipeg and the Government of Manitoba, both of whom provided wide additions to the original scoping mechanism, so it is extremely important that the terms of reference are not set narrowly.

I am not suggesting this would have happened, but in the most ludicrous issue, if this does not happen, you could have an assessment of Shoal Lake where it was not appropriate to discuss that it was a source of Winnipeg's drinking water. That is the sort of thing that could happen. I am taking the most extreme example. That is the second point, the independence of the panel.

The third point, No. 3—and I only have three—the environmental assessment process must allow for full public participation. This is fundamental and can only be guaranteed by an independent panel. To ensure public participation, the following amendments should be made to Bill 24:

3(a) Provisions for mandatory intervener funding should be made in the Bill. The independent panel should administer this funding and ensure that it is made as far in advance of the environmental assessment as possible.

3(b) Criteria for intervener funding should be provided in the Bill or at the very least in the regulations. At present no criteria are set out in the regulations.

3(c)Notice of joint assessment should be given to the public.

3(d)There must be public hearings in Manitoba.

3(e)There should be a public review of the entire Manitoba Environmental Act in 1991. Provision should be included in the amendments to require that there will be public consultation before any changes to the Act. This would prevent any repetition of the fast-track process that has been taken with respect to the present amendment which was introduced in mid-December 1990 and is to receive its final vote on January 21, five days from now.

In summary, in order to ensure that the environmental assessment process is as stringent as possible, it is essential that the panel be independent of political control and that it be able to provide intervener funding to ensure full public participation in the environmental assessment process. Without these vital checks and balances, the only remaining safeguard against unsustainable development will be the federal environmental assessment process.

However, the federal process is presently being altered in Bill C-78. If it is significantly weakened and is combined with an extremely weak provincial process, then there is a very real danger that the environmental assessment process could degenerate into nothing more than an expensive facade designed to delude the public into believing that the environment is being protected. This must not happen.

Bill 24 will govern every Manitoba development with potential to affect the environment. It will govern developments in the Manitoba section of the Shoal Lake watershed, and it has the potential to influence indirectly the Ontario assessment of the proposed gold mine on Shoal Lake, the source of Winnipeg's drinking water.

Manitoba is the first province to adopt the joint process of environmental assessment. In doing so, it has the opportunity to lead the way in sustainable development, which is appropriate since Winnipeg is the centre of the International Institute for Sustainable Development. However, if Manitoba adopts a weak process of environmental assessment, it will set a poor example for other provinces to follow.

Winnipeg residents should be very aware that at present the only protection standing between us and an operational mine in our drinking water is an Ontario environmental assessment. That process must not be weakened.

I trust that the Manitoba Government will lead the way in setting a high standard for joint environmental assessments and will adopt these amendments to ensure that our concerns are fully addressed. Thank you.

Ms. Cerilli: Thank you, Helen, that was an excellent presentation.

You made the statement that TAC is a political body, and you have gone on to make what seems to be a good recommendation that any information it has should be available to presenters and interveners.

From your experience, what has been the involvement or use of TAC by people who are making presentations?

* (2050)

Mrs. McCullough: This is a question that really at the moment I am not qualified to answer, since I have not had direct experience of TAC. All I know is that TAC is a political body, and I know how it works.

There are others here who will be able to answer that question in much more detail, and I hope you will ask it again of them.

Mr. Cummings: One question, please. Mrs. McCullough, in your presentation you make a point that political bias, political control regarding panels—how do you define political bias as opposed to being separate from any bias?

Mrs. McCullough: It is possible, Mr. Cummings, to find people who are not in any political field. I would set myself as someone here. I have no political affiliations.

Governments can look for people like this who do not owe allegiance to any particular Party and who are not in a position to perhaps depend on that Party or even worse to be employed in their employ. These people should be sought out. They are available.

Mr. Cummings: Do you consider civil servants to be political?

Mrs. McCullough: I think civil servants are too close to Government. The pressures from Government—and I have seen them with civil servants. They do the best job they can, but in the end they say this is the decision for our political masters, and they should not be put into positions that make them not able to be as independent as they might wish to be.

Mrs. Linda McIntosh (Assiniboia): Mrs. McCullough, I wonder if you happen to have a copy of the first part of your presentation. All I have received in the handout is the recommendations.

Mrs. McCullough: That is correct. The first part of my presentation is—this is what it looks like at the moment. I can provide you with a copy of it and I will do so. I can have it for you for tomorrow if that would be all right.

Mrs. McIntosh: Thank you very much. I would appreciate that.

Mr. Chairman: Thank you, Mrs. McCullough.

Now I would like to call on Deanna Martz. We have a written presentation which has been circulated. You may begin at your convenience.

Ms. Deanna Martz (Manitoba Naturalists Society): Good evening, Mr. Chairman and Members of the committee.

I would like to clarify. My name is Deanna Martz and I am the chair of the Environmental Action Committee of the Manitoba Naturalists Society.

The Manitoba Naturalists Society is a volunteer organization of approximately 2,400 individual Manitobans dedicated to the awareness and appreciation of the natural environment and an understanding of our place in nature. We seek to provide an association and a voice for those interested in natural history and the outdoors and to co-operate with individuals and organizations with similar objectives. To further these objectives, we arrange educational programs and field trips to promote an understanding of the natural environment, we stimulate research and record data and material in natural history and allied subjects, and work for the preservation of our natural environment.

Specifically we have the Environmental Action Committee which monitors federal and provincial legislation, policies and actions which have an impact on the environment. Various Government departments and private corporations approach the Manitoba Naturalists Society about issues or activities that affect natural resources. For example, the Naturalists Society is often asked for its position on proposed projects, including our suggestions for mitigation of impacts. We have also worked with the Government to preserve Manitoba's natural habitats such as through our prairie preservation program.

The Manitoba Naturalists Society agrees with the concept of joint environmental assessments. If the legislation ensures an adequate environmental assessment, there is nothing to be gained by forcing proponents to go through the time and expense of two separate assessments. I would just like to emphasize there, when we use the word "adequate," in no way do we mean "minimal" environmental assessment. Our brief contains suggestions that we believe will strengthen The Environment Act and also protect Manitoba's environment.

We have three main recommendations to make concerning Bill 24. The first deals with Manitoba's participation in joint assessments. Next we will address the independence of the panel, and lastly, intervener funding.

While we agree in principle with the notion of a joint assessment, it must truly be a "joint" assessment with representation from all jurisdictions involved. Manitoba must not delegate the joint assessment to another jurisdiction. Another jurisdiction will not necessarily be accountable to Manitoba citizens, nor will it have an interest in protecting Manitoba's environment. Again our fear there is that Manitoba might simply become an interested observer at a panel that might be set up. We want to have people who are answerable to Manitoba citizens sitting on those panels.

As far as the independence of the panel is concerned, as you have heard already tonight, the panel must be independent. In our opinion, the panel will be independent if its members are unbiased and free of potential conflict of interest relative to the proposal; if the members are free of political influence; and if members have special knowledge and experience relevant to the anticipated environmental effects of the projects. Environmental assessments must start to consider a broader spectrum of environmental effects. This requires the appointment of panel members who in total have a broad background including social, philosophical and ethical strengths.

Further, an independent panel must be free to set its own terms of reference, and the Bill should be amended to give the panel that power. In particular, we would like the panel to be able to start to consider one issue which in the past we feel has not been able to be addressed, which was a consideration of whether or not the development is needed or not and what alternatives might be possible.

At this point, I would just like to leave my prepared text for a moment and say that I think what you are going to hear a lot about is that panels should be independent. I do not know, I have not heard anyone so far say—the reason I think and the MNS thinks that panels should be independent, or perhaps I really should admit this is more of a personal opinion—that what we have now is so much cynicism among the citizens of not only Manitoba but the whole country. One of the reasons people are so cynical is that we do not believe the politicians when they tell us that "we have the environment's best interest at heart."

Well, we do not believe that, because there are not always the channels we feel we need to have all the input that we want to have and to make sure that those issues—that would really convince us that you really did have our interests at heart or were at least giving them as equal a consideration as you are giving to other issues. We are not convinced that is happening. We feel, if there were an independent panel, there would be a greater likelihood that those issues would be addressed, and it might help to alleviate some of cynicism that people are feeling these days.

Going on, we are pleased to see that the proposed section 13.2 in the Bill provides for intervener funding. However, the panel, not the Minister, should be able to determine its criteria for awarding funding, and such funding must be mandatory and available at the outset. We are not saying that every group that walks up should have funding, but funding should certainly be available for all projects undergoing a joint assessment. As well, the funding must be available at the outset for the Manitoba Naturalists Society and for many other volunteer organizations, I would even say most volunteer organizations.

Funding at the outset is important, because the Naturalists Society and other groups do not have sufficient financial resources to take on the very large expenditures required to participate fully as an intervener. It is very difficult to hire witnesses and other professional assistance on the speculation that somewhere down the line we might receive funding at the end of hearings.

To give you a very practical example of this, the Manitoba Naturalists Society office is about, oh, I would say maybe one-sixth the size of this room, and there are usually two people working there. It is one big room; there are no separate offices; there is no quiet place to work. There are usually two people working there. There are four phones, I believe four desks with phones on them and numerous lines going to the office. They are often ringing all at the same time. There is no physical place to work in the office. Volunteer organizations need to have an office to work.

* (2100)

I was involved peripherally with the capital review in front of the Public Utilities Board this summer, and the documents alone filled up my dining room table. To really be involved and to really be involved to the extent that you can stand up and give a credible job of being intervener at these hearings, you need to have the physical backup. To be able to do that, you need space to work. In the case of the Naturalists

Society, if they do not move in the next little while, it would mean having to get an office. All those types of things are very expensive. Volunteer organizations just do not have that kind of money.

We can appreciate that you just cannot hand out money to anybody and hope they show up at the hearings. I am sure mechanisms can be worked out so there would be some control of the money that is given out. It is very important that volunteer organizations such as the MNS be involved in the process to ensure that joint assessments are thorough and as effective as they can possibly be. Only with a thorough examination of the project from all viewpoints can the results be relevant and acceptable.

Again, I think that would go some distance toward reducing some of the cynicism that people feel about the decisions that are currently being reached not only in Manitoba but in other provinces as well.

To conclude, we believe that Bill 24 should be amended to include our recommendations with respect to Manitoba's participation in joint assessments, the independence of the panel and mandatory intervener funding. Manitoba has taken the national lead in proposing a joint assessment process. Now is the time to take that leadership role a step further by incorporating our recommendations which we believe will strengthen The Environment Act and protect Manitoba's natural environment.

Mr. Cummings: I would like to ask a question regarding your concern about the relationship of another jurisdiction. We had an example in Manitoba not very long ago where the assessment that was required was primarily on Native lands and had federal funding. Primarily the responsibility fell, the vast majority, under the federal jurisdiction. Do you believe that under those circumstances that information gathered by that federal panel could be used for a Manitoba panel to make a decision?

Ms. Martz: It is kind of hard to answer a question like that without really—

Mr. Cummings: Sorry, I do not mean to put you on the spot any more than to ask, where a situation arises, to simply say without being specific that the majority of the responsibility lies with the federal authority and they are doing an assessment, do you believe that information gathered by that assessment could be used by a Manitoba panel to make a decision?

Ms. Martz: I really do not know what you are asking me.

Mr. Cummings: Perhaps I am not explaining myself well enough. What I am getting at is that that would be an example. If you look at the Bill the way it is structured, Section 13.1—and I appreciate that the joint process is seen by your organization to be a reasonable process—a number of people have taken umbrage at 13.1(b). Subsequent to that, it talks about "for the gathering of information," it does not talk about delegation of decision-making authority. I guess that is really what I am asking you, if the gathering of the information could be done in a situation like this by the federal authority.

Ms. Martz: So in effect then, the report of the federal panel would become evidence at a Manitoba hearing?

Mr. Cummings: The information gathered would be used for the Manitoba panel to make a decision. In other words, there would be two independent decisions, but the information gathered by the first panel could be used by the second panel.

Ms. Martz: I would say off the top of my head I do not see anything glaringly wrong with that. Certainly it would be better—I mean, these things do not just occur overnight: Oh, by the way, we had a federal assessment last week, do you want our results? It would be much better if Manitoba had some input then into the kinds of information that they were going to be gathering. Just because something is occurring on land under federal jurisdiction, does it mean that the effects will not be felt on lands under provincial jurisdiction?

Mr. Cummings: I repeat, I am not trying to ask a trick question. I am searching for the best way for these things to be done. I am only trying to envisage or to demonstrate how joint panels could operate, as you have just said a moment ago, or how, under what might be some rather unique circumstances, there could be a delegation of the information-gathering process. I wondered if you had any opinion on that, that is all.

Ms. Martz: I would say no violent objections to it. Again, people know that these things are happening, that they are coming down the pike, so to speak, and that if Manitoba is thinking that they will probably use that information, then again it would be advantageous if they had some input into the kinds of information that were collected. As far as taking that information and assessing it, I do not

think we would have any problems with that. It would be preferable if it was found that information was lacking, that that information be provided.

Ms. Cerilli: It seems to me that one of the most difficult things is collecting or doing research on the environment that is expensive, that is time consuming and difficult to do, and that is crucial to knowing how the environment is going to be impacted. It seems to me the easier part is having people listen to a panel, listen to presentations, much like we are doing right now. Who do you think should be doing that kind of research on the environment?

Ms. Martz: Are you asking me whether or not we should have access to the information of the proponents?

Ms. Cerilli: Sure, who should the proponents be that are—who should be doing the research that is actually going to be going out to the area where development is going to be done, and getting dirty, and having the money and expertise to do that? Who do you feel should be doing that?

Ms. Martz: Ideally, any of the parties that actually have an interest in that matter. Information is a funny thing. Depending on where you go looking is what you are going to find. Depending on what you find and how you use it is going to influence your results. Ideally, the thing would be to have all interested parties doing their own research. That would certainly go a long way to ensuring that all aspects of a project were considered.

Ms. Cerilli: How would you feel then about relying on the research of a proponent of a development to be used in determining if there are going to be adverse effects on the environment?

Ms. Martz: Well, of course that is basically what happens now, because environmental groups do not have money to do their own research. I guess that is where we look toward being able to tap into the expertise of other people. Right now a lot of what happens is that, for example, the Manitoba Naturalists Society, a lot of our members happen to be biologists or people with that kind of background. We also have some people with backgrounds in more of the technical matters such as chemistry, engineering, things like that. We try and tap into their expertise. These people are working full time—most of them hopefully are working full time—and they do not necessarily have time to launch a full-scale research project on our behalf, so we do try and tap into our members.

Intervener funding, especially up front, would certainly allow us to then hire people who can evaluate the information that is provided by the interveners. I think that would be the next best thing. The worst thing is having to rely only on your own members, not to denigrate the contributions they make, but getting ready for these hearings is getting to be more and more complicated, more and more sophisticated. It is a big thing to ask people to, on a volunteer basis, help you get ready for these hearings. That is sort of the least desirable option.

* (2110)

Next would be being able to hire experts so that we could fully evaluate the information that is brought forth by the proponents' consultants. Ideally, the thing would be, if there were enough lead time to projects and funding were available far enough ahead, that interveners could also actually do research on the ground as well as be able to evaluate research that is brought forth by others.

Ms. Cerilli: Has the Naturalists Society done that kind of research to intervene in an environment assessment?

Ms. Martz: Not to my knowledge, not original research. Again, we have a lot of members who have expertise and we often call on them for their help. I am not certain on that point, though. Not since I have been a bit more active in the Naturalists Society has there been that type of original research.

Mrs. Carstairs: I would like you to give me a definition, if you can, of what you mean by an independent panel member. Just to give you where I am coming from, the previous presenter implied that it could not be anyone who had any political affiliation which, of course, would be contrary to their Charter rights of freedom of association, so surely it is not whether they are a member of a political Party or whether their membership of that political Party would influence the position they took on a particular panel. Is that how you view the sense of an independent panel member?

Ms. Martz: Repeat that last sentence or so.

Mrs. Carstairs: Well, is it the fact that they are a member of a political Party or whether their membership in the political Party influences the position they would take as a panel member?

Ms. Martz: I think the thing that the Naturalists Society is getting to here is that at present the clean environment commissioners are appointed by the Government with—I think aside from one commissioner in particular—I do not mean to disparage them at all as far as their competence to do their job, but they do not really come bearing great credentials for evaluating the environment.

I think it is not so much that they—I lost my train of thought there. It is sort of the whole ball of wax that you get. When you take them all as a whole, you know, they happen to be appointed by the Government—except I think for the one member—they happen not to have any great credentials, experience or expertise. When you take it all together, it is not very encouraging. I guess the way that we summarize that and express it is to say they are not independent.

Mrs. Carstairs: Would you feel more comfortable if an appointee to a clean environment commission, or indeed any other body, was asked to appear before a legislative committee for an examination of his or her credentials before the approval was given for that person being a member?

Ms. Martz: Well, that is an interesting idea. Right off the top of my head, I think that shows great promise. I agree. I do not think they should have to be subjected to, you know, do you belong to a political Party and do you go out and vote, those types of things, but I think that would show great promise.

Ms. Cerilli: I want to get back to the kind of questions that I was asking. Has the Naturalists Society been an intervener in hearings on environment assessment?

Ms. Martz: To my knowledge, they have been certainly involved in presenting briefs.

I became involved with this committee just as they were finishing up being involved with environmental assessment for the Repap expansion at The Pas.

There is somebody sitting behind me who could answer that question a bit more authoritatively, if you want me to find out.

Ms. Cerilli: My assumption would be that they have. I am wondering where they would get their research.

I think that the public would look at a name like the Manitoba Naturalists Society and assume that they would have an interest in protecting the environment. When you look and see that they have 2,400 members, and you were saying that they would have biologists and people who could do that kind of research—but I am looking at the dire straits that you would be in financially, so I just wanted to see—where would you get the research then? How would you rely on getting that scientific information?

Ms. Martz: I think in the past what has happened is that whoever is in charge of the committee at the time, or whatever, will get a policy paper going. It will be distributed again to those members that we know who have either some expertise or some particular interest in a matter and ask them to review it and to give their comments.

I think we have been frustrated on more than one occasion, because we are often asked for our opinions, not only as interveners but we just mailed things in the mail that say hey, would you like to comment on this? We are often very frustrated because we might not have anyone in particular who has that particular knowledge.

Right now, what I am thinking of is the siting of the north-central line for Hydro, taking the power out to the north-central reserves. We were sent a letter—I am not clear if it was either directly by Hydro or by a consultant working for them—asking for our comments about where the line should go. Well, very often we are frustrated in providing those kind of comments because we can give them some general information.

I think in that case, you know we said well, please be particularly careful when you cross streams and try and stay away from lakeshores, but we could not say there is a very rare plant growing there or there is a very rare ecosystem over here or you should stay away from that particular area, because we do not have that specific knowledge and we do not have the resources to ask somebody to go out and carry out that type of field work basically.

At that time we actually, in the letter that we wrote and it was directly to Hydro—I mean I believe there is some movement afoot to try and co-ordinate a bit more so that the kinds of information that is gathered by researchers all across the province in all different fields can be a little bit more accessible, so that people can have access to that type of information when they need it, such as it is.

Ms. Cerilli: I have just one final question on this. Who has that kind of information, from your experience, and who do you think should have it?

Ms. Martz: Most obviously the people who live in local areas have that information. They do not

always, but a lot of them do, and there are certainly a lot of professionals in the city and the province and even other places in Canada that have—

Ms. Cerilli: I guess, I am trying to get an understanding of who are we relying on to do that kind of research. Where do they work? Who are they employed by?

Ms. Martz: University professors. Sometimes the proponent's consultants go out and actually do original research. A lot of times they just rely on other people's knowledge as well.

Mr. Chairman: Thank you very much for your presentation.

* (2120)

Mr. Chairman: I will now call on Mr. David Taylor as a Concerned Citizen of Manitoba.

Mr. David Taylor (Concerned Citizens of Manitoba): I would ask that Members of the Committee also have Bill 24 at hand, the Regulation to Establish a Cooperative Environmental Assessment Process in hand, as well as the document McJannet Rich, which is contained in Helen McCullough's submission. All these documents are available.

Thank you very much. Mr. Chairman, Members of the panel, my name is David Taylor. I am with Concerned Citizens of Manitoba. Concerned Citizens of Manitoba is a group of approximately 100 members that has been actively involved in environmental affairs in this province for over 10 years. We welcome the opportunity to present our position regarding Bill 24, The Environment Amendment Act.

At the outset, we want to state our extreme concern regarding the circumstances under which this Bill was introduced to the House. Considering its importance as the first provincial legislation in Canada permitting joint federal-provincial environmental assessments, the Bill's consideration was not well served by introducing it with such a short time period remaining until the end of the legislative Session. The rapid passage of the Bill, as envisaged by the Environment Minister (Mr. Cummings), allowed for no effective public consultation on this matter of critical importance to environment groups and to the environment of Manitoba.

Our group is pleased to have been able to participate in the somewhat hastily called meetings with the Premier (Mr. Filmon) and the Environment Minister to discuss the Bill further, but we believe that future environmental legislation requires more thorough public deliberation and debate.

We are satisfied that the amendments to the Bill, which were agreed to by the Environment Minister during our meetings with him—please refer to the December 14th letter from Brian Pannell to Glen Cummings—offer an improvement over the original wording of Bill 24 and that they are a step in the right direction towards effective joint environmental assessment processes.

It is absolutely essential that the Government live up to the agreement on these amendments. We share the concern of many of our colleagues that Minister Cummings appears to be backing away from his commitments, especially upon review of the draft regulation of the Bill, which is now being circulated. The agreement made with the Minister represents our bottom line with regard to Bill 24. It is important however that this committee recognize that even with these amendments Bill 24 still does not go far enough in ensuring that the most comprehensive and stringent environmental assessment of proposed developments will be carried out.

The rationale for joint assessments is to avoid unnecessary duplication of efforts, to streamline the process of determining environmental impacts and thereby to save money. Under the current system two assessments are frequently required, a provincial and a federal one. Though two assessments can be costly and time-consuming business, there are times when the environment can clearly benefit from this process. A well-known example is the Al-Pac review in Alberta. The initial provincial assessment gave the green light to the pulp mill project, however subsequent review under the—and in this case—more stringent, federal EARP guidelines revealed that the impacts on the river systems were in fact poorly understood. They turned out to be far greater than the provincial review had recognized, and more in-depth study was necessary before the project was to proceed.

In this case there is clearly no question that the environment was well served by the dual review process by virtue of the fact that more information was brought to bear on the question. Nothing is gained if a joint review fails to live up to the very minimum that is offered by a combination of provincial and federal reviews. Here it is worth

noting that even the most highly-touted EARP guidelines often fail in important ways to fully address the issues to which it applies. A very good example of that is the recent review of Atomic Energy of Canada's plans for the disposal of high-level radioactive waste.

Given their purported interest in sustainable development, most proponents of developments should be ready and willing to meet the toughest tests of environmental assessment that can be devised, and Governments, having this same sustainable development agenda, ought to be prepared to hold them to it. More importantly, the current state of our environment leads us to suggest that meaningful environmental assessment of any proposed project, which includes the option of no development at all and of examination of alternatives to a given proposal, is a survival imperative.

Having made these comments, we suggest that the amendments to the Act, as proposed by the coalition of environment group representatives who met with the Minister before Christmas, meet the needs of a thorough joint review process, and at that time, can refer to those in the McJannet Rich document. We would recommend that this entire package be adopted. Failing this and recognizing that the cause may have to be advanced incrementally, we support the package of agreed-to amendments as noted in paragraph 4 above. We have, however, some outstanding concerns which arise from our review of the regulation which pertains to Bill 24.

I would like you now to refer to the draft regulation and specifically 3(c)(ii). One of the committee Members does not have the draft.

Mrs. McIntosh: Mr. Chairman, I am also missing—It says "see enclosed copy of December 14 letter." I am missing that letter.

Mr. Cummings: Officials have a few copies, I think, of the draft regulations that were out for discussion, which is what you are referring to?

Mr. Taylor: Yes.

Mr. Cummings: I would like to circulate what copies we have to the Members.

Mr. Taylor: Thank you very much—these regulations which fall under Bill 24.

Referring to the draft regulation, 3(c)(ii), impartiality is one of the most fundamental features of any environmental assessment. For this reason we feel that application of the regulation, 3(c)(ii), under which panel members are required to be "impartial with respect to the proposal and are free of any bias or conflict of interest," should contain further stipulations to the effect that the panel be truly independent as they must be under the federal EARP guidelines. Under these guidelines public review panels should be "fully independent of government." To achieve this independence, the federal clause as stated above needs to be included in this section.

In addition, we believe that it is critical that panel members have specific expertise in the issue under review. These points must be included as they are part of the package to which the Minister has already agreed to in our meetings with him. Please refer to the December 14 letter.

Regarding the panel's independence, our group feels that the terms of reference need to be set by the panel itself. In this way the panel will be able to do a comprehensive review unrestrained by the influence of political motives. Under 3(c)(iii), "the minister shall issue or approve the terms of reference for the panel so appointed." We feel that this should read, "the appointed panel should set the terms of reference after consultation with the public, such that a wide range of environmental social and economic impacts can be adequately reviewed."

Section 3(a)(viii), "the provision of a participant assistance program for major developments" does not provide a clear enough statement of intent. The word "major" implies the possibility of an interpretation by the Minister involved. What indeed is a major development as opposed to a minor one? We feel that in order for there to be consistent and fair allocation of intervener funding, this regulation needs to be free of ambiguity.

In addition, we note that no mention is made of the time frame involved in the assistance program, nor of criteria for provision of funds. As members of a non-profit citizens' environment group, we can be seriously hindered by our financial situation. To ensure that all evidence is heard before an environmental review and that non-governmental environmental group interveners participate in reviews in a position of equity with proponents and Governments, we feel that intervener funding must be made available to participants prior to the commencement of a review, and that a clearly

defined set of criteria for awarding such funds be spelled out in the regulation.

* (2130)

Finally, with respect to the role of the Technical Advisory Committee as noted in the regulation 3(d), it seems likely that the TAC could in practice end up performing the role of a shadow review panel having a disproportional amount of influence over a given review. This situation could lead to political interference and serious compromise of the independence of a review. To rectify this situation, we suggest that any reviews, meetings, et cetera, undertaken by the TAC be fully open to the public at all times.

In addition, the expertise offered by the TAC should not be seen as a substitute for the independent expertise which would otherwise be engaged by the review panel itself or by the interveners to assist with technical interpretation.

In closing, we appreciate the opportunity to express our views on Bill 24. As we have stated, we believe that it can be strengthened considerably. Concerned Citizens of Manitoba wishes to continue our involvement in consultation on the environmental laws of Manitoba and to contribute what we can to sound environmental legislation. We therefore welcome the suggestion by Mr. Cummings that The Manitoba Environment Act will be opened up to public review during the calendar year 1991, and intend to participate fully in that review. Thank you very much.

Mr. Edwards: Thank you, Mr. Taylor, for your very concise and informative presentation.

Mr. Pannell's letter of December 14 indicates at page 2 at No. 1.(b)(v) that there must be a program of financial assistance for public participants in the assessment, and he suggests that be in the Act. As No. 1.(b) indicates, he is talking about amendments to Bill 24.

You indicated that you felt there had to be provision for a funding assistance program with the criteria set out in some detail and I presume also the expenses—you mentioned in a regulatory form.

Mr. Taylor: Not to mention prior to the review, as opposed to after.

Mr. Edwards: You indicated, as I heard it, that you wanted that in a regulatory form. Do you want it in the Act, or do you want it in a regulation?

Mr. Taylor: As long as it is law and we are able to appeal to the legal process, that is sufficient, yes.

Mr. Edwards: You understand the difference between a regulation and the Bill itself in terms of how it can be amended, I assume, the regulation being able to be amended by Order-in-Council pursuant to the regulatory section in the Act, in effect by executive authority, and the Bill having to be amended through the Legislature.

Mr. Taylor: Then indeed it would be preferred to be in the Act.

Mr. Edwards: That is in keeping with Mr. Pannell's suggestion.

Mr. Taylor: Yes, indeed.

Ms. Cerilli: Mr. Taylor, do you foresee problems with making the decision if there should be a joint assessment panel used or not? You seemed to be alluding to that in part of the brief.

What do you think the problems would be?

Mr. Taylor: In deferring it to another jurisdiction?

Ms. Cerilli: How do you think it should be decided if there should be a joint process used?

Mr. Taylor: Any development which has an impact upon Manitoba should be reviewed by the Province of Manitoba Environment Department.

Ms. Cerilli: Okay.

Mr. Edwards: I have one further question.

Mr. Taylor, I was at a press conference yesterday and you were there. There were some draft amendments handed out, which I think had been put together by the coalition.

Mr. Taylor: Yes.

Mr. Edwards: I do not have those right in front of me, although I recall that they—here, I do have them in front of me.

They suggest, with respect to the participant assistance program, that—here it is—the Minister may require a proponent of a development to assist. Then it says here: The panel may require a proponent to assist.

Is it envisaged that there must be a participant assistance program in any joint assessment process? Is that what is being suggested—

Mr. Taylor: It is essential, yes.

Mr. Edwards:—that there must be some participant assistance program. In other words, you are not

suggesting that there be an option when we are entering into a joint assessment process as to whether or not there be a participant assistance program. You are saying that there must be?

Mr. Taylor: Essential, yes.

Mr. Chairman: Thank you, Mr. Taylor.

I call Mr. Harry Mesman. His brief has been circulated. You may start at your convenience.

Mr. Harry Mesman (Manitoba Federation of Labour): Thank you, Mr. Chairperson and Members of the committee.

The Manitoba Federation of Labour represents some 86,000 workers, on behalf of whom we are very pleased to present our views on this important Bill, and we thank you for the opportunity to do that.

You have my name. My title actually is health and safety representative with the organization which, lacking the funds for another staff member, the responsibility for the environment was appended on to that. Unlike most times when your job is greatly expanded, in this case I did not resent that for personal reasons, and my concern about the issue and the knowledge of how really important it is to our members and to all workers in this province, in this country, on this planet.

In any event, our members, like most citizens today, are gravely concerned about the well-being of our environment, but unlike many citizens, our members are subject to a double dose of that pollution, once they receive it at work and then again when they get home. Organized labour has been fighting for a cleaner workplace environment for decades, and we are applying the lessons that we have learned there in the struggle for a cleaner planet.

Before dealing with the Bill proper, we would like to add our voice to those who have objected to the attempt to hurry this Bill through, and we have heard some of them already this evening. As much as we like to see the Government act expeditiously on environmental matters, we do not think that should ever result in foregoing meaningful public consultation, and that the subject matter itself is just too important to see any repeated attempts at rushing legislation like this through.

We support, however, the initiative that the Government has taken with this Bill. Although we have seen cases where dual process has benefitted the environment, this was inevitably due to the inadequacy of one or the other. Streamlining the mechanism of environmental assessment strikes us as eminently sensible as long as the resulting process is fair both in practice and perception, complete in the options provided and thorough in its evaluations. Unfortunately, Bill 24 in its present form does not meet up to these standards. It does not ensure fairness or completeness.

In order to correct these shortcomings, we would recommend that the Bill be amended as follows:

> Clause 13.1(b) should be deleted. Our understanding at present is that this deletion will be tabled by the Minister by way of amendment. Should this not be the case, we are here to express our serious opposition to that clause. We do not believe that Manitobans should and will, and we do not believe that Manitobans can, accept the approval of a major project affecting their province without the guaranteed ability to provide their own input.
>
> Any joint assessment should equal Manitoba's own process and in addition meet the following criteria, which you will recognize from the previous presenter, but we will go through them again, because you cannot say the right thing often enough:

* (2140)

1. Require notice of the joint assessment to be given to the public through advertisements and the filing of the development proposal in the public registry.
2. That there must be public hearings in Manitoba.
3. That members of the joint assessment panel are to be appointed jointly by Ministers from the relevant jurisdictions.
4. That panel members are to be impartial and free of any bias or conflict of interest and have experience and expertise in the area. This would cover the independence that previous presenters have called for.
5. That there must a program of financial assistance for public participants in the assessment.
6. That there must be an opportunity for the Minister or the director, as the case may be, to acquire further information after the report of the joint assessment panel, which

information would be used to assist the Minister or director in the decision as to whether or not to grant a licence.

These points are taken directly from the previously referred to December 14, 1990, letter written by Mr. Brian Pannell to the Honourable Glen Cummings on behalf of a number of organizations including our own. It is our understanding that in a series of meetings just prior to this date with representatives of some of these groups present, Mr. Cummings agreed that these items would be contained either in the Bill or a regulation pertaining thereto. If this is so, it is a commendable step toward effective assessment. If not, we sincerely have to question whether this Bill is intended to protect the environment from damaging development or the developers from those who seek to protect the environment.

That same letter also noted our understanding of the Minister's intent to review the entire Act in 1991 as well as to introduce further regulations. We look forward to participating in that exercise and helping to ensure the inclusion of the right to refuse to pollute and the protection for those who whistle-blow on employers who do pollute.

The amount of discretion left to the Minister in regard to the make-up of a joint assessment panel and in regard to the funding of intervener groups to appear before that panel is more individual power over this province's environmental management than we suspect that citizens would care to give to any individual politician. Inclusion in the Act of the amendments contained in the attached document provided to the Minister at the aforementioned meetings would remove the uncertainty of such exclusive power and ensure an Act that all Manitobans would see as truly safeguarding their environment.

I would like to read certainly not the entire attachment you have there, some of the recommended amendments to the Bill, but just very quickly go through the minimum requirements for joint assessments that are set out in there, which state that:

Notwithstanding any other provision of the Act, the Minister shall not enter into an agreement pursuant to Section 13.1 unless:

the agreement provides for the establishment of a panel to conduct the joint assessment process pursuant to Section 13.1;

the Minister may appoint or approve the appointment of the chairperson or a co-chairperson and one or more other members of the panel;

all members of the panel including the chairperson are persons who:

(a) are unbiased and free of any potential conflict of interest relative to the proposal under review;

(b) are free of any political influence; and

(c) have special knowledge and experience relevant to the anticipated environmental effects of the project under review.

The public will be given an opportunity to participate in:

setting the terms of reference for the panel;

setting the terms of reference for the collection and presentation of any information or evidence related to:

the environmental effects of the project, including the environmental effects of malfunctions or accidents that may occur in connection with the development and any cumulative environmental effects that may result from the development in combination with any other developments that have been, are being, or will be undertaken—synergistic effects if you like—the significance of those effects;

the comments concerning those effects received from the public in accordance with this Act and the regulations;

measures that are technically and economically feasible and that would mitigate any significant adverse environmental effect on the development;

the purpose of the development;

alternative means of carrying out the development and the alternative to the developments that are technically and economically feasible and the environmental effects of any of those alternatives;

the need for, and the requirements of, any follow-up program in respect of the project;

the short-term or long-term capacity for regeneration of renewable resources that

are likely to be significantly affected by the development; and

the need for the development and the need for technically and economically feasible alternatives to the development.

Public hearings for the purpose of gathering information or evidence by the panel will be something that the public will also be given an opportunity to participate in.

Just to jump a short list under the participant funding, which is the other key element of this Bill, the amendment suggested here, 13.4 it would be under the—if the amendments were to flow as this is proposed:

The panel may require a proponent of a development that is subject to an assessment under 13.1 to provide financial or other assistance to any person or group participating in the assessment process.

In deciding whether to award the funding to a person or group, the panel or Minister, as the case may be, shall consider whether:

(a) the person or group represents a clearly ascertainable interest that should be represented at the hearing;

(b) separate and adequate representation of the interest would assist the board and contribute to the hearing;

(c) if the person or group does not have sufficient financial resources to enable it to adequately represent the interest;

(d) the person or group has an established record of concern for and commitment to the interest.

We are missing an (f) there, or an (e), pardon me.

(f) the person or group has attempted to bring related interest of which it was aware into an umbrella group to represent the related interest at the hearing, and

the person or group has a clear proposal for its use of any funds which might be awarded.

We think those amendments take on the two main subjects of the Bill proper.

While not dealing with it directly here, we certainly hope to be consulted and expect to be consulted, and to be fair, to date we have been consulted at least as a member organization of the Manitoba Eco-Network on further development of the regulation that we referred to earlier. We know that much of what we seek may wind up being contained in such a regulation rather than the Act, and we see room for considerable improvement to what has been drafted to date. We hope to participate in that improvement.

Organized labour has not bought into the frequent assertions that the issue is jobs versus the environment. Workers and the environment will continue to suffer as long as this false choice is accepted.

We thank you for providing this occasion to put forth our viewpoint on this particular environmental issue.

Ms. Cerilli: Mr. Mesman, were you at the hearing where the regulation was discussed in the public meeting?

Mr. Mesman: No, I was not.

Ms. Cerilli: Okay, thank you very much.

Mr. Cummings: I wonder if you would give me your definition of someone free of political bias.

Mr. Mesman: No, I will not. I think clearly that is something that has to be worked out. It is obvious that it would be somebody with any direct links to the governing Party, and it possibly would be anybody holding a card of that Party, but I think already there we tread into the Charter area, frankly. I am not sure if it should be that restrictive, but that is something that would have to be determined.

Mr. Cummings: You would then exclude those who are Members of the Opposition Party?

Mr. Mesman: I did not say that, no, I said of the governing Party, the Party in Government. Again, I have to admit that it is not something that thought has been carried through all the way. I think people need to sit down, but I think it is an important factor. Obviously, the cynicism that is out there is partially because many of the members of this panel have clear political ties to the Government that has set up whatever the panel may be.

Mr. Cummings: Do you consider civil servants political?

Mr. Mesman: I do not consider them political, but I consider them to be politically influenced, yes.

Mrs. McIntosh: Just for clarification, Mr. Chairman, on the questions asked by the Minister, I was not quite clear on the intent of your response, and I

wonder if you could clarify it for me. I know it is something that you do not really want to give a definitive answer to and I understand that about being independent and free of political influence, but you indicated that a person would be free of political bias if they had no direct links to the governing Party.

Mr. Mesman: That is correct, yes, that I did say that. I am saying that is one obvious definition. I am not saying that would be the sole and final definition of someone free of political influence, not political bias incidentally, influence.

Mrs. McIntosh: Could I ask the question that I think the Minister was getting at? I was confused by your answer. Would you extend that also to include someone who had no direct links to the Opposition Parties?

Mr. Mesman: Yes, I would.

Mrs. McIntosh: Thank you.

Ms. Cerilli: To get around the issue of individuals with political ties on the panel, how would you feel of people having to declare their ties or of having individuals from all political Parties on the panel? Do you think that would—

Mr. Mesman: That might be a way to address the question, yes. I admit to my own not-fully-clear thoughts on the subject, other than some of the obvious ones that I have indicated. When it gets to the point of saying should no one who carries a card in a political Party sit on one of these panels, I have a bit of a problem with that question, yes, so that may indeed be a way to go then to balance that off.

Mr. Chairman: I would like to call on Mr. Ronald Carter, Private Citizen. Mr. Carter's brief has been circulated. You may precede it.

Mr. Ronald Carter (Private Citizen): Mr. Chairman, Members of the Assembly, although I am listed as a Private Citizen, I should say at once that I belong to, oh, about half of the groups which are represented here this evening. However, I have not consulted them on my brief, and these are personal remarks.

* (2150)

When the meeting was held, I believe, on December 11, there were certain activities which stemmed from that meeting. One of them, I felt, was the preparation of the regulation you have in front of you, which is called Regulation to Establish a Cooperative Environmental Assessment Process. It was dated January 3. I have read the regulation in context with Bill 24 to get some sense of the Government's intention in bringing this Bill forward, therefore I will talk to them together, if I may.

The first point I would like to talk about is the value of the legislation. Why do we want it? What is the good of it? In proposing this legislation, the Government has taken an opportunity to save money and minimize differences of opinion between jurisdictions through streamlining of the assessment process.

(Mrs. McIntosh, Acting Chairman, in the Chair)

This is commendable, especially in light of the Rafferty-Alameda experience, the Oldman and the Al-Pac. Perhaps the occasion is the need to avoid two assessments of Conawapa, a federal and a provincial one. Possibly also, knowing Mr. Cummings as I do, there is a modest amount of statesmanship being shown by Manitoba in a comprehensive Bill which all Manitoba political Parties might endorse if we can get it together a bit.

The point to be made is that, if we can get a Bill together which all Parties can endorse, then we will strengthen public confidence in the assessment process and enhance public trust in the impartiality of the major players. To this end, much can be gained by enlarging the Bill to provide detail, despite the usual convention which ordinarily gets this done through regulation. I would like to see us raise then many of the things which would ordinarily be in regulation into the Bill proper, so that both process and specific rules shall be provided to the Legislature and to the public as a package, minimize the amount that you put in the regulation of this Bill.

I want to talk about the nature of agreements under Section 13 in Bill 24, the nature of agreements between Manitoba and other jurisdictions. I make the assumption that delegation as originally proposed in 13.1(b) is deleted altogether, and it is possible no comment may now be necessary. I believe that was part of the general discussion with the environmental groups made back in December.

The notion that Manitoba could entertain standards lower than its own is repugnant in the gathering of information necessary to do an assessment. The public must be assured that any agreement with another jurisdiction must require that a joint assessment meet the standards of Manitoba, but are these standards good enough? Can Bill 24 elevate those standards, perhaps

anticipating changes to be expected when the promised 1991 review of The Environment Act is undertaken?

I will talk a bit about the focus for improvement. The focus for improvement should be the quality of the panel appointed to conduct, to orchestrate, each joint assessment on behalf of the public. In this respect, whatever internal mechanism you use—you usually call it a TAC. What is it called? What is that for? A task force of some kind. The partners in this joint process, which are set in place to assist the panel, is secondary to the capacity of the panel to marshall its own expertise whether this is coming from Government or from the consultants. It is clear that the draft regulation as we have it now places heavy reliance on Government sources.

The point to be made is that the panel itself must be selected early and carefully, must scope the assessment, set its own terms of reference for review and change them if warranted as the assessment progresses. To set things into stone at the outset seems to me to be a regression. There are things discovered during the process of the assessment which can be inserted in the terms of reference and pursued by the panel itself. We have to do that all in circumstances which provide for public comment.

The Bill should specify that panel members be independent, free from conflict of interest and political influence and that some members have substantial technical expertise in the field represented by the proposal. On the principle that the assessment, with the panel's proceedings and its recommendations, should be understood by the ordinary non-technical person, panel members should include ordinary citizens and perhaps ordinary citizens who are resident in the area of the project. You have somehow in the panel to find a balance with a good deal of expertise in the field to which the assessment relates, and in addition to that I believe that panel membership should include people from the locality and the ordinary people in the street.

I say also that consideration should be given to video taping of the proceedings and supplying the tapes to the media. I am saying all along that public visibility is absolutely necessary in this process. Also, from the point of view of developing public confidence, the regulation 3(b), in the January 3, 1991, version which seems to vest the control of scoping, guidelines and review in a Technical Advisory Committee is undesirable. The TAC must be subordinate to and a servant of the panel throughout the panel's life. In this way some light may be thrown on the possible impacts of a project which go beyond the valuable but often constrained visions of line departments of Government.

We ask then, what is the role of CEC in a jointly organized assessment, the Clean Environment Commission? It is reasonable to expect that it can provide administrative support to the panel, organize the panel's expert advice, if any is needed, and bring its own experience on hearings to the panel's attention. In a word, it should provide medicine and duty, as I call it. That is to say, it is there as an administrative arm, helps out in the process, but does not get involved in the judgments. It must remain, therefore, remote from decisions on the information to be collected and the judgments upon that information.

(Mr. Chairman in the Chair)

Again the CEC I think should be a servant to the panel. Regulation 3(c) should be changed, and the Minister's approval of the panel's terms of reference should apply rather than putting the onus on the Minister to issue the terms of reference. In addition to that, the task of the panel itself is to consult with the public as it evolves those terms of reference for itself.

I have a note on intervener funding. The notion that requests for financial and other assistance will be entertained under Bill 24 is commendable. In proportion to the capital expenditure involved in projects such as Conawapa and Bipole III, the cost is insignificant for the returns which arm's-length examination can produce for the proponent. It is the importance of potential environmental impacts which shall govern, not physical size or capital costs as the term "major" in the regulation might indicate.

We do not know from either the Bill or from the regulation how this assistance is to be organized. A case can be made for the elaboration in the Bill beyond the five general parameters proposed for Subsection 41.1, as has been done in Ontario.

In that province, sufficient guidelines are available to enable the panel chairman to assign decisions on who is to be helped and how this is to be done to one or more ofthe panel members. A panel member then is assigned the task and removed, if you like, from the actual assessment and told to find out who are likely to be proper interveners. He reports to the

chairman and says Joe Blow from the Concerned Citizens of Good Lad should be here getting assistance and doing the research which he has told you about on a program which he has presented to you.

In Manitoba the CEC could handle requests and maintain the linkages with the proponent on the provision of funds on behalf of the panel, but the panel should fully control allocation.

* (2200)

A point made by other people—it is important that advances be available to individuals and organizations who have made proper application. Flexibility and concern for the time constraints under which volunteers have to work shall govern the mechanism for financial aid.

I conclude then, the threads which bind the credibility of the environmental impact assessment process are public visibility and good judgments of impacts. The latter must be made independently of proponent and Government. The regulator and the implementer should not be seen as parties in making those judgments. Bill 24 and its regulations, above all other matters, should enhance and strengthen the role of any panel selected to conduct the joint assessment process. Thank you.

Ms. Cerilli: Mr. Carter, what do you think should be the relationship between interveners and the Technical Advisory Committee?

Mr. Carter: The interveners themselves, I think they should know what the Technical Advisory Committee is advising the panel. I think all that material should be available to everybody who is engaged in the process of doing the environmental assessment and making the judgments as they go along. It should be open.

Relationship, obviously somebody has to make a judgment of whether the technical advice available from Government is good enough or whether it can be benefitted more by adding the research which might be mounted by an intervener.

I think there is nothing adversary about this thing. I think there is a combination of getting the best information together and that can be done from the proponent, by the proponent, by the Technical Advisory Committee, and by the interveners, if there is suspicion, as there will be, about some of the material provided by Government, some of the material provided by the proponent, in completeness, then the intervener can spot the weaknesses and use his resources if he is provided with them to add and flesh out the total information available.

Ms. Cerilli: One of the other areas I am concerned about is how are we going to decide which developments or projects are going to have the joint assessment. Do you have some ideas of how that should be decided or if there are going to be some problems with that?

Mr. Carter: That is a good question. I think there are some fairly standard things that you can say if a project is going to impact on either side of the boundary, whether this is a municipal boundary or a provincial-federal boundary or provincial territorial boundary or between ourselves and the States, for example, then obviously you need a joint panel of some kind. This should not, however, mean that you delegate the task and toss yourself away and say okay, North Dakota, you do this job. You have to be present all the time. You have to make your own decisions and Manitoba has to be party to, and if possible, consensual in the decisions which are made, the judgments which are made.

Does that answer your question? I hope it does.

Ms. Cerilli: As it stands now when there is a development and we have two assessments, are there problems with the current system? I am thinking in terms of when things are screened out. Do you see that as affecting when things are screened out from the federal process and then only receive a provincial environment assessment? I am concerned that is the same thing that could happen with a joint process which is supposed to be more stringent, then we would have things screened out in the same way. I am looking for ideas of ways that we could not run into that kind of a problem.

Mr. Carter: Well, I think of the time that the other jurisdiction gives up its participation, then it should be, at that time, confident and prepared to accept Manitoba's decision of whatever comes out of this thing.

Mr. Edwards: Mr. Carter, I presume you have had a chance to look at the draft regulations put forward by the Government.

Mr. Carter: Yes, just roughly. I have not studied them very deeply. I have scanned them.

Mr. Edwards: I have not studied them in detail either. It gives me some concern, this establishment

of this Technical Advisory Committee. It strikes me that the Technical Advisory Committee being set up—what I gather from these regulations—is set up at the outset to advise the panel, and then they produce a report and that report is made public.

If a person was to be reviewing the project with a view to intervening, they would not only review the assessment done by the proponent, but they would review this Technical Advisory Committee report which is, according to the regulation, a committee with representation of relevant expertise from participating Governments. That is it.

Does that give you some concern that the Governments are going to be involved at the outset in producing a report which may or may not support the project and purporting to give advice at that very preliminary stage to the panel?

It gives me some concern only in that if that technical expertise is needed, surely the panel should decide that and go out and solicit that technical expertise if in fact they need it.

Mr. Carter: As I recall that regulation, I did not like the way in which that TAC was doing the things which I believe the panel should do. I think the panel should be helped very much so by the TAC, and it could go anywhere to get its help. It should have the money and the opportunity to go and get experts for itself.

I do not want the TAC governing the process. I want the panel to do that. I want the panel to be brought together very carefully, get its advice wherever it wants it, but the strength of the assessment, the strength of the judgments and recommendations, come out of that selection process up front.

You get the best panel members of the kind for the project that you want, and then you make the TAC the servant to that panel as you do the consultants which the panel may itself hire to do work for it as well as those of the proponent.

Mr. Cummings: Thank you for your presentation. I was wanting to ask you in terms of—you went to some extent to comment on the potential for intervener funding. There is no doubt that further regulations regarding the conditions of intervener funding will be taken out for further discussion. I take it from your comments, however, that something similar to the model used by the PUB might be a type of system that would be acceptable.

Mr. Carter: I have seen the PUB process and felt it was a reasonably good one. I think, however, just reading that new Bill in Ontario, which has really not had too much testing yet, is a better way of doing it. I think that once again the independence of the panel is further strengthened by the fact that they will make the judgments on the people who are helped.

In the case of the PUB, as I understand it—and I am not sure of this—is more like the CEC where you have a permanent Public Utilities Board, and you have not really tuned your PUB exactly to the kind of project which you are looking at, although I do not want to do that with disrespect to the PUB because I do not know enough about it to be able to criticize them. Just the same, it does not do for me the thing which a totally independent panel does for me.

Mr. Cummings: I have one other question directly related to 13.1(b). Do you agree or disagree that another jurisdiction, an example being the federal authority, their assessment of an information-gathering process, essentially the assessment, bringing together of the information, could then be used by a Manitoba panel to make a decision?

* (2210)

Mr. Carter: Oh, yes, very much so. I agree that the information collected by anybody can be used. What I want though is an independent test of that information a little bit. If you are dealing with, say, and we will use this example—if some federal Fisheries and Oceans are taking a look at some fish problem or what have you, a highly reputable organization, very, very good, but I would also like our own fisheries people or some kind of consultant to say yes, they are right or they are wrong or they have provided us with the most probable impact.

In other words, you should not leave them alone, no matter what. You should not leave any consultant alone to do his own thing, you should not leave any Government alone to do its own thing, and you should not leave any other jurisdiction alone to do its own thing.

Mr. Cummings: I was being more specific in terms of accepting their information for decision making by Manitoba in terms of an environmental licence or impacts, because the Bill does not delegate the decision-making authority or does not propose to delegate, but the question is whether or not information can be gathered and then used by Manitoba for decision making.

Mr. Carter: -(inaudible)- you go out and get your information wherever you can get it, and that is one of the sources.

Mr. Chairman: Thank you very much, Mr. Carter.

Mr. Jack Dubois. Mr. Dubois does not have a written presentation to hand around.

Mr. Jack Dubois (Manitoba Eco-Network): Thank you. Good evening, Mr. Chairman, Honourable Members, ladies and gentlemen.

I apologize for not providing a written version of what I am going to say, but those of you who were at the press conference yesterday will have gotten more or less the bulk of what I am going to say.

First of all, let me give a little bit on the Eco-Network. The Eco-Network, of which I am the chair of the steering committee or the board, is a neutral, non-partisan service organization to the environmental groups of the province. We are not a spokesgroup for other environmental groups; we are in fact just service to those groups. When I say neutral and non-partisan, I mean that you will not hear the Network speak out officially on anyone's behalf on any of the particular issues of the day regarding such things as water quality issues, air quality issues, et cetera, but where we do feel we have some right to speak is on these kinds of issues, these generic, if you will, environmental issues that affect particularly public participation and public consultation, and therefore the basis of my appearing before you here this evening.

The environmental community in Manitoba is calling on the Government to live up to agreements made with us before Christmas regarding environmental assessment legislation, Bill 24. We are concerned that the agreement will be broken, leaving Manitoba with totally inadequate legislation for joint federal-provincial environmental assessments. This probably should not be said before seeing what amendments the Government will put to this committee. We have no firm basis to believe that they will renege on agreements made with a group of us in early December, but it is the indications that we have had from the Minister that this may be the case, thus our deep concern.

Bill 24 was introduced close to the end of the last legislative Session. It is legislation which enables the provincial Government to enter into joint environmental assessments of proposed developments with other jurisdictions, that is, the federal Government primarily, I believe is the intent of the Bill, possibly other provinces and even states of the United States. The intent of joint assessments is to streamline the often costly and time-consuming, dual-assessment process which must now take place in theory when a proposed project affects areas of both provincial and federal jurisdictions. Examples of such projects are the Rafferty-Alameda dams, the Repap development in northern Manitoba, Conawapa and the Shoal Lake developments.

This legislation is extremely important. First, it would be unique in Canada, providing a blueprint for similar legislation in other provinces. Second, and perhaps more important, it would cover several major developments currently being planned or under way in Manitoba. As you may know and as you have heard from other presenters, representatives of several of our groups met with the Environment Minister (Mr. Cummings) and Premier Filmon before Christmas to discuss our concerns about the legislation. During those meetings we offered alternative wording for the Bill, which we believe would significantly improve the legislation and help it to live up to the claims made by the Premier that the intent of the Bill was to incorporate the best aspects of both federal and provincial environmental assessment laws. Again, the proof of the pudding will be in what the Government puts forward in the way of amendments at the end of this process.

At the end of our meetings in December, the Environment Minister (Mr. Cummings) we felt agreed in principle to amend the legislation, utilizing some but not all of our suggestions that we had put forward at that time.

The agreement which we reached with him and which you have now seen spelled out in some detail in our letter dated December 14 briefly touched on the following points that we thought we had reached agreement on: first, that there would be no delegation of environmental assessments to other jurisdictions. In other words, Manitoba would always be active in assessments involving Manitoba interests; second, that any joint assessment permitted would have to be at least equivalent to Manitoba's own environmental assessment process; third, that intervener funding would be available for joint assessments; fourth, that the assessment panel would be unbiased and free of conflict of interest; fifth, that regulations would be produced to ensure that joint assessment panel

members would be free of political influence and have specific expertise and qualifications in the area under consideration.

The Minister also indicated at that time that a public review of the entire Environment Act would be undertaken by the end of 1991.

While many of us feel that the Act could be strengthened even further, we believe that these amendments significantly improve the original legislation. The Minister of Environment (Mr. Cummings) indicated to us that if we were in agreement with these amendments, we could communicate this understanding to the Opposition Parties, which we did at that time. While we welcomed the decision of the three Parties' House Leaders to have the House reconvene January 21 for a vote on the legislation, allowing an opportunity for the public to comment on the Act before the legislative committee, we do not similarly welcome the Minister's apparent backing away from the agreement which he had made with us.

To touch on the regulations just very briefly, and again you have seen those tonight and they have been touched on before, we have seen them, they have been circulated, and we are greatly concerned about the wording which indicates a reversal of the Government's position on the agreed-to amendments. Specifically, there is no requirement that the assessment panel is to be free of political influence and have expertise in the area under review. The inclusion of these requirements in the Bill is, we feel, fundamental.

A second point is that the Minister of Environment may set the terms of reference for an assessment; that is, he or she may determine the range of subjects which the panel will examine relating to the assessment. This contradicts again Premier Filmon's assertion that the best of both federal and provincial assessment laws will be utilized, since under current Manitoba process, the panel has the ability to determine the terms of reference.

* (2220)

Another point is that the role of the provincial Technical Advisory Committee, an interdepartmental committee of Deputy Ministers and other representatives charged with screening all proposals through Government policy as set out in the regulation leads to a concern that the independent nature of the review may be compromised; that is, that the Technical Advisory Committee may be seen, in the way the regulations are currently written, to be some sort of quasi-independent source of expertise or expert advice to the panel. You have heard more about that earlier this evening. Finally, intervener funding programs and criteria are not spelled out in the regulation except to say that funding will be available for major assessments. Again, you have heard some discussion on that this evening.

We have met in fact in the interim with Environment Department officials who assure us that more public consultation will take place regarding the regulation. However, the regulation will not be completed prior to the vote on January 21 in the House, leaving us all in a gray area as far as the real implications of the Act are concerned, if not otherwise spelled out in amended versions of the Bill that was first presented.

We are also greatly concerned by public comments of the Environment Minister (Mr. Cummings) that no commitments were made to introduce particular amendments to Bill 24. All of our groups agree that it is absolutely necessary that the Government stick to the agreements which were made in good faith, gentlemen's agreements, if you were, if we can use that old-fashioned phraseology, before Christmas. It is our concern that this gentlemen's agreement made in good faith is made on the basis of mutual respect and regard for the other party to a discussion as being principled. We would feel that any retraction or any backing-away from those positions represents unprincipled behaviour and would change the tone and the substance of the way the dialogue is carried on in this province, in a co-operative manner up until now, in dealing with these kinds of matters.

Just to drive home the point, I would like to repeat yet again the matters of substance that we feel will appear if the gentlemen's agreement is stuck to, that will appear in fact in the Government's amendments to the Bill, or the amended Bill. We look forward with some optimism to seeing them there, but just to refresh your memory in case they do not appear, the first was that Clause 13.1(b) of Bill 24 would be deleted. This is the clause that allowed for the delegation of the environmental assessment process to another jurisdiction.

The second point, further amendment would require that any joint assessment permitted as a result of Bill 24 would have to be at least equivalent

to Manitoba's own environmental assessment process and in addition, meet the following criteria:

First, that it would require notice of the joint assessment to be given to the public through advertisements and the filing of the development proposal in the public registry, the current Manitoba system; second, that there be public hearings in Manitoba; third, that members of the joint assessment panel are to be appointed jointly by Ministers from the relevant jurisdictions; fourth, that panel members are to be impartial and free of any bias or conflict of interest.

I would say here that, as you have had read out, the current criteria spelled out under the EARP guidelines, which are more stringent than the Manitoba panel member criteria, should be adopted consistent with the Premier's (Mr. Filmon) public assurances that any joint assessment process should be the more stringent of the two rather than the less; fifth, that there be a program of financial assistance for public participants in the assessment. I personally find it continually surprising that we refuse to deny persons engaged in legal matters recourse to legal resources. We provide those at the public expense in the name of justice and equality in our society, yet on the biggest and most significant developments in the province, we would continue to deny citizens who wish to participate that same sort of access to resources. I think that this has to be included in Manitoba legislation.

Finally, that there be an opportunity for the Minister or the director, as the case may be, to acquire further information after the report of the joint assessment panel, which information would be used to assist the Minister or director in the decision as to whether or not to grant the licence.

Ms. Cerilli: With the importance of this legislation and the fact that you are a member of the Round Table, can you tell us, did the Round Table review this legislation and what was their opinion of it?

Mr. Dubois: The Manitoba Round Table on Environment and Economy is an advisory body to the Premier (Mr. Filmon) and on the integration of sustainable development into the way we "do business" in Manitoba legislatively, in the private sector and in our private lives ultimately. The Round Table was not formally consulted by the Premier, asked for their advice or presented this Bill in any form.

At a meeting of the executive at which I was present, the Premier talked about the possibility of pending legislation and at that time repeated his assurance that he was determined any process that we adopted in Manitoba be the most rigorous of the processes that were combined. That is the extent to which I have heard any discussion between—in Round Table context.

Mr. Edwards: I find that quite shocking and disappointing that the Round Table was not formally consulted on this legislation. Going further on your comments about the Technical Advisory Committee, I have just seen this regulation for the first time tonight, and I share some of your concerns about the perception but also the reality of what influence it would have on a panel, as it is contemplated in this regulation.

I wonder if you would support what Mr. Carter had said earlier that it should be one tool, one resource for a panel to look to amongst other experts which they may or may not retain, or do you see a need at all for a Technical Advisory Committee? What is your view on the advisory committee as an idea itself?

Mr. Dubois: Well, I think it might help this committee's deliberations of the regulations and their potential influence on the Bill and how much of what they say there needs to be in fact reinforced in the Bill, to have someone more knowledgeable than I explain the current role of the Technical Advisory Committees in the Government process.

I have some appreciation of the role of the Technical Advisory Committees as a process within Government to ensure that relevant departments or indeed all departments are consulted on potential impacts. That is one of their major functions.

The concern with the way they are described in the regulation and the way that I have heard their role described sometimes or represented sometimes in public is that they are perceived to be the source of technical advice to the panel and some sort of unbiased advice. That is why the insistence on the provision for some expertise on the panel itself and also for the independence of the panel.

I think the Technical Advisory Committee will continue to be a process used by Government to facilitate the functioning of a panel whether it is mentioned in regulation or not. The concern from an environmentalist's point of view or in terms of public perception and public participation is that this will be

seen to be sufficient pseudo-independent technical advice as opposed to the real thing, which is provided in two manners, that is, independent advice: the panel is able to hire on its own or call in for a consultation or even in fact appoint to the panel if they so desire; and the provision for independent expertise through the provision of intervener funding.

Mr. Edwards: Thank you for that answer. Aside from the fact that you have prefaced it by saying you felt we could get better advice, I think that is good advice. I think it is an accurate, at least from my perspective, understanding of this regulation and what it purports to do.

Going to the issue of sustainable development, which you are obviously well acquainted with, do you think that there is a need to put in this legislation, The Environment Act, in the context of these joint assessment processes, that the report of the joint assessment panel should include amongst one of its headings a review of the application of the principles of sustainable development to the proposed project? Do you think that needs to be incorporated, if not in the Act itself at least in regulatory form?

* (2230)

Mr. Dubois: Well, that is like saying we should include an endorsement of motherhood as a preface to all Government Acts. Talking to someone who is up to their neck in sustainable development business, of course I have to say that consideration of the principles of sustainable development should guide all of the operations of the Government of Manitoba. In fact, a document was put out of which I was a member of the committee that put forward that same point of view.

I think the principles that are being argued for by myself and other people here tonight in terms of restoring confidence of the public in the process and engaging the public in a fair and open way in the process are in fact arguments to embody the principles of sustainable development in our processes here in the province as outlined in the environment Bill and this amendment to the Bill.

Mr. Edwards: Given that we all are saying that—certainly the presenters here tonight are saying that—we are all talking about sustainable development, we are doing lots of talk, the Premier (Mr. Filmon) has indicated to your group as well as to us that we are seeking the best of Canadian provinces, and we want to go to the highest level, should we not be setting things like that out in legislation giving them some legal validity, if first and foremost perhaps to reinstill some faith in the public in politicians generally, but also more importantly to ensure that a panel that is selected knows exactly what is expected of it?

I wonder if we should not be including a number of things which the panel is specifically expected to consider, for instance, the one I have mentioned before, the application of the principles of sustainable development; the review of any alternative methods of carrying out the development, including the methods to mitigate the expected environmental consequences; possible cumulative effects of the development on the environment; socioeconomic effects; and possible biophysical effects. Should we be setting that out in our legislation?

Mr. Dubois: I have seen the draft of the new mines Act which has in fact the principles that were developed by the Round Table of Sustainable Development included in the preamble, so maybe this Government is in fact moving in that direction.

In very practical and pragmatic terms, I think that the insistence of myself and others here tonight on meaningful public participation will ensure in fact that occurs.

Those items that you think they should be directed to address will in fact be a product of the public consultation. I do not think they necessarily need to spelled out in great detail for every single panel that is formed or in advance of every assessment providing there is opportunity for meaningful public input, and especially in setting the scope of what it is the panel looks for in terms of its granting of licences for particular projects. If there is some public input into that, and if the panel has the freedom to amend the terms of reference, I think that you will find that groups such as you have heard from tonight will ensure that all of the basic considerations and the basic principles of sustainable development will be very much brought to the attention of the panels.

Mr. Doug Martindale (Burrows): Mr. Dubois, you said that Manitoba is unique in Canada in terms of amending the environmental assessment process, mainly because we are first. Is that correct? That is what you said?

Mr. Dubois: Yes, that is what I understand. We are the first to propose in our legislation this process whereby we allow specifically for joint assessments.

Mr. Martindale: I am interested in knowing how much significance you attach to Manitoba being first. For example, do you think that if the standards are maintained at a high level, other provinces might emulate that, or do you think that if our standards are watered down there is a danger that other provinces might copy that?

Mr. Dubois: It seems like a bit of a rhetorical question. I think that you have described the case quite accurately, but my first and foremost consideration is what happens here in this province on the ground. This is where I live, this is where my children live, and this is where my grandchildren live, and the reason I put my efforts into these kinds of things is to first and foremost do what I can for them to ensure that they have some decent environment in the future.

In terms of the spill-over effect, that has some I believe influence in the way politics is played in Canada. Politicians like to take credit when they can, and I will not shrink from giving the Premier (Mr. Filmon) credit should the amendments that are presented by the Government tomorrow embody all of the strengths that have been suggested to them. I will be the first to applaud, but I think the only advantage from my perspective of this Manitoba-First business is to quite frankly use it at this stage to strengthen the Government's resolve to make it the best and the strongest of the processes.

Ms. Cerilli: One quick question, Mr. Dubois. Do you think that environmental assessment panel should rely on the research of the proponent or another jurisdiction?

Mr. Dubois: I think you are mixing terms there. Sometimes jurisdictions are proponents, often they are not. They are the third party, if you will, to assessments. I think that if I and others had every confidence that the current processes, federal or provincial, were close to perfection, we would not be here appearing tonight, and we would not worry about these picky principles and seeing them embodied in the Act. Again if you will, what happens by establishing a joint assessment process is that instead of having recourse to a third party or another party and considering an environmental licence, we are now being asked to give up that recourse to another party and put all our eggs in the one basket. That is the one process.

Again that is the reason for our insistence that the Premier be true to his word and make this process the most stringent. That is, it takes the most stringent things like criteria for panelists, it takes the best criteria for setting the terms of reference for the investigation, et cetera, and it makes that one process the best.

If it fails to do that and the Government still thinks that the environment community should support giving up recourse to another process, I think it is just foolish to expect the environmental community to accede to the Government's desire for a combined process that in fact takes away some potential for superseding poor processes, be they federal or provincial.

Mr. Martindale: Mr. Dubois, since most of the other presenters have been asked this question and we seem to be taking turns asking it, what is your definition of "free of political bias"?

Mr. Dubois: That is a good question. Maybe I will turn that back to the Members to determine by looking at other jurisdictions and what they do. I think the current scenario is that the federal Government chooses panel members who have some expertise and some experience with a given topic. They show up and the Manitoba appointees are an insurance salesman who happened to be the campaign manager of one of the Ministers, and they are given equal voting weight on a substantive matter like a huge Hydro development. That is the current scenario we are faced with if we allow these criteria for panel members, as originally proposed, to go through.

* (2240)

Obviously I think that those sorts of direct political influences or direct conflict of interest, however you propose to phrase your criteria—if the current criteria for federal panel appointments are unacceptable in the light of constitutional developments or other, I still think they represent a more stringent set of criteria. One that approximated as closely as possible our joint assessment Act would bring much more public confidence into then the deliberations and recommendations of such panels.

Mr. Martindale: What are your views on civil servants and whether or not they are political?

Mr. Dubois: Well, I think the allegiance of civil servants is quite up front. We know that the chair of the Clean Environment Commission is a civil servant. Everyone is aware of that. We are not all aware of the political backgrounds currently of members of the Clean Environment Commission. I think that, were the federal criteria, as I have suggested, to be accepted, we would have much more confidence in the other panels. I mean, everyone accepts that the chair of the Clean Environment Commission is in effect a civil servant and that the advice of the Government for whom we lay out taxes to provide is provided from that perspective.

Mr. Martindale: Earlier it was asked of another person whatthey thought ofthe idea of, for example, members of the Clean Environment Commission appearingbefore a legislative committee who would inquire into their qualifications before they were appointed.

I suppose this idea is analogous to some of the systems currently in place in the United States for some officeholders there appointed by the Government.

Do you think that is a good idea or not, and if not, why?

Mr. Dubois: Well, I have not looked at the way in which this is determined in other jurisdictions. As I said, the federal criteria I think are well worded now and talk about freedom from any potential conflict of interest. How they determine that, I am not sure. I am not sure that we need a semi-judicial public process to assure ourselves of that.

I would think that there would be some good faith put forward by the public as long as the criteria are well known for the choosing of panel members, for the selection of panel members, and you know we tried it for a while and it was not seen to be being abused.

I think the terminology of "free from bias" or "free from conflict of interest" is going to be problematic, depending on how far you want to push it. We could go a long way toward restoring public confidence in panel decisions and in the Government's credibility in protecting the environment on our behalf were the criteria for selection to be well known and advertised and the panel members who were appointed for the next while, especially to these joint assessment panels, seen to be in fact measuring up to those criteria and not found out some time later to have some direct political connection.

I do not personally think we have to go to congressional hearing type examinations of criteria for these kinds of things. I am prepared to go on good faith, until it is demonstrated otherwise.

Mr. Edwards: I just want to add my two bits to this conversation and ask for your comments.

I make a distinction between "free of political influence" and "free of political involvement." Political influence is the terminology that is used in Mr. Pannell's letter and it is one which I think can be supported.

Political influence does not necessarily mean that someone does not have and has not had political involvement.

I do not accept that you cannot be a member of a political Party, still be useful, serve the public good, and be seen to be a credible representative on a board such as a panel as is contemplated by these regulations. I would be interested in your comments on that.

It seems to me that certainly almost everyone in this room both at this table and otherwise has political involvement, has had, if not in the recent past, farther back, and many do presently. If you are going to be involved in these issues, you will have political involvement. I wonder if that is an automatic non-starter from your point of view and from some of your colleagues in terms of being able to serve on this type of a panel?

Mr. Dubois: Well, we have yet to see the amended version of the Bill that the Government will put forward tomorrow, presumably. We do not know what wording in fact will describe this situation, but I do not think I personally was putting forward a particular wording. I feel, as you do, that probably the wording, something along the lines of "free of political influence" would be sufficient, but I leave it to where the buck stops to determine the final wording.

I think as long as it embodies the principle that we are espousing here and that it is an improvement on the current situation—and again, to hammer at the point, the current selection criteria for federal panels is more stringent than the Manitoba selection criteria. We would like to see in this Bill the embodiment of the Premier's assurance that this Bill will embody the more stringent of the Acts in all

aspects, so that where it is more stringent on the federal side, that is what should be in this Bill, and where the current Manitoba situation is more stringent, that is what we would like to see in this Bill. We have outlined, I have outlined and other presenters have outlined where those areas are. They occur primarily in the qualifications of the panel and in the setting of the terms of reference. These are crucial.

Mr. Cummings: Mr. Dubois, I am sorry to hear you say that you had no idea what was contemplated in this Bill. My memory must be failing me, but I thought we had a half-hour briefing with my deputy at the Round Table meeting before Christmas, talking about the principles of joint assessment and interjurisdictional co-operation.

Perhaps I do not remember, but during that discussion it seems to me that it was discussed about the appointment of panels, and the concept and the appointment of panels—very likely that the federal Government would appoint the people who were the Manitoba members to their panel, and Manitoba would appoint the federal members to their panel. The criteria of both legislations would then be respected. Do you recall that discussion?

Mr. Dubois: Yes. It was not my intent to deny that these discussions had taken place. I forgot that we talked about it at the Round Table meeting. As you know, they are all-day-long sessions and we cover many topics. I was thinking about it as you have reminded me. It seems to me that we did not get into the substance. First, we did not have the wording of the Bill in front of us, nor did we have the sample regulations.

* (2250)

It was a discussion in theory, and I do not think I said anything tonight that was inconsistent to what I would have said at that discussion. I recall only then, and at the meeting I described earlier of the executive of the Round Table, of putting some faith in the Premier's (Mr. Filmon) assurance that whatever did result in the form of an actual Bill would in fact embody the more stringent of the jurisdictions. I assure you there was no intent to obscure or hide the fact that it may have been discussed at a Round Table.

My recollection was only that one, until you have perked it now, but again I do not think that changes anything I have to say here this evening.

Mr. Cummings: I grant you that the printed Bill was not there, and I think it would have been a breach of the Legislature to have presented the printed Bill there. I do not want to dwell on that, but I would ask if you would express an opinion on what I just said about the appointment of the members, if that does not in fact recognize that the highest standard of both jurisdictions would be recognized.

Mr. Dubois: It is our contention that the way the Bill is worded, without seeing any possible amendments, does not in fact clearly convey that. In fact I spoke with someone in the federal assessment process who was the one who proposed the ludicrous situation that could exist of a well-qualified panelist being appointed under federal criteria and a panelist being appointed under Manitoba criteria whose main qualification was some political allegiance. I think that the wording that is there now, prior to potential amendments that may show up here tomorrow, does not preclude that.

Mr. Cummings: How do you envisage the federal jurisdiction appointing somebody that did not meet their qualifications?

Mr. Dubois: Well, again, I do not see in the current Bill specific mention of the fact that the feds will appoint the Manitoba people and the Manitobans will appoint the federal people. If you are dwelling on that proposed mechanism or process, I do not know where that will be described. I do not see it in the current wording of the Act that was put out in December, and if that is in fact the case, then perhaps that will address the concerns that have been raised, and we will not need to worry about it any longer.

Mr. Cummings: That is one of the difficulties we had in writing the Bill, as you can appreciate I think, and one of the difficulties that we have in arguing it here, because subsequently structuring of an agreement for a joint process would contemplate the kind of thing that I am just talking about. My concern is that the only way you will get an agreement with another jurisdiction is if there—and particularly the federal jurisdiction if we want to dwell on that one, because many people see that as being somewhat different in some respects from ours. I cannot contemplate how the Manitoba jurisdiction or the federal jurisdiction could, when they are jointly appointing, each by their own criteria, not attain automatically the highest level, because there would not be an agreement. You could not have an agreement that

contravenes your own Act. We are not by this amendment changing the rest of the Act. These are enabling sections, not to modify the rest.

I assume that comfort level we need to provide perhaps is not being spelled out clearly enough in terms of the public discussion.

Mr. Dubois: I think you have hit the nail on the head. It is not spelled out under the current wording. It may be under tomorrow's wording. I would be glad to see that. I think that we would be naive from our side to accept your assurances, despite the absence of wording setting out the fact that the highest criteria would apply for qualifications of panel members, that would be the modus operandi of the Government of the Day. Governments come and go, and who knows, we may get a Grant Devine here as Premier and have the fiasco that occurred in Saskatchewan in terms of interjurisdictional co-operation.

While I may be willing to take on good faith your assurances that in practice Manitoba would adopt the higher standard, I think common sense requires that I ask that more specific wording be put in the Act when you amend it, to ensure that takes place, not only during your tenure but the tenure of your successors.

Mr. Cummings: I will not dwell on this. I suspect we have a divergence of opinion. I simply wish to ask you to reconsider the point. How could either jurisdiction not live up to its legislation?

Mr. Dubois: Well, we only have to look at the performance of the federal Government with regard to Rafferty-Alameda, Oldman dam and a few other places for object lessons in the enthusiasm with which various jurisdictions live up to their legislative responsibilities. I think the sad fact of court cases being required by citizens to compel the federal Minister of Environment to live up to his responsibilities under the Act are well-known facts in Canadian history now, in terms of dealing with environmental matters.

It is all well and good to have faith in good intentions, but I think that here is the opportunity to make this exemplary legislation. It is in your hands. It is quite capable of being fashioned much better than what was presented in December. Again, I would urge you to do so, not that I doubt at all your assurances that in practice Manitoba would adopt the highest standards despite the wording of the legislation. As I say, I worry about lesser people in the office of the Minister here in Manitoba doing other than what goodwill may permit.

Mr. Edwards: You may also want to consider, Mr. Dubois, in looking at the Minister's question and his statements, that he cannot imagine appointments to a joint assessment panel that would not meet the higher federal criteria, the regulation, which on my reading of it says that the agreement to establish a joint environmental assessment process pursuant to Section 13.1 shall include provisions as follows: If you turn to (c) it says "appoint representatives from the participating jurisdiction to the CEC"—that is the Clean Environment Commission—"for the purposes of a proposed development to form a panel jointly appointed by the participating ministers".

That suggests to me that we—in effect, what is contemplated is that the participating jurisdiction members join our existing members. Therefore, there is certainly no guarantee that the existing Manitoba members meet the higher criteria. That would be my reading of the regulation.

Mr. Cummings: They will not be able to meet if they have to meet the federal regulations.

Mr. Chairman: Thank you very much, Mr. Dubois.

I now call on Mr. Harvey Williams.

Floor Comment: Mr. Chairman, I would like to exchange places with Mr. Pannell, if I may. He is not feeling well, and I am happy to make presentation if it is all right with you.

* (2300)

Ms. Cerilli: I was going to test the will of the panel, considering the hour, to hear one more presentation and then break.

Mr. Edwards: I have just received a note from one of the listed presenters inquiring as to that and wondering, given the hour, that we cannot soon adjourn and come back tomorrow evening to hear the rest. I wonder if we could not—I would concur with my friend's statement that maybe we could hear one more and go from there.

Mr. Cummings: Mr. Chairman, I would like to push forward for at least a while longer. I can recall as a citizen coming here and waiting to give my presentation until four o'clock in the morning.

It is not a situation where we are doing anything more than proceeding in the previously set out manner, and I would like us to push forward.

Mr. Edwards: Why do we not canvass so that some of the people who are on the list in the order they are on do not necessarily have to stay if they do not feel comfortable staying tonight. Could we not just go through the list and determine who would like at this point to be stood down until tomorrow night if in fact they do not want to present at this time?

Mr. Cummings: I would only ask the Member to consider—when we reach this time tomorrow night what will he then suggest?

Mr. Edwards: I may suggest that we sit Friday morning. I do not know what I will suggest if we get to it tomorrow night.

What I do know is that tonight we have people who may not want to stay the full tenure and would like an opportunity to come back tomorrow night. If those people feel that way at this time in the evening tonight, perhaps we should offer them the opportunity to come back tomorrow. It may be just as late tomorrow that they have to speak, but perhaps we should canvass the speakers. There are not that many that we could not do it quickly.

Mr. Cummings: Mr. Chairman, I am not a person who likes to be overly rigid, but I do see some problems if we carry over a large number of presentations for tomorrow night. I certainly have no problem with canvassing those who would like to be carried forward, or perhaps we could take the other route as to who would prefer to be heard tonight.

Mr. Chairman: I will have to ask for you to call out your names so I can mark it on this list, if you would not mind, or I will call out the names and then you can indicate whether you would like to be heard tonight.

I believe Mr. Williams has changed with Mr. Pannell, so Mr. Pannell would be next.

Mr. Brian Pannell (Manitoba Environmentalists Inc.): Yes.

Mr. Chairman: Mr. Sawatsky?

Mr. Len Sawatsky (Private Citizen): Yes, tonight.

Mr. Chairman: Mr. Williams, did you want to defer until tomorrow?

Mr. Harvey Williams (Canadian Parks and Wilderness Society): Oh, I am happy either way, whatever—tonight.

Mr. Chairman: Tonight?

Mr. Williams: It does not matter.

Mr. Chairman: Mr. Sawatsky, tonight?

Mr. Sawatsky: Yes.

Mr. Chairman: Mr. Johnson?

Mr. Bryan Johnson (Private Citizen): Tonight.

Mr. Chairman: Mr. Miller?

Mr. Peter Miller (TREE): I will go either way.

Mr. Chairman: Tonight. Mr. Shearer?

Mr. John Shearer (Private Citizen): I do not have a strong preference, although if it gets much after midnight, I think would prefer tommorrow night.

Floor Comment: It will be after midnight.

Mr. Chairman: Tomorrow. Ms. Nembard?

Floor Comment: Tomorrow would be fine. She will be here tomorrow night.

Mr. Chairman: Mr. Keeper?

Mr. Cyril Keeper (Private Citizen): I would be prepared to go either way, but I must say that I would prefer if we had a reasonable adjournment hour tonight and then come back and have hearings tomorrow night.

I think it just makes it difficult on the public participants if you go till—well, anything later than now. I mean, if you go to midnight or one o'clock in the morning—

Mr. Chairman: The intent is to sit tomorrow at eight o'clock also. What was your preference, Mr. Keeper?

Mr. Keeper: Well, I can go either way.

Mr. Chairman: Tomorrow then? Mr. Emberley?

Mr. Kenneth Emberley (Private Citizen): I prefer tomorrow night, Sir.

Mr. Chairman: Mr. Hunter?

Mr. Bill Hunter (Private Citizen): Tomorrow night, please.

Ms. Chairman: Ms. Hillard?

Floor Comment: Tomorrow night.

Mr. Chairman: Mr. Neily?

Mr. Wayne Neily (Manitoba Environmental Council): Tomorrow night.

Mr. Chairman: Mr. Breed?

Mr. Dennis Breed (Canadian Public Interest Organization): Tomorrow.

Ms. Cerilli: I think we are going to achieve what I was going to suggest.

Mr. Chairman: I will just clarify this now. For tonight we have Mr. Pannell, Mr. Harvey Williams, Mr. Sawatsky, Mr. Johnson and Mr. Miller. That is correct? Then for tomorrow we have Mr. Shearer, Ms. Nembard, Mr. Keeper, Mr. Emberley, Mr. Hunter, Ms. Hillard, Mr. Neily and Mr. Breed. Correct?

I want to proceed now with Mr. Brian Pannell, with the Manitoba Environmentalists Inc.

Mr. Pannell: It is usual, when advocates come forward, to find some basis to compliment the Government before they enter into a fairly long and lengthy criticism, and I intend to do that tonight. The compliments are honestly felt, warranted and are worth enumerating.

The Government of Manitoba has a useful policy in consulting the public on regulations as built into The Environment Act. It is one of the few aspects of The Environment Act that I favour. It is to be complimented in its use of that provision for regulations related to this amendment both in October of 1990 and more recently in January of 1991 when the Government has consulted environmental groups on regulations related to this amendment.

(Mr. Bob Rose, Acting Chairman, in the Chair)

Further, when this amendment came forward, environmental groups very swiftly requested a meeting with the Premier of the Province of Manitoba (Mr. Filmon) because of their concern about the impacts. That meeting was granted on very short notice, and that is worth a compliment. Thank you.

Following the meeting with the Premier which was attended by the Minister of Environment (Mr. Cummings), there were further ministerial meetings with representatives of environmental groups, and those were conducted in a very businesslike and thoughtful environment. I think an expression of thanks is warranted for those as well.

I thought that the way that those discussions were going were inherently different than the vast majority of governmental environmental group interactions over time, and that they might set a dawn, if you wish, of a new era where this notion of consulting with the public was being taken so seriously that in fact points of agreement could be reached that both sides of the table found compelling and were willing to put in place and live by. That may very much still be the case, and to the extent that it survives, it is very worth complimenting and thanking the Government for their involvement in that approach. Generally from this point on the criticism occurs.

The area of environmental assessment is very complex. I imagine most of you are struggling with the terminology. I intend to go a little bit back to first principles and take my presentation from there.

Firstly, the question arises, why environmental assessment at all? What causes all of us to be in the room debating terminology that some of us may be hearing for the first time? Well, it is very simple. We have decided we have messed things up without this process. We have decided that Exxon Valdezes have only one hold because of a decision-making process that we used before. We have decided that Chernobyls occur because of a decision-making process that we used before.

* (2310)

We have decided that a whole host of environmental dilemmas are incurred because of the basic business approach to decision making which is: if you have the capital and you have the land, then you essentially can get what you want so long as you meet fire regulations and a few other fairly nominal requirements. We are saying that no longer is that the case, but rather much more consideration must go into a decision before society endorses a major new initiative. That is what environmental assessment is all about, and that is what The Environment Act of Manitoba purports to do.

However, it does it in a very flawed fashion, because while Governments have said that they are willing to do this, in practice the Acts do not do it. What we have said is we should have a decision of a fair-minded independent body that can advise Government about what action it should take, and it should canvass all of society that is interested for the best information it can get before it forms its advice to give to Government. That is what environmental assessment is about.

How do we do it in Manitoba? We appoint politically-appointed people who are normally unschooled in environmental issues and carry the political card of the Party in power in their pocket as the advisers to the Minister. We permit the proponent who has the money to do their project to

come forward and use the money that they have garnered for the project to pay for specialists to present their case, and we provide no resources for anyone else to present a contrary opinion.

We set the terms of reference in most jurisdictions, and this is different in Manitoba. In most jurisdictions, the terms of reference are set by the Minister of the Environment, so that he or she can set the terms so narrow as to avoid complex or problematic issues they do not want the panel to examine. These are typical ways to defeat the essential purpose of environmental assessment that are chronic across the country, and most of them apply to The Manitoba Environment Act.

This is important to know, because what we want to do as environmentalists is simply get that fair hearing with the best advice possible, so the person in the political position who has to take the flack for the decision does it on the basis of society's knowledge.

What these systems are doing, including Manitoba, is setting up the pretense of collecting information, presenting an unbiased opinion to the Minister, normally so that the Minister can have his cake and eat it too, to have the pretense of no environmental problems and have the jobs related to a development project. That is why environmentalists are loath to give up more than one environmental assessment, because most of them are flawed.

The federal environmental assessment is flawed in different ways than the Manitoba assessment, but if we are going to have flawed processes, then we want as many cracks at the can to get it right as possible. There are so many examples of where that has been effective that environmentalists are loath to turn down two assessments if they have to go through these flawed processes. When the notion arises that instead we will go for one, a joint one, the question automatically arises, will it have the best aspects of both or the worst?

The Premier (Mr. Filmon) has promised the best and set in place a piece of legislation that is almost guaranteed to provide the worst. The reason why it is guaranteed to provide the worst is because that is normally what happens when two jurisdictions get together and try and sort out their differences and get to something they can live with that is just one process. The history of that in environmental issues in Canada is that you go to the lowest common denominator, and we see that in the regulation that was released in January.

Notwithstanding the Premier's comments, the regulation that was released that is supposed to reflect the best of both processes in many occasions actually contains the worst. I give you a couple of precise examples. With respect to the appointment of panelists, the highest standard for the appointment of panelists is the federal process which says that panelists will be unbiased, free of a conflict of interest, free of political influence and expert. Those are the criteria for the appointment of federal panelists.

The provincial criteria for the appointment of panelists is entirely at the discretion of the Minister, and the result is the appointment of people who are members of the Party in power as a normative basis for appointment.

Clearly, the federal standard is far stricter. What does the regulation contain? It contains essentially the provincial requirement. Why is the federal requirement not there if we are supposed to be living up to what the Premier (Mr. Filmon) said would be the best of the standards?

Similarly, on the terms of reference criteria contained in this regulation, the federal standard is the weakest of the two. That is that the Minister sets the terms of reference for a panel, and the panel is constrained by whatever the Minister says they have to look at.

In Manitoba it is far different. This is one of the few areas where we outshine other provinces, because in Manitoba the panel has the ability, although they have never exercised it, to set its own terms of reference.

One would have thought that in the regulation, given what the Premier (Mr. Filmon) had said, it would be the strictest standards that would be applicable, it would be the Manitoba requirements that were contained in the regulation, but if you look at the regulation, in fact it is the federal standard that is contained in the regulation.

These are simply examples that in practice it is much easier to get agreement by going lower than by going higher.

I do not think the Department of Environment officials who are here today will begrudge it too much if I say comments that are related to me, which were that they do not think they could get the federal Government to agree to have the panel accept the

terms of reference. That is the whole reason why it is so tough to get the highest standards unless you say so.

The amendments put forward do not say so. They do not say so in general terms, and they do not say so in specific terms. That is one of the reasons why we are seeking amendments to the amendment. We are seeking both a general provision that the highest standards have to be applied, and then specific provisions to make sure that it is beyond a shadow of a doubt on a number of crucial points—in fact it is contained right in the legislation that these things must occur. There is no question if the jurisdiction that we want to go into a joint assessment with is unwilling to meet these conditions, get lost.

Two assessments, either do two assessments or they meet the minimum criteria—simple as that. That gives us a tremendous strength in negotiating, because our negotiators just point to our legislation. They say gee whiz, you would like to have a joint assessment, you would like to save some money, you would like to simplify the process, grand. Here are our minimum conditions, sorry, we cannot negotiate them, it is legislation.

The other jurisdiction has a choice then. They either concede or they have two assessments. I think what we will see is they will concede. The question is whether we want them to concede on those points or not. If we want them to concede, then we build them into the legislation. If we want to go to the lowest common denominator, we leave it as it is.

* (2320)

This piece of legislation designed to amend the Act also contains the notion of taking our assessment process and actually delegating it out to another jurisdiction. I understand the rationale is that for some very small assessments this would just be an economical way of doing it, and since they would be so small as to be trivial, why not?

The problem is that this Bill is being introduced at a time when public concern about the good faith of Government's behaviour on environment is at an all-time low and the provision contained in Bill 24 is completely discretionary. It contains no criteria upon which such delegation would come into play. It does not say whether it be big, small or in between. For all we know, it could be Conawapa that is being delegated to some jurisdiction.

Now, why would Manitobans ever want the federal Government to be the sole body considering Conawapa? Why would we want to rely on the federal Government to do the right thing?

(Mr. Chairman in the Chair)

I cannot imagine any circumstances where we would want that to happen. Even scarier, why would we ever want Saskatchewan to do an environmental assessment for us completely? How would we know we would even get an opportunity to have a hearing in Winnipeg? How would we know that we would have intervener funding? How do we know that we would get any of the things that we would think appropriate? Then, if it is done completely wrong, we have one option, either do it all over again or live with it.

Why would Manitobans ever want that situation when we see that is the situation that industry so frequently likes to put us in so that they can continue their projects? I will try and stop there and go back for that analogy because it is an important one.

The classic environmental assessment technique for industry is the foot-in-the-door technique. Let us spend $200 million so we cannot go back on this project. It is very similar to: let us do this entire environmental assessment, and even if it is wrong, so much time will have been spent and so much money will have been spent that who could contemplate doing it again?

These are the practical implications of the legislation in its present form, and there really is no good reason for the complete delegation. We do not want it there, even with conditions. We have said so to the Minister, and in December he agreed that there should be no complete delegation out of the province. We would ask him to stick by that agreement and introduce an amendment tomorrow that reflects that agreement.

I am not going to go through each of the provisions of the agreement absolutely, but I will go through quite a number of them. They are contained in that letter of December 14 that is referred to frequently by other speakers. It is worth going through them, because the agreement has specified that some of the changes would be right in the legislation and some would be in the regulations. There is a really good reason to have things in the legislation.

The reason is that before you can change them, you have to come back before this committee and before this Legislature and go through the process

again, which gives you a fair degree of protection that there will not be easy changes to these provisions, and these provisions are being put in as protective provisions to the discretion of the Minister to ensure that the discretion of the Minister is used appropriately for all administrations.

We do not want them easily changed. To put them in regulations means that they can be changed at the discretion of Cabinet, so for the most part, we do not want them in regulations, we want them in the legislation.

That would include the requirement of notice of a joint assessment to be given to the public, there be advertisements to the public, that the requirement for filing of a proponent's proposal in the public registry. All those things should be in the legislation.

In the legislation there should be provisions that there be public hearings in Manitoba, that there should be members of the joint assessment panel who are appointed jointly by the Ministers from the relevant jurisdictions, that panel members be impartial and free of any bias or conflict of interest, that there be a program of financial assistance for public participants in the assessment, and that there be an opportunity for the Minister or the director to seek further information after the joint assessment, should they wish.

Each of those things are bare minimums that should be directly in the legislation. If I can have your attention for a moment, I pose you a question on each one of them, why not? Why not have right in the legislation that you have to advertise to the public that there is going to be a joint assessment? What conceivable reason is there not to put that in the legislation? Why not advertise to the public of the hearing process? What good reason is there not to do it if you are intending to put it in the regulations anyway? Is there some barrier that will prevent you from putting it in legislation? Having public hearings in Manitoba for all joint assessments, can we imagine any reason why we would not want to do that?

Each of these things is so fundamental that there is really no strong argument that I can think of that would suggest why it should not be in the legislation. In fact, when I discussed these things with the Minister, he was in agreement with this point. He could think of no strong reason why these things should not be adopted and no particularly strong reason why they should they not be in the Act, except that if you put them in the regulations, you know, that is simpler for Government. That is a tendency of Government to put things in a way that can be changed easily, but these are things we do not want to be changed easily.

Now, in the regulations we agreed with the Minister that the appointment of the panelists should be free of political influence and the panelists should be expert. There has been much debate tonight about what "free of political influence" means, and my comment I guess on that would be "free of political influence" is pretty straightforward for the average person. Who really cares about the nuances? Who is going to challenge it so long as you have it in there?

If you do not have it in there, I can tell you who is going to challenge it. If you do have it in there, is industry going to challenge it if you appoint someone who is free of political influence? Are they going to take you to court over some kind of interpretation of it? I strongly doubt it. So long as you are sort of keeping to any sort of reasonable interpretation of what that meaning is, are environmentalists going to take you to court over it? I strongly doubt it.

In the federal sphere, as a matter of practice it means that political members of the Party in power and civil servants cannot be appointed to the panel. That is their rule of thumb federally, and that is where these words come from. It does have the advantage of providing a cure to a consistent problem presently in Manitoba.

In any event, the Minister was agreeable to including these things in the regulation. They are not there in the current draft regulation, and we would ask the Minister to honour the agreement and put them in the draft regulation shortly. If he is inclined to put them in the Act, so much the better.

The question was brought up to an earlier commentator about whether the Charter of Rights would have an influence on whether you could prohibit someone who is a political Party member from participating on a panel. I would like to spend a little bit of time on that one, because I have heard that there is a lawyer in the Department of the Attorney General who has this opinion. I have not spoken to that person, but I am informed that in fact no legal brief on the point has been prepared. It is just sort of I guess a less than thorough review of the matter that has resulted in this opinion being expressed.

Certainly the Charter contains provisions that would cause this kind of concern to arise, but I guess the issue is that there are competing values in our society. The Charter contains some, and some are not in the Charter. One of the very strong values, I would say, that our society should adopt is that our panels that are advising Ministers on important environmental issues should be free of political influence.

If that happens to be in conflict with the values set out in the Charter, then I would suggest we rely on Section 1 of the Charter, which is the provision in the Charter that permits competing values to override the Charter. I would say that we should rely on Section 1 until someone challenges it and tells us we cannot.

The comments I made at the beginning were congratulations to the Government for being very forthright in the regulations, and a variety of other things. One of the problems with this particular amendment was it came forward at the last minute. It is my own opinion it is being driven by circumstances relating to Hydro, but whatever the circumstances, it came forward on fairly short notice and resulted in a rather significant panic amongst environmentalists.

* (2330)

It is a situation that can be wholly avoided if the actual practice of how the Government deals with regulations is extended to legislative amendments and in fact further to the agreements that they propose to enter into to create joint assessments. Let me try and explain that.

Under The Manitoba Environment Act, regulations are circulated in advance of ever being put into force, and they permit the public to comment on the regulations before the final regulation is brought into force. The result is that the public can set forward its views, and the Department of the Environment can hear those views and frequently amends the regulation to improve it in one or more ways.

This should be applied to amendments to The Environment Act, so that instead of just relying on this particular committee hearing phase as the sole method of public participation, the amendments are actually circulated in advance. People can complain and chew the ear of the departmental officials instead of your ear and put the departmental officials to sleep instead of putting you to sleep, and they might improve the Bill before it ever comes here and essentially absolve you of headaches.

That is a very useful process in my mind, and given the problems related to this amendment, it would be very useful if Bill 24 was amended to ensure that the next time there is an amendment to The Environment Act, the amendment is circulated in advance to the public, and the public is permitted an opportunity to comment on it.

The extension goes further down the line to those agreements that are contemplated to come into place to set up the joint environmental assessment process. If you want to make sure that you have not covered every base and you have people who complain about it, do not send it out and have it commented on. That is, if you want problems, do not send out a draft agreement, because you will get lots of problems then, you will not know what everyone is worried about, you will only find out after you have an agreement, and then the shouting will start.

If you want to avoid shouting and avoid problems, send out the draft agreements in advance and make sure you build yourself enough time in entering into those agreements so that you can hear public commentary first and build in the commentary as amendments to the agreement before it is signed. In that way, everyone will be a whole lot happier, and therefore we would recommend that Bill 24 be amended so that process is actually required for the entering into agreements for joint assessments as well.

There are many other things that could be said about this Bill. I will not say them all tonight. I imagine everyone is getting tired of hearing me, and I am kind of on a podium in more ways than one here. I will try and shut it down a little bit, but let me say I would be willing, and quite desiring actually, to be present during the clause-by-clause consideration of amendments to this Bill.

I have had the honour of being the representative of the environmental community who has had the most drafting involvement in this particular process, and I would certainly be more than willing to sit in on it provided it is at a reasonable time. I would be open for questions if there are any.

Mr. Cummings: You are suggesting that the consultation process that occurred before this Bill was introduced in the Legislature was not sufficient?

Mr. Pannell: That is correct.

Mr. Cummings: In what way?

Mr. Pannell: There was no consultation process on this Bill before it entered the Legislature.

Mr. Cummings: Perhaps that is your feeling about what happened. There were a number of public meetings. I have printed responses in front of me from different organizations that made presentations at those meetings.

On the principles of joint assessment, I agree that the printed Bill was not there. That is why I asked do you believe that the process—that was in fact the reason that the Bill was not introduced on the opening day of the Legislature. It was to allow for public consultation and input at that point, and that is my concern that—you were saying the only way that would satisfy you is if the printed Bill was there.

Mr. Pannell: That is essentially my recommendation, that you treat amendments the same way you treat regulations. I appreciate that the distinction may not be an important one for you who is setting policy. The policy, whether it ends up in an amendment or regulation, may or may not be of importance to you, but there is a significant distinction between an amendment to legislation and a Bill. In this particular case, there is an important distinction between the content of the regulation that was referred for public consultation to which you refer and the actual Bill.

The example I would give is, for example, the regulation contains no notion of complete delegation of the environmental assessment outside the province, so there is no public commentary or even discussion on that point. For two reasons, one that the content of these two documents is substantially different and one that the nature of the two documents is substantially different, I would recommend that you circulate both regulations and amendments in the form that you intend to introduce them, before you would introduce them.

Mr. Cummings: We have discussed this before, so I will not prolong the process much longer here tonight. You talk about the section of the Bill, (b) Section where it talks about "provide for the use of another jurisdiction's assessment process." I would like you to tell the committee whether or not you believe that another jurisdiction's information gathering process, which is the assessment work, can be used for Manitoba to make a decision.

Mr. Pannell: The answer is no.

Mr. Cummings: Would you have the same answer if it were the federal process?

Mr. Pannell: That is correct. The answer is no.

Mr. Cummings: So you are saying that there must be two processes?

Mr. Pannell: No, I am not saying there must be two processes. I am quite theoretically willing to accept the notion of a joint process provided minimum conditions are established that ensure that the best aspects of both joint processes are present, and at a minimum, all the conditions of the Manitoba Environmental Assessment are present. So long as those two conditions are met, I cannot see any reason why you would not have a joint assessment.

The problem is that we are not sure at present that is what a joint assessment will mean as the Bill is presently written. You really asked a different question. You asked about the complete delegation out, which is the notion that some other jurisdiction could do all the legwork right up to the final political decision, and then we would take the final political decision. I am saying to you no, that should not happen, it should not happen theoretically, and it should not happen for a variety of practical reasons which I am happy to go into, if you wish.

Mr. Cummings: Well, I do not agree with your choice of words when you say "political decision," and there is nothing in Bill 24 that I see that allows for anything other than Manitoba's decision to be made by Manitoba. You have answered the question very clearly, that you do not believe that other assessments can be used for decision-making process. Do you believe then that where there is—Shoal Lake being an example, a very small portion of the lake on Manitoba's jurisdiction—do you see then only the federal process applying?

Mr. Pannell: No, in that case there are at least three jurisdictions that have some role to play, and it is conceivable that you would have a joint assessment involving three jurisdictions. So long as the best provisions of all jurisdictions were applicable, I would be comfortable in having all three jurisdictions participating in a joint assessment.

Mr. Cummings: Do you conceive of Ontario, for example, sharing with Manitoba assessment occurring on a portion of their watershed, let us say on the east side of Shoal Lake as opposed to along the border? Let me clarify. I do not mean to make it a subjective question, but my concern with your

answer to the previous question is how do we get another jurisdiction to accept Manitoba's input when it is some considerable distance beyond our border?

Mr. Pannell: I do not think the way is to loosen our requirement so much that we make it easy for them to enter into assessment process that may be valueless. That is not the way. I think the way is—

* (2340)

Mr. Cummings: I agree with that statement.

Mr. Pannell: I think the way is to permit really, on basic principles—I think the basic principles of environmental assessment are gaining credence across the country, and I think the values of environmental integrity are also gaining credence across the country. Those two things on their own over time will be sufficient to cause provinces, when they also consider the financial issues of doing multiple assessments, to work together on these things. I do not think you have to worry about going to least common denominators to get there.

Mr. Cummings: I am sure you are aware that all jurisdictions have indicated their support for this direction in terms of trying to get some harmonization so there is some continuity across the country. Can I assume that you are not opposed to the principle of joint assessments?

Mr. Pannell: I am not opposed to the principle of joint assessment, and most environmentalists are not. What they are concerned with is the historic pattern of joint assessment in the name of efficiency, and what happens in practice is that these joint processes end up being a process to the least common denominator.

Environmentalists across the country are now aware of the arrangement that the provinces and the territories have entered into saying that these are things that they think are good and proper, and I can assure you there is a consensus in the environmental community across the country that they are taking the view that the wholesale delegation of environmental assessment to another jurisdiction and the unfettered discretion of entering into joint assessments is not a good and proper thing. They will be fighting it tooth and nail at every opportunity in every province and in the federal jurisdiction and have already begun that process.

Mr. Chairman: I would now like to call on Mr. Len Sawatsky, Private Citizen. Mr. Sawatzky does not have a written presentation for distribution.

Mr. Sawatsky: Mr. Chairperson, committee Members, I have two regrets tonight, and that is, one, that I have no copy for you. The copy I had prepared has disappeared into the nether realms of my word processor which have been carefully and scientifically built into the word processor, I am sure.

The other regret I have is that this happens to be the third time that I have intervened personally on the amendment that I would like to suggest to you as far as an amendment to The Environment Act.

I realize that the focus of much of our discussion here tonight with Bill 24 has to do with joint assessments and intervener funding, and I certainly want to support what the environmental organizations of Manitoba have said to you tonight. I have read their amendments, and I feel that I could stand behind them almost 100 percent. I think there are a few places where it says "the Minister may" that I would like to say "the Minister must" and make sure that it has some enforcement possibilities.

I have had some experience as an intervener myself. I was a resident for a few short years in Ontario and was involved in doing some research there, and so I have some experience with the process and also with successfully advocating that environmental assessments be a requirement and essential in all major developments. Now it is included to be more than that as well in Ontario. I have seen also the development of funding for groups in that province as well.

Believe me, those of us who are dependent on volunteer time do require that kind of assistance to be able to make solid and credible presentations to bodies such as an environmental assessment panel.

I would like to add some fresh perspective here and some different kinds of examples, amendments that I would encourage you also to consider beyond what has been spoken of tonight. One has to do with environmentally sensitive lands within the perimeter of cities. A lot of cities in North America have already adopted this kind of an amendment.

Actually what we are talking about tonight is public hearings and where we have an opportunity to intervene on certain things. I think there are some things where no one should have an opportunity to do any intervention whatsoever, and that is on environmentally sensitive lands within city perimeters. Cities are a place for concentrated

development, and we often overlook the need for ecological balance within city perimeters.

What I would like to advocate for tonight is that you also add another amendment to this amendment Act that would ensure that. You do have authority over the City of Winnipeg to make sure that they do this kind of thing, and it is that kind of thing I would like to propose.

The best way to illustrate this is to look at actual, practical experience and a real example that took place here in the city. One of those, as one of the Members of the committee well knows, has been the development that was proposed for Omands Creek, consisting of a six-story office tower. I think it provides us a good example of what some cities call hazard lands amendments or a hazard land by-law and is something that I urge you to consider.

Within the parameters of existing city by-laws and zoning regulations, city officials had no choice but to initially approve the application for Omands Creek, at least at the initial level. Thanks to media exposure and thanks also to the aggressive action of local citizens involved in opposing this development, this was not approved, but it happened politically as opposed to in any rational objective ways to which I would like to propose to you tonight.

According to the law, it could have been approved. First of all, what would have happened is that the city rivers and streams authority, as they were then called, would have required a geotechnical study to ensure bank stability and adequate water flow. Secondly, the provincial ministry of the Environment would have had to—well, did review the developer's plans. I am not sure that process was ever completed, but to review it to see if it falls under the definition of development as stipulated in The Environment Act. If it does, then the licence requirements will necessitate an environmental impact assessment.

* (2350)

Thirdly, this particular project at Omands Creek would have also required approval from the ministry of Natural Resources to ensure that there was adequate water flow.

Some would say that such a maze of approvals for which one would have to apply already provides for adequate protection for these so-called, well, not so-called in my view, environmentally sensitive lands. I would say not. Wealthy developers with connections have surpassed such obstacles successfully in the past or stick-handled their way through them.

Secondly, it also makes a lot more sense to me to have clear and rational by-laws or provisions within legislation and also regulations which protect hazard lands long before an application is even considered by a developer. Certainly, it would save developers the cost of an expensive application process, which would possibly lead to a rejection in the final phase, as it did with this particular developer. More importantly, it would save Government bureaucracies much time and expense and several trees worth of paper in having to consider each stage of frivolous applications.

Thirdly, a developer can often use such an obstacle course for his or her own advantage. For instance, in the case of Omands Creek the developer could go halfway—which I think was the strategy here, this is my intuition, my guess about what was happening here—through this obstacle course, gotten the city over the barrel, and then made a deal with the city to abandon this controversial development in exchange for a choice piece of property elsewhere in the city.

Now this kind of market-driven haggling by a private developer with various levels of politically vulnerable Governments puts the citizens' hard-earned tax money up for grabs and more importantly it places the environment, our source of life, at risk.

Surely we are at the stage in this day and age where everybody, regardless of partisan interests, acknowledges that sensitive lands should not be left to the vagaries of this kind of "let's make a deal" mentality, and what we need are zoning provisions and legislative provisions at the civic level, at the provincial level and at the federal level which would automatically protect the sensitive lands in question. Such provisions should be clearly set out, widely understood, and accepted and defined in concrete terms in order to rule out some subjective or politically influenced interpretations.

As I have said before, many cities have already adopted such zoning regulations for hazard lands or environmentally sensitive lands. In fact, in my own fairly skimpy research that I did on this—I say skimpy, because I have high regard and respect for good research—I found out that some of your provincial staff already have the wording for such a

regulation or legislative provision, and I would like to read that wording to you and make it part of the record. The wording goes as follows:

Hazard lands are those lands upon which development is likely to cause one or more of the following impacts:

(a) those lands defined by environmental officials as having severe physical and environmental hazards such as lands requiring restorative action due to bank stability and lands characterized by extensive drainage and erosion problems;

(b) degradation of the environment and reduction in natural and ecological diversity;

(c) destruction of biotic communities such as tree stands, wet lands and nesting areas;

(d) direct and indirect impact upon human settlement, and areas of archaeological and paleontological value; and

(e) major cumulative impacts resulting from recurrence of minor harmful actions.

I believe it is clear that under such a zoning provision that would be imposed upon the city by the provincial Environment Act, the Omands Creek development would never have even been proposed. I am fully aware that this committee need not concern itself with the actual wording as presented, but it is certainly within the committee's mandate to consider an amendment that would obligate the city to establish such as a zoning by-law and would protect hazard lands from development for commercial purposes.

I think it would be really preferable for the city to have shown some leadership in the protection of environmentally sensitive lands, but with the past record of the council as we know it and with the voting patterns in mind, it would seem to be that it is the size of a donation or a well-placed phone call that determines how things go. Despite the fact that there seems to be new winds blowing at City Hall as a result of the recent city election, I believe it is really important that the provincial Government set guidelines and initiate action in this area.

I also wantto encourage—and this is where I have lost some of my notes—you to consider social impact assessments as well, in addition to an environmental impact assessment. The way people live, community life and ecological balance are intimately linked. Sometimes you talk about the environment as if it is out there, it is outside of us. It is a part of us. We need to be talking more about ecological balance, I think, than the environment that is out there. We are part of it and it is part of us. We depend upon it. The way communities are organized and how community life, whether how integrated it is, how integral it is, how healthy, what kind of quality of life we have, all depend upon the environment.

I, as some of you know, have been quite active in the justice area. We have seen again and again with the deterioration of community life, where people are really communicating with each other, where there is co-operation, where there is sharing, when that deteriorates there is also an increase of anti-social behaviour and social problems. We have seen it again and again and again. I would encourage you also to make sure that there is social impact to any kind of development that takes place, not just an environmental impact. The two are intimately linked.

Finally, I would really encourage you to come up with a definition that is not subject to any Minister's subjective determination regardless of what Party it is, and I mean that sincerely. I would say this the same with whatever Party, even if it is a Party of my own preference that would be in power, and would say so vociferously. Maybe part of what it means not to be politically influenced is when you have the public involved in these hearings, those kinds of dynamics that might take place in back rooms are much more exposed, and people will have the evidence to know whether someone is beholden to their political masters or not. Just because you are a Party member or a card-carrying member does not mean to say you are an automaton that is just going to go along with what your Party Leader may say.

Certainly, I do not operate by those kinds of—I hate to call that an ethic, but nevertheless, people are thinking people. If the public is involved, if there are interveners that are supported by Government money or the developers' money who are free to speak whatever they want, and they can observe all these meetings, maybe that is the way to minimize those kinds of dynamics.

What I was also saying, another way is to have a rational, objective definition of these words that are so subject to interpretation, such as the word "development." There should be no question. The Minister should not have to figure oh, is Omands

Creek a development or not, you know. It should be protected by law. Thank you for your time and especially at this late hour.

* (0000)

Mr. Cummings: I think you and I may have had this discussion before. I certainly support the idea of local authorities being required, as part of the planning process, to recognize environmental considerations at the start. I do want to challenge you on one thing that you said though. You indicated that decisions are very often made, or words to that effect, by the size of a donation. In a free and open political society that is a pretty serious challenge, and I wonder if you want to substantiate that.

Mr. Sawatsky: Give me a bit of time to look through some of the public records, and I think I could substantiate it. I think we have seen it at City Hall very clearly, and I think we have seen it in federal politics at the current time.

You know, having looked at the donations from the 1988 election here, there were some interesting little figures in there. Having seen that report—I do not have it on me right now. When you look at past decisions and when these reports finally come out, there are some very interesting figures in there. Sure, at City Hall I think we could say that has clearly happened there.

Mr. Cummings: At this late hour I guess my desire to debate is somewhat diminished, but I do feel that you are in a sense slandering everyone at this table, as an elected official, when you make the broad-brush statement that those are the kind of things that go on. I certainly would not condone them, and I do not think anyone else at this table would.

Mr. Sawatsky: One of the things Manitoba has done is come up with at least some—maybe has not gone far enough—but some measures which hold people who run for office accountable in terms of their donations. You all had to go through that. I think that in itself is a good way to keep things honest. But we can go further; that is all I am saying. There should be more accountability. Frankly, I do not see why the public should not know. Democracy diminishes when we do not know. If we do not know, we cannot make choices.

Mr. Chairman: Now I would like to ask Mr. Bryan Johnson. He is with Citizens Against Neurotoxins.

Mr. Johnson: Thank you for the time. I guess it is now this morning. I really appreciate what this is taking out of your personal time and lives.

Although I was originally listed on the speakers' list as a Private Citizen, I have recently been asked by the Citizens Against Neurotoxins to make a presentation on their behalf.

We would like to start by expressing our dismay that the agreement reached between the Government and the environmental community before Christmas was not upheld. CAN feels that the Government's reneging on this agreement was deceptive and that the Government should refrain from this type of conduct if we are to work together on these issues in the future, but in the interests of negotiating in good faith, CAN asked me to present their concerns to you this evening.

We believe that the legislation proposed in Bill 24, although potentially very progressive, contains some very serious flaws. We therefore ask for the following amendments to this Bill. We need environmental assessments at all Class 2 and 3 projects. To allow large-scale projects to begin without proper environmental impact assessments is a shocking disservice to Manitobans. Section 13.1(b) allows precisely for such a mistake. The Bill must specify environmental impact assessments for all Class 2 and 3 development projects. The spirit of interjurisdictional co-operation coupled with financial savings apparent in 13.1(a) is highly commendable. The savings that can be recognized by the Government of Manitoba are significant, and the potential increase of access to the democratic process through interjurisdictional consultations is also very important.

To have accomplished both of these with a single motion is a very worthy effort; however, when one Government works with another, the effect is often to sink to the standards of the lowest common denominator. Therefore, it is imperative that Manitoba take a leadership role and require the other partner in a joint assessment to rise to our standards. This must be specified with an amendment 13.1(a).

Just as a willingness to co-operate with other jurisdictions is important, all the affected Ministers must have a say in the appointment of panelists. Furthermore, the panelists must be free of political bias and free of conflict of interest. Talks between the province and the environmental community

have indicated provincial legislators were unable to develop appropriate wording. We would like to refer you to the EARP guidelines for choosing panelists as an effective model.

These panelists, being expert, unbiased and acceptable to all of the Ministers concerned, must then be free to set their own terms of reference. It has been our experience in these matters that terms of reference need to be flexible enough to change as new information comes to light. To have the terms of reference rigidly fixed and unable to adapt to increased understanding would be a very great disservice to the people of Manitoba. Therefore, the panel must be able to set its own terms of reference.

Bill 24 contains significant advances with regard to the role of the public which will help upgrade the environmental review process. Unfortunately, it does not yet specify that there will be public hearings with every environmental assessment. As well, it does not yet specify that there will be a proper 90-day public notice, including the use of printed announcements in the major daily papers. Proper notification of the public is essential to any review.

Section 13.2 participant funding by proponents, contains a very necessary factor for meaningful public participation, intervener funding. Proponents of large development projects typically have large budgets and many other resources available to them. Interveners are usually private citizens operating out of pocket. They simply do not have the resources to do research and make presentations comparable to those of industry. The result is that a system without intervener funding is weighed heavily in favour of the proponent before the review even begins.

Amendment 13.2 is a good start, but it still needs to specify the criteria that qualify a person or group for intervener funding and assure that all parties qualifying will receive intervener funding. These criteria must be available to the public in an easily understood format.

If these amendments are made to Bill 24, Manitoba will have a better environmental protection system accessible to all. Thank you.

Mr. Chairman: Mr. Peter Miller, Private Citizen.

Mr. Miller: Actually, I represent TREE. Thank you. I chair the Department of Philosophy at the University of Winnipeg, and I also teach a course in environmental ethics there, but I speak here tonight as a representative of TREE.

In my remarks, I want to comment on the requirements for a sound environmental assessment process and support the need for such a process by relating my experience with the Clean Environment Commission hearings on Repap's Phase I mill conversion proposal. That experience points up sharply some of the ways in which the present process is flawed.

* (0010)

Bill 24, I think, has a legitimate purpose that others have alluded to, the efficiency and streamlining. I think that it should be clear that the experience of federal reviews following provincial reviews in such cases as the Rafferty, Alameda and Oldman dams and Al-Pac and, as to occur, Repap, is not superfluous. It is not superfluous, not only because the federal Government has responsibilities there; it is superfluous because the first assessments in each of these cases were inadequate.

As long as there are deficiencies in the quality of the environmental assessments, of course, we are all going to want a second chance to try to correct some of those deficiencies. As has been emphasized by other speakers, the condition for accepting the efficiencies of a single process must be that the highest standards are observed. There is a fear that many of us have that there is a tendency to weaken it. It is not unwarranted, I do not think, by the track record of various Governments.

We appreciate the commitment of the Premier (Mr. Filmon) and the Minister to want the most rigorous combination in Manitoba, but we want to see that commitment fulfilled in very specific terms in the legislation.

Bill 24 for joint assessments does not yet contain that assurance, and so we think it should not be passed unless those assurances are present in further amendments to Bill 24.

I think what I will do is skip down towards the bottom of the page. In addition to the technical expertise that is required for an environmental assessment, there is an increasing recognition of the need for public participation. I think a paper by the Energy Caucus of the Canadian Environmental Network gives a perceptive rational for that, and so I would call that to your attention.

They essentially point to three basic reasons for the inclusion of the public in the decision-making process. First of all, it is a democratic right. If we are going to have full democracy, then the public must

be heard on vital issues of that sort. Sometimes it is said, well, a Government is elected then to exercise, on behalf of the public, their own judgment as to what is good for the public, but there are too many and too diverse issues involved in any election campaign. There is no way in which that is any substitute for hearing the public on the very specific development or proposal that is at hand.

The second reason is there is practical utility. The quality of the decisions—and I am quoting here—can be improved as a result of the information, expertise and perspectives the public brings to bear. The process may result in creative new solutions not previously considered.

Finally, the public participation may result in more effective implementation of the decision. You do not want an alienated public. You want a public which can see the reasons and the justice for the project and to know that these have been well considered.

The same paper further points to the nature of this kind of decision making. These are value-scientific disputes. It is a combination of both. You do not have one or the other separated. They characterize these as having a public interest in the problem and its resolution, the information needed to make a rational judgment is complex and difficult to evaluate, and finally, a sound final judgment requires fine tuning and balancing of a number of quality-of-life concerns about which different people may have widely varying attitudes and feelings.

The Energy Caucus of the national Environmental Network identifies the following principles that they think should govern any such process: fairness, openness, mutual respect, consideration of and sensitivity to cultural, minority and world view differences, flexibility, and the commitment to the integrity of the process.

Thinking now of this comprehensive purpose that an environmental assessment has to serve, the complex value-scientific combination in the judgments and the need for significant and adequate public consultations, the demands obviously on this process are quite high. This is not an easy set of demands to fulfill, and I think we are all appreciative of that fact, but the consequence is that the legislation should embody the requirements to fulfill those very high standards.

Here is my list of what I think it should contain—this is not an exhaustive list, by the way:

1) A broad scope including a survey of the kinds of value issues at stake in relation to the proposal, a thorough examination of alternatives to the proposal, and alternative ways of executing the proposal;

2) Competent research into the many facets of the proposal and its predicted consequences and impacts;

3) Informed and significant public input at various phases beginning with the initial setting of terms of reference and procedural guidelines;

4) An independent, competent, sensitive, non-biased panel that is free from political influence and has the requisite knowledge, experience and expertise to oversee the entire environmental assessment process and make the complex value-scientific decisions that are called for;

5) That panel furthermore should have an adequate set of powers to assure the integrity of the process, including:

   (a) the power to set or revise its own terms of reference and the assessment guidelines following inputs from proponents, Government and the public;

   (b) the power to award intervener funding to participants to assure their informed and significant participation;

   (c) the power to hire its own experts to assist in evaluating and interpreting the research presented by others or to conduct its own research to remedy gaps in the information from other presenters;

6) A requirement besides the competent panel and suitable powers, adequate time for each of the phases of the assessment to fulfill what has to be done at each phase;

7) Finally, adequate resources for the panel and interveners to accomplish these tasks.

Moreover, so that Manitoba can guarantee that these conditions for an assessment are rigorously fulfilled, we should retain our own share of responsibility for an assessment of any development having a possible impact on Manitoba, and therefore I join others in urging the deletion of 13.1(b) of Bill 24 which permits delegating to another

jurisdiction the environmental assessment. I think that is wrong.

Now I have stated briefly some of the purposes and some of the requirements that I think the Act should assure. What I want to do in the remainder of the paper is to consider, based on my own personal experience, what deficiencies I have observed in the one process that I have taken a hand in, which is the Clean Environment Commission Hearings on the Phase I mill conversion proposal by Repap.

First deficiency: lack of an appropriate evaluative framework that explicitly recognizes the many values that should underlie policies of environmental protection and sustainable development—now, the Government is working on establishing a sustainable development policy framework and that is intended presumably to meet that kind of requirement, that is, to have some kind of a value framework for operating. Unfortunately, that process has problems as well, and one of the main problems is that it fails to identify the broad range of environmental values other than the sorts of things—the long range economic prosperity. The scientific, spiritual, cultural, heritage and aesthetic values are nowhere, as far as I can tell.

* (0020)

The book that I have been through the most is the forestry one, but nowhere would you get the idea that Canadians love their country, that they love their wilderness, that it has all sorts of values to them quite apart from being a resource base. I do not find that in the sustainable development documents that are coming from the Round Table.

I think the Government, if I may just make an aside, has to make a decision here. This sustainable development initiative, is this one wing of environmental policy, namely the environmental conditions that the economy must meet? If so, you need another wing of your environmental policy, and that is one that speaks of the other values that our natural heritage contains.

If you want to integrate the two, then you have to have in one and the same document the recognition that there are these other values. I do not see them acknowledged in the sustainable development literature. That is the problem I have with that initiative as providing the basis of the value framework that I am looking for. With or without such a framework though, I think the environmental assessment must offer the opportunity for a hearing as to what values are at stake in the process.

As a further aside, TREE, with a couple of other environmental groups, has been working with Repap consultants, the Beak Consultants on the Forest Management Plan to develop a questionnaire for identifying wilderness areas for preservation on the basis of a variety of values, so there is some initiative there that indicates the kind of thing that is required.

Such measures should not rest on the good will of a company or its consultants. It should be an integral part of the legislation and regulations governing the process to require such a consideration of values. Part of the competence of the panel that oversees the process should be an ability to recognize, analyze and weigh complex value questions involving the full range of environmental values and environmentally related cultural values. Such abilities are not the same as having panelists represent particular value commitments in their own persons. That may be so as well, but you need people who can handle complex value judgments.

Like Manitoba's hearings on Meech Lake, environmental hearings will tap into some of the most basic values we hold, not only about rights, health and welfare, but also about our place in nature and the value of our wilderness heritage. There was little evidence that the Clean Environment Commission hearings on Repap's Phase I went much beyond an evaluative framework that considered only jobs versus health risks. This is historically understandable, given the traditional role of the Clean Environment Commission that is still reflected in its anachronistic name, which I presume would be changed under any thorough modification of The Environment Act.

Under Manitoba's 1987 Environment Act, however, the Commission may on its own volition conduct an investigation into any environmental matter. It is not just confined to pollution issues. In my view the Clean Environment Commission has not yet awoken to the full power and responsibility given to it on a discretionary basis in the 1987 Act. It is important, I think, to make these powers and responsibilities more detailed and explicit and mandatory in their exercise in amended legislation.

Second deficiency: the overly narrow scoping of the assessment. Although Phase I mill was destined

to contribute massively to North American garbage glut, to harvest forests with three and a half to four and a half times the intensity that Manfor did, as a consequence of either the 1,700 tonnes a day for the Manfor equivalent area or a reduction of the licensed area if they did not go through with Phase II, either way it would produce at least a threefold increase in the intensity of the harvest and no consideration of recycling opportunities, forest inventories, sustainability of the forest management plans, wilderness preservation, compatibility with other forest users—all of these things were excluded. I think Brian Pannell made the point, once you have a heavy capital investment, it is very difficult to turn down the company's need for the resource to pay off that investment.

Not only was the scoping too narrow, there was no opportunity for an independent determination or vetting of the scoping of the assessment. The scope was simply prescribed by the Department of Environment without independent review of its adequacy or appropriateness by the CEC. There was no forum for hearing and responding to arguments regarding the inadequacy of the scope. TREE members were astounded to hear Pat Maley, President of Repap-Ferrostaal, tell us that he would defend Environment's decision to divide the assessment, because he had proposed that division in the first place. I want to add that senior Environment officials, Tanner Elton specifically, denied any direct dealings with Mr. Maley on this issue. I have no idea what factual circumstances, if any, might underlie his claim to us, but he said it when he met with TREE. I mean, I find it disturbing.

I do not object to Mr. Maley or anyone else tossing out suggestions providing it is done in a public manner with equal opportunities for others, especially Manitoba's citizens, to make their proposals and arguments known, and providing that the body which shall hear these proposals and arguments shall not be an arm of the Government which has just concluded a contract with the proponent. It is imperative that an independent environmental assessment panel shall have the power and responsibility to revise the terms of reference given to it if these fall short of the full range of environmental implications which are its mandate to consider.

It is interesting to note that Mr. Keith Grady of FEARO, in a public meeting held by the Department of Environment last fall, said that such a division of assessments for a major development like the Repap proposal would not be allowed under federal regulations which call for an integrated assessment of the entire development, but Manitoba should not rely on another jurisdiction to provide the backbone and integrity for our assessments. Let us rather show some leadership in establishing the backbone and integrity that others must meet.

I should remind you that—well, first of all, the federal legislation is still in flux, so we do not know how it will end up, and secondly, the Bill is intended for joint assessments with other jurisdictions too, so we have to consider—we cannot just rely on the feds providing the standards, we must provide the standards that others must link to.

Another deficiency: lack of consideration of industrial alternatives that might be more benign in their environmental impact. The Al-Pac mill in Alberta was rejected on its first time around, and they came up with cleaner technology. Repap was not asked to look at alternative technologies. I think that is important to include, that the range of technologies must be examined.

The fifth deficiency: technical studies for the assessment were provided only by the proponent's consultants. Other interveners had no resources to hire their own consultants. This point has been made extensively, and TREE approached both Environment and Repap to obtain some resources to hire a few consultants to review what MacLaren Plansearch was doing and perhaps conduct some additional studies of their own. It was declined by both, although the Repap representative did indicate that if Environment were to support the initiative he would recommend that Repap follow through.

I guess I have to give this illustration just to indicate how managed information can affect it. Repap persuaded the Town of The Pas that the mill was not only an asset to the economy—more jobs—but also an asset to the environment. The basis for that claim seems to be the amount of pollutant per tonne of pulp produced. Well, okay, you may clean up the process by reducing the pollutant per tonne, but if you then increase the tonnage four-and-a-quarterfold, you have to substantiate on the basis of total discharges, not the rate of pollution per tonne produced.

I asked for such a tabulation and such an extrapolation from MacLaren Plansearch, and they

declined to produce it in the hearings. I invited them to comment on whether it was fair to extrapolate just on the basis of tonnage or on some other basis. Well, they just would not touch the issue, yet many of the citizens that I heard in The Pas when I went up there to testify were basing their own acceptance of the project on the company's assurances, which were not supported by the presentation of their technical people.

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Finally, in my view the Clean Environment Commission did not display the level of expert knowledge and independence that would be expected of a panel dealing with a complex set of environmental issues. I do not want to impugn any members personally, and they indeed invited me in November to discuss with them my impressions of the process and what its deficiencies might be and how it might be improved, and I said the same thing there. I have no reason to think that within their abilities and their somewhat narrow interpretation of their task they did their job more or less conscientiously.

The point I want to make though is that we have to have a different set of expectations, we have to have a different set of standards for the people serving on these panels. One member even said well, I do not know what all this stuff is about. Well, how is he going to enter into an intelligent discussion, a debate about whether the risk is worth it and so on if he cannot understand the technical information? The only panel member that I could see, on the basis of his cross-examination of the witnesses, who had any sophisticated grasp of it was Barry Webster, who does pesticide research. The other members were pretty much in stony silence for the technical presentation. They would ask how many people do you represent and so on, they would not listen to the particular arguments you were presenting, how many people do you represent?

At one point they did come up with about half an hour's questioning, and that was the point where they were talking about the discharge, sort of a four-nozzle-discharge mechanical device to diffuse the effluent in the Saskatchewan River. Oh, they all jumped in and zeroed in to that, because at last here was something within grasp, something that could be comprehended, but there were charts and charts and charts of percentages of toxic materials and analysis laid over analysis—stony silence exceptfor Barrie Webster. You know, that stuff just is not being processed. You have to have the capabilities there.

I join other presenters in urging the Minister to live up to the understandings that we thought we had, to see that we do indeed have a panel who is competent, and that we have the other provisions that we need for the highest standard of environmental assessment. I thank you.

Ms. Cerilli: I just have one question. You have raised a lot of the values of the environment which I do not think have been considered very much. I am wondering if you think that the amendments that have been proposed by the Eco-Network groups are going to address some of those concerns about looking at alternatives to the proposal. Can you see that the way we would envision a successful environmental assessment process could, as it would stand with the amendments, allow for that?

Mr. Miller: I do not actually see in any of the proposals yet something that would provide that value framework. I think that is the kind of thing that the Government is trying to move towards in the sustainable development document which would provide some sort of an overarching philosophy, and I tried to indicate why I think the present formulations there are inadequate, so I guess that would have to go under the heading of a new proposal. It is not one that anyone has committed to yet, but it is a proposal that I would like to see.

I think the place where this would very likely come out, whether it is written into the Act or not, is in a public review of the scoping. People come to want something or other within the scope of examination, because they feel that something vital hangs on it. I guess what I am urging is that we try to articulate what those vital values are that we think are at stake in the examination. If you will, it is a philosophical dimension of the process that I have not seen formulated in any version.

Mr. Chairman: Mr. Harvey Williams of the Canadian Parks and Wilderness Society. The brief has been passed around. You may start your presentation.

Mr. Williams: Well, I must say, I look at the lateness of the hour and the patience of the committee, and I am most appreciative of the opportunity to speak.

I am the prairie region director of the Canadian Parks and Wilderness Society. The Canadian Parks and Wilderness Society is a national organization of about 6,000 members with over 100 in Manitoba.

I have a brief here which I am submitting on behalf of the society. I might add that I am also president of TREE, but TREE is sort of a coalition group. Many of us wear many hats, and Peter is serving as our spokesman and in my view does a very fine job.

I might add also that the Repap development has been my first brush with the environmental review process and with the Clean Environment Commission. My comments I think may be a little more global and perhaps to some degree be a bit naive, but I think what I will be expressing is the view of one who has a particular interest in some area and some development, and then for the first time encounters this environmental review process. I think what I am probably presenting to you is what you might expect from anyone off the street who all of a sudden found out they were going to put a dump or whatever they were interested in nearby and it was going to be subjected to an environmental review. I hope you will take my remarks in that light.

Natural areas such as parks and wilderness are essential to the maintenance of Earth's biodiversity, and they contribute to the quality of the lives of people in many ways. They provide habitat for wildlife, and they are increasingly viewed as having intrinsic value.

Since industrial and other development is the greatest threat to Manitoba's natural areas, and since Manitoba's natural areas are poorly represented in the provincial park system, which itself is poorly protected under Manitoba's parks Act, the society has a strong interest in legislation relating to environmental protection.

The Canadian Parks and Wilderness Society commends the committee for providing this opportunity for public comment on the draft regulations to accompany the proposed amendments to The Environment Act. We support the intent of the regulations as stated. Public involvement in a comprehensive environmental assessment of developments is in the public interest. Avoidance of duplication of assessment is desirable so long as it does not reduce the rigour of the assessment process.

* (0040)

Specifically, the society supports the application of the regulations as described in Section 3(a) and many other features of the draft regulations. We also support an interdisciplinary review of the developments as implied by Section 3, but the Technical Advisory Committee is not a means of achieving that end. The role of TAC as described under 3(b) is clearly to serve as a channel by which Government departments can influence the environmental review process.

The regulations as drafted will not provide for an independent environmental assessment. Indeed, if I were to characterize the draft regulations by a single statement, it would be to say that they appear designed to minimize meaningful public scrutiny of, and commentary on, the environmental impact of proposed developments. Many, if not most, development proposals subject to environmental review will either be from Government or have prior Government support.

The Repap forestry development and Conawapa dam are typical of such developments, hence Government will be either the actual or the de facto proponent in most developments and accordingly will be reviewing the environmental impact of its own development proposals.

Under 3(b), the Technical Advisory Committee provides the assessment panel with relevant expertise from participating Governments who, as pointed out above, are likely to be proponents of the projects being reviewed. The Clean Environment Commission is itself appointed by the Government, and in the case of Manitoba, serves at the pleasure of the Government. The Minister of Environment (Mr. Cummings), a Government official, issues the terms of reference for the panel.

While the draft regulations call for a panel impartial with respect to the proposal and free of any bias or conflict of interest with respect to the proposed development, no mention is made of political influence resulting from Party affiliation of panel members, nor is there any provision for a disinterested examination of the results of the assessment by independent experts and no requirement that the panel members themselves have any technical expertise relating to the proposed development.

The development proponents employ the consultants who do the impact assessments and will inevitably influence the conclusions. While the consultants who perform the assessment studies may be people of the highest integrity, the fact that they are selected and employed by proponents of the development casts a shadow over their objectivity.

It is ironic that only in environmental protection is such manifest conflict of interest tolerated. In virtually all business, legal, administrative and political transactions where conflict of interest is possible, an arm's-length relationship between the parties involved is observed, yet in environmental protection, the arm's-length principle is allowed to break down.

A credible joint environment review process must include the following: a strong and effective Manitoba presence on the review panel and in the review process; reasonable funding administered by the environmental review panel to non-governmental interest groups to enable them to employ experts to examine and comment on various aspects of the environmental review; environmental review panels who have a proper background to make informed judgments about the various issues involved and who are free from any possible influence of Government; impact assessment at the expense of the proponents, but with the selection and supervision of the consultants who perform the assessment by the environment review panel; and finally, terms of reference for the review panel set by the panel independently of the Minister. Incorporating these five provisions into the regulations would go far toward establishing public confidence in the environmental review process in Manitoba. Thank you.

Mr. Chairman: Thank you very much. Are there any questions of Mr. Williams? Since this is the last presenter for this evening, this meeting will adjourn until eight o'clock in the evening, Thursday, the 17th of January.

COMMITTEE ROSE AT: 12:44 a.m.