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

Thursday, January 17, 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. Cheema, Edwards, Helwer, Martindale, Reimer, Rose

* Substitutions

Mr. Stefanson for Mr. Praznik;

Hon. Mr. Enns for Mrs. McIntosh;

Mr. Ashton for Mr. Martindale.

WITNESSES:

John Shearer, Private Citizen

Kemlin Nembard, University of Winnipeg SAFE

Cyril Keeper, Private Citizen

Kenneth 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

Toby Maloney, Private Citizen

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, will be considered tonight.

Committee Substitutions

Mr. Chairman: Before we proceed, I have a few committee resignations. I have before me the resignations of Mrs. Linda McIntosh and Hon. Darren Praznik.

Mr. Edward Helwer (Gimli): I would like to make a change here: the Member for Kirkfield Park (Mr. Stefanson) for the Member for Lac du Bonnet (Mr. Praznik) and the Member for Lakeside (Mr. Enns) for the Member for Assiniboia (Mrs. McIntosh).

Mr. Chairman: Is there agreement? Agreed. Therefore, the committee Members will be Ms. Cerilli, Mr. Cheema, Hon. Messrs. Connery and Cummings, Mr. Edwards, Hon. Mr. Enns, Mr. Helwer, Mr. Martindale, Mr. Reimer, Mr. Rose and Mr. Stefanson,.

* * *

Mr. Chairman: We have the list of presenters this evening. I will just read off the names: Mr. John Shearer, Private Citizen; Ms. Kemlin Nembard, University of Winnipeg SAFE; Mr. Cyril Keeper, Private Citizen; Mr. Ken Emberley, Private Citizen; Mr. Bill Hunter, Private Citizen; Ms. Jenny Hillard, The Consumers' Association of Canada (Manitoba); Mr. Wayne Neily, Manitoba Environmental Council; Mr. Dennis Breed, Canadian Public Interest Organization.

Before we proceed, can we agree on adjournment time this evening? Is there a will of the committee?

An Honourable Member: Unlikely.

* (2005)

Mr. Chairman: Unlikely? Okay. Does the committee wish to impose a length on the length of the presentations?

Some Honourable Members: No.

Mr. Chairman: We will proceed then. I will call on Mr. John Shearer, and his brief has been distributed. You have it before you. You may proceed at any time, Mr. Shearer.

Mr. John Shearer (Private Citizen): Mr. Chairman, committee Members, environment can be defined as all the conditions, circumstances and influences surrounding and affecting the development of an organism or group of organisms. That definition comes from Webster's New World Dictionary. What

could be more important to us as organisms than our environment?

In recent years we in Manitoba have become increasingly aware of human-induced factors which may contribute to a deterioration of the quality of this environment. Often these factors are related to development projects which, while generally well intentioned, are not sufficiently evaluated or understood with respect to their long-term effects and costs.

The Manitoba Environment Act, passed in 1987, represents a significant, albeit flawed, legislative attempt to deal with these human-induced environmental concerns within the existing legislative and social framework.

You are meeting here this evening to consider an amendment to The Environment Act, namely Bill 24. Any such amendment, given the importance of our environment, is an extremely important piece of legislation. I address you, both on my own behalf and on behalf of Ms. Kim Tyson, as concerned citizens who share a deep communion with the natural world and some knowledge of the complexity and sensitivity of environmental or ecological interactions.

We are also professional ecologists with considerable experience, both as researchers and as educators, and with some first-hand knowledge of the importance and limitations of the existing Manitoba environmental review process.

We welcome this opportunity, limited as it is, for public input into the amendment process. While The Manitoba Environment Act has proven valuable in a number of instances, we recognize a need to redress some weaknesses and omissions in the present review process. We understand that the entire Environment Act will be open to public review sometime later this year. If so, we encourage this initiative.

More immediately, however, the present Government has indicated its concern that proposed developments of direct environmental import both to Manitoba and to some other jurisdiction may be subjected to separate environmental review processes by both Manitoba and the other jurisdiction. This could result in prolonged delays in deciding whether a project should be licensed and in costly duplication of effort by the various jurisdictions involved.

Bill 24, The Environment Amendment Act is, as we understand it intended to avoid this duplication and to streamline the environmental review process for projects affecting both Manitoba and some other jurisdiction. We can appreciate the advantages in avoiding duplication of effort.

However, there are also potential risks of omission. We must stress that environmental concerns are paramount. There are a number of important issues which must be addressed in any legislation such as Bill 24. In particular, the responsibility for environmental assessment of projects affecting Manitoba must not be delegated to other jurisdictions. This would be complete folly and would indicate that Manitobans do not accept the full responsibility for the welfare of their own province.

* (2010)

An early draft of Bill 24 left this possibility open to ministerial discretion in Section 13.1(b). We understand that this section will be amended in the final draft to ensure that such responsibility is never delegated. We encourage and applaud this change.

Not only must Manitoba and Manitobans be directly involved in any environmental assessment affecting Manitoba and Manitobans, but the existing process must be improved to ensure that these assessments are thoroughly and correctly carried out by an independent and expert review panel. The existing review process under The Environment Act allows for panel members to be political appointees who may have little or no expertise in, or understanding of, the specific issues being addressed during the hearing process.

We do not wish to demean the excellent efforts of many Clean Environment Commission members over the past years. However, many of the issues being discussed at CEC hearings become so technical and specialized that it is almost impossible for someone not expert in these specialties to adequately evaluate the arguments. Perhaps even more importantly, the review panelists must be seen to be independent of political, commercial and governmental pressures and biases with respect to the project being reviewed. Too often the panelists have obvious personal linkages which bring into question their total objectivity in the decision-making process.

Under current practice in Manitoba, the CEC members have access to and input from a Technical

Advisory Committee or TAC composed of senior Government officials from various departments. The implication is that these TAC members have expertise which may be useful to the CEC in evaluating the environmental impacts of a project. Unfortunately, membership on the TAC does not guarantee any particular expertise, qualifications or knowledge about the specific project. TAC members do bring the biases of their own Government departments to the evaluation process. This can be particularly undesirable whenever the Government is itself involved, as it often is, in the project under review. Therefore, the use of a Technical Advisory Committee is not a substitute for expertise on the actual review panel and may well be detrimental to the objectivity of the review process.

We urge that you recommend amendments to ensure that members of each review panel will be politically independent, unbiased and knowledgeable in the specific areas required. They should also be given the power to set their own terms of reference for the review in consultation with interested members of the public. Often these review panels are constrained by narrow terms of reference imposed by other authorities. The panel members must be allowed to examine and consider social and ethical issues as well as economic and technical scientific arguments.

We have seen a draft of Bill 24 which makes no provision for ensuring that environmental review panel members are unbiased, politically independent or expert in any way. We understand that some specific provision for unbiased panel members may be included in the regulations, but this does not answer all our concerns in this regard.

The draft of Bill 24 does address specifically in Section 13.2 the issue of participant funding, another matter which we believe to be of great importance. However, we are concerned that the allocation of this participant or intervener funding apparently is left to the discretion of the Minister with no clear indication of when it might be awarded. We believe that this type of funding is absolutely essential if both sides of most issues are to be adequately addressed.

Proponents, particularly proponents of major projects, usually are more than capable financially of ensuring that their side of the issue is presented complete with glossy visual aids and expert witnesses or legal counsel. Often the opponents of projects are private citizens and volunteers who lack the financial resources to compete on a "level playing field."

We believe that provision of intervener funding must be mandatory for all public review processes and that this funding must be made available at the beginning of the review process so that all necessary preparations for the hearing can be completed. The review panel, if independent and unbiased, should be given the authority to award such funding when and as required.

* (2015)

While some of our concerns may be addressed in the regulations pertaining to the Act, we recognize that these regulations could then be changed at some future date with little public knowledge. Inclusion of these important provisions within the body of the Act will ensure that they can be changed only by the Legislature itself. This would, in turn, ensure that the public has more knowledge of, and input into, any future changes to the environmental review process.

In summary, such public consultation is essential for a thorough review and upgrading of the existing Manitoba Environment Act. We urge that such a review be held later this year and hope that public discussion and input will be solicited and encouraged prior to any amendment of the Act. We also urge that intervener funding be made available whenever required to permit citizens and citizen groups to provide adequate representation of their positions during any public environmental review process.

Independent, knowledgeable panelists must be appointed to review major projects. They must be given the authority in consultation with the public to set the terms of reference for the review and to allocate intervener funding at the outset of the review process. Manitoba and Manitobans continue to espouse the principles of sustainable development. However, the key issue is environmental sustainability.

A long-term view of environmental cost accounting is required. Only through strong environmental legislation can we ensure that our environment is protected both for us and for future generations. Unfortunately, time is the enemy. You have the opportunity to take an immediate and significant step toward a more secure future by ensuring that Manitoba's environmental legislation

provides for thorough, unbiased public assessment of all significant projects affecting our Manitoba environment. Let us not delegate this responsibility. Talk in defence of our environment is not enough. We must act. Thank you.

Mr. Chairman: Thank you, Mr. Shearer. Are there any questions of Mr. Shearer?

Ms. Marianne Cerilli (Radisson): You have mentioned the Technical Advisory Committee. I am wondering if you have some recommendations for how to improve the TAC and its involvement in the assessment, some more specific recommendations.

Mr. Shearer: I am not particularly knowledgeable about the TAC, but I think one of the dangers with any body such as this is that they may be seen by panel members, who are perhaps not expert, as being a source of expertise when they may not necessarily be that. Because they are going to be coming from various Government departments, they are, I think of necessity, going to be representing the positions of those departments which, in some cases at least, may be biased towards or against a project, depending on what that project may be. So I guess I cannot really recommend the particular role for them, but I simply say that I do not believe they serve as an alternative to having some independent knowledge on the panel itself or giving the panel access to other more independent knowledge.

* (2020)

Hon. Glen Cummings (Minister of Environment): Not to dwell too long on the point, but you are emphasizing that you believe the panel should be composed only of experts?

Mr. Shearer: One of the difficulties, of course, is in defining an expert. I think, certainly as I pointed out in the brief, one of the problems that I see in a great many cases is that much of the evidence being presented at these hearings can become very technical. I think for someone who does not have at least some background or had done some considerable reading in the field, it may be extremely difficult for them to evaluate the pros and cons of that testimony. For example, if I can refer to something in my own field, which is ecological research, one of the problems that I have seen in certain instances is that there is a serious lack of background information available on ecosystems that are potentially going to be affected by projects.

If panelists do not have some knowledge of what is involved in understanding the processes that take place in an ecosystem, the complex interactions, they may not be aware that this kind of background information is essential in order to understand the impacts on that ecosystem. That sort of thing, I think, requires a certain level of expertise or knowledge. Someone who has no background or has not read considerably in that field may have a great deal of difficulty in being able to evaluate that testimony.

Mr. Cummings: A problem I have with what you are suggesting is that, if there were a panel that was evaluating a project, perhaps next to a northern village, do you believe that someone resident there, without necessarily a lot of expertise, should be barred from sitting on the panel?

Mr. Shearer: I guess that person might be able to bring a different form of expertise. I do not necessarily believe that every panelist should have the same expertise as the other panelists. I think you need a range. It is probably, in most cases, impossible to find individuals who could be expert in all the various areas that any review process might require. I think local people may have certain expertise that they could bring to it that might not be the same as perhaps someone who was not local.

Mr. Chairman: Thank you, Mr. Shearer.

I would like to call now on Ms. Kemlin Nembard. You may proceed.

Ms. Nembard (University of Winnipeg SAFE): Mr. Chairman, committee Members and fellow Manitobans, the importance of a strong Environment Act in Manitoba cannot be overemphasized. A strong and just joint assessment process will enable both the Government and public process to proceed efficiently and effectively.

The proposed Environment Amendment Act, in the opinion of U of W SAFE, does not indicate a serious commitment by the Manitoba Government to a fair joint environment assessment review process.

We feel that The Environment Amendment Act should embody the following six principles:

1. That the Manitoba Government must not delegate sole responsibility of a joint review assessment to another jurisdiction, Manitoba must remain fully involved in the process;

2. The panel members for a joint review assessment must be free of political influence, have no conflict of interest and have a special knowledge and experience on the topic of review;

3. The panel members must be able to set their own terms of reference;

4. Intervener funding should be made available to concerned citizen groups;

5. The panel should be in charge of setting the guidelines for granting intervener funding to citizen groups;

6. Public consultation should occur before any amendments to The Environment Act.

Short and simple.

* (2025)

Mr. Chairman: Thank you very much. Are there questions of Ms. Nembard? Thank you very much for your presentation.

I would like to now call upon Mr. Cyril Keeper, private citizen. He does not have a written presentation for the Members, so you may proceed.

Mr. Cyril Keeper (Private Citizen): I am sorry, I do not have a written presentation. Ever since becoming a private citizen, I have not had access to the resources to present you with a written presentation. It is not a future that I wish on any of you.

I did take the trouble to come out here because I think it is critical that we be here this evening. I think it is crucial that all of the people who are here making presentations be here; that all of you who are here hearing the presentations be here because I have come to believe in a much more urgent way than I ever have before that we need a new way of life; that we have to make fundamental changes in the way we live and the way we carry on public business.

For the last couple of hundred years, to give you a round number, we have acted and believed that the planet was unlimited in terms of the amount of pollution that it could take care of, in terms of the amount of resources that it could provide us, and we have lived by the motto of more and more, that we want more and more material goods.

Well, I think we all are becoming aware of the fact that there are limits to the capacity of this planet to provide for our material needs and for it to take the abuse that we hand out to it. In short, we are living in a time of transition, transition from a society of unlimited economic growth to a society of sustainable economic activity.

We are living in a time of economic crisis. This crisis is visible to us all. We do not have to be a biologist, although I, like others, recommend them for the panel. We do not have to be an ecologist. We do not have to be a David Suzuki to see the signs. I talk to my uncle, who is a fisherman on Lake Winnipeg, and he tells me that he now sees fish on the lake without a lower jaw. Where does that come from? I talk to older people that I know, and they tell me that there has been significant degradation in the environment in their own lifetime.

One of the clearest indicators of the crisis that we are living in now, the fact that we are facing a crisis, is the fact that the resources that we have taken for granted, we can now recognize as limited. The resources upon which we have built our society, we now recognize as being limited.

Taking oil as a prime example, it is limited to the extent that people can now measure the amount of resources that are there and can measure within a measurable amount of time when those resources are likely to run out.

We can also see it from the fact that we are having to go further and further afield in order to develop those resources, into more and more ecologically sensitive areas. We are having to subsidize projects with billions of dollars in a way that had not been done before—Hibernia, by way of example. We are limited in the sense that if we use those resources in the wasteful way that we have been using them up until now, it is starting to affect our climate. There are limits in terms of the abuse and use of resources in terms of its impact on our life-support systems.

Another evident way in which it is clear that we are living in a time of crisis is the fact that you can read in your daily newspaper about increasing cancer rates due to pollution, due to chemicals in our environment. We can read about chemicals being found in animals in the Arctic Circle. We can read about Eskimo people being warned not to eat the animals that they hunt. These are notions which are inconceivable when I set myself back say to when I was a youth, which is really not that long ago.

There are other signs of the fact that we are in a time of crisis. One that is very visible and that has to do with the inequitable use of resources on this planet is the fact that we in this part of the world, even if we think we are poor, we do not think we

have enough, and I certainly do not think I have enough, use 80 percent of the world's resources. That leaves the rest of the planet to inadequate food, clothing and shelter. It means that we take as a regular occurrence famines. When the Ethiopian famine happened a short time ago, it really hit home. It disturbed people and it moved people. Now there are famines going on and it does not make much of a ripple in the water.

* (2030)

There is a global inequity in the way that we use our resources, and that comes directly out of the way that we run our economy and the fact that we continue to make our decisions on the basis of economics as the top priority.

I say these things by way of introduction just to indicate why I take my time to be out here, and this is really why you are here and why the people are here behind me. So we are here to ask for, to plead for, to beg for, to demand stronger environmental legislation because the times demand it.

My impression is that this legislation, this Bill here, which I must say if I was a Minister—and good Lord knows that is not very likely—that I would be embarrassed to bring forward this flimsy sheet of paper in the name of environmental legislation. Rather than bringing forward such a lightweight proposal, what we need is we need an environmental bill of rights. Individual citizens in this province need the right to go to court in order to hold Governments, in order to hold private corporations, accountable for their damage to the environment, and they should not have to wait for political parties to wake up, for Governments to wake up. We ought to be bringing in legislation that would really move us forward, rather than a flimsy, one-page set of amendments to the present environmental legislation which in itself is inadequate.

My impression of why this legislation is here is that the Government simply wants to avoid the trouble and heartache that was visible in the Rafferty-Alameda situation. We can see the changes that are taking place now in the federal legislation, which is watering it down and making it possible for co-ordination, harmonization, efficiency, and this legislation falls right into it because this legislation is meant to avoid the court. And why do people go to court? People go to court because they are dissatisfied with the environmental assessments that are taking place now.

What we ought to be doing is strengthening the legislation, and you have heard here over and over suggested ways as to do that. For example, if we are going to have joint assessments, why do we not go with the higher standards? If we are going to go with the higher standards, then let us spell it out so that people can have some confidence that we are going with the higher standards. For example, let us go with the federal way of appointing panels, which stresses the expertise, the non-partisanship, and the non-political role of the panel members.

I want to deal a little bit with that because there have been a lot of questions on that. How dare you say to somebody, because they are a member, an active member of a political party, that they ought not to sit on one of these panels? The obvious reason is that political parties have to protect their public image, and good loyal members of political parties will have a tendency, or at least may appear to, to the public, to be more concerned with the image of their party than they are with the environment or other public policy questions that come before them. There are legitimate places for partisan appointments, and those places are where the Government has a right to impose its policy. For example, you have a board for Manitoba Hydro. Well, yes, the Government needs a board that is sympathetic to Government policy and that is not going to sabotage it, but when Manitoba Hydro goes before the Environment panel to plead its case, then that panel ought to be independent of political activity, people who are clearly partisan members.

Now in a society that we live in there are a good proportion of people who do not take part in politics. Every one of you around this table here has made an effort to get out people to come and do volunteer work in your campaigns, and you must be aware that there are people who will not campaign. There is a good proportion of our society that are apolitical, so let us tap that resource to get people who have some expertise, some knowledge, and can assure the public that they are independent in their decisions.

So the legislation ought to be strengthened; there ought to be funding for intervener groups. How much money did Manitoba Hydro spend on preparing its proposal with regard to Conawapa, and will citizens groups who question that from an ecological and an environmental point of view have an equal amount of funds in order to be able to

marshal information and knowledge or will they at least have assurance of having some? And why should it be at the discretion of the Minister; why should it be "may", why should it not be "shall"?

When the Conawapa project went before the Public Utilities Board the people who did the work, the leg work, the lawyers, the experts had to go to the same people that they were pleading with in order to make their case to say, well, here is how much we spent, cover our expenses and this sort of thing. Well, if you are going to be an intervener, if you are going to have some independence and you do not want to have to watch your p's and q's, and you want to pay attention to the facts, then you ought to have an assurance that there is going to be money there for that purpose.

Now there are a number of recommendations which you have already heard, and I am referring now to the letter from Brian Pannell to Mr. Cummings. In there is outlined a number of solid recommendations for strengthening the legislation that is before you.

So I commend those recommendations to you but it is also disturbing and, I think, worthy of comment that, I mean, the reason why I have this letter before me is because the environmental groups met with the Minister, got assurances that there would be improvements in the legislation and then, sometime later, those assurances evaporated. So not only is there a general global level of distrust with regard to environmental assessments because of what is going on in the country with regard to Rafferty-Alameda, with regard to James Bay II, but even here, when the legislation is being streamlined and people come up with positive suggestions, then the confidence that people have that Government will follow through on its commitments in order to improve legislation, rather than water it down, are undermined.

By way of saying that there is a need for stronger environmental legislation, stronger review of projects, I want to refer to the Public Utilities Board's hearing with regard to Conawapa. If you look at their executive summary, one of the things you can find in there for yourself is a statement, and I will paraphrase to this effect, that demand-side management, environmental considerations, mitigating effects and a number of other items, which people who made submissions considered crucial and important and why they were there, were not fundamental parts of the decision-making process. So you know like, wow! You know, it just blows you away. Demand-side management, that is the efficiency alternative to building another dam, was not a fundamental part of the decision-making process. I am paraphrasing, but you can find that in your own executive summary of the Public Utilities Board.

* (2040)

While these hearings went on and people put a lot of energy into preparing submissions to that board, and then you get that kind of submission which just wipes away the criteria and the evidence that came before them, it undermines confidence in this kind of public hearing process. We need stronger legislation. I hope you will hear the concern that people are bringing before you and act on it.

There is another aspect of why we are here that I want to touch on about the environmental crisis and the need for stronger public policies. I noticed that there is no media here. There are no television cameras here. I see no newspapers here. I see no radio outlets here, unless they are hiding.

I know I have found myself in rooms in which I have spoken very frankly and later woke up and found out there was a media outlet there. I do not see any. Why do we have no media outlets here? Where is the media?

I just left home, and what was on the television? The war in the Gulf. Gorbachev can brutalize Lithuania, while there is war in the Gulf. Manitobans do not hear about the fact that the environmental legislation is being gutted while there is war in the Gulf.

Why did they go to war instead of sanctions? Would they have gone into the Gulf if there was no oil there? This is a related issue. Would they have gone into the Gulf if we had learned to be energy efficient? If we had invested properly in public transit? If we had invested properly in the insulation of our homes so that we would use less fossil fuels?

Gentlemen, to sum up, we need a new approach. We need stronger legislation. We need a fundamental restructuring of the society in which we live. We need a fundamental change in the priorities by which we live. We can no longer make decisions on the basis of economic criteria while ignoring ecological criteria. We can no longer live on the assumption that we can have more and more. We can no longer live on the assumption that our only needs are material.

I call upon you to remind yourself, when you come down to considering this legislation, that we do live in a time of crisis and that if you look around yourself you will see the indications. We need to make a radical change in direction, and you could make a small step in that direction by accepting the recommendations from the environmental groups to strengthen this legislation, to spell out the commitments that you have made with regard to having appropriate environmental legislation, to spell out the commitments that would give people a sense that you are not just here to scuttle the legislation or you are not just here to streamline the process, but that you have a genuine interest in good legislation. Thank you very much.

Ms. Cerilli: Mr. Keeper, you have mentioned the Conawapa development and energy conservation. Can you tell us how you feel the legislation as it stands would affect the Conawapa development?

Mr. Keeper: Well, my understanding is that the Conawapa development still has to go before the environmental hearings. Those environmental hearings will be subject to Manitoba legislation, so that the quality of that legislation is going to be critical in terms of the quality of the environmental assessment.

I think it is crucial, because when I look at the Public Utilities Board hearings, I think there was good evidence brought to those hearings, but I certainly was really wounded by the fact that the board just wrote off considerations such as demand-side management and put it in their own words. It is not my interpretation of what they did, but they spelled it out. They said that demand-side management, energy efficiency, was not a critical factor in their decision.

When we are into the situation in which we are examining a major development in Manitoba that is going to affect the northern ecology, that is going to affect the distribution of capital in this province, $5.5 billion which if we were, by way of alternative, to invest in energy efficiency, we could give something like $13,000, by rough calculations, to each household in the province in order to retrofit their homes in order to make them energy efficient. We could produce jobs in every community across this province.

I would like to see some tough legislation that gives us more assurance that the environmental aspect at least of the project will be soundly and thoroughly examined, and that they will be examined by an independent board with adequate funding for interveners and with assurance that it is not going to be a series of political hacks sitting on the panel who will be more interested in protecting the image of the Government than they will be in considering the evidence that is before them.

Mr. Chairman: Thank you. Are there any other questions of Mr. Keeper?

Thank you very much, Mr. Keeper.

Mr. Keeper: Thank you.

Committee Substitutions

Mr. Chairman: I have the resignation here before me of one of our committee Members, Mr. Martindale. Is there a nomination to replace Mr. Martindale?

Ms. Cerilli: I move that the Member for Thompson (Mr. Ashton) replace the Member for Burrows.

Mr. Chairman: Is there agreement? Agreed. Therefore, Mr. Ashton will replace Mr. Martindale on the Law Amendments Committee.

* * *

Mr. Chairman: I would now like to call on our next presenter, Mr. Ken Emberley, private citizen. His brief has been circulated. You may proceed, Mr. Emberley.

Mr. Kenneth Emberley (Private Citizen): My name is Kenneth Emberley. Mr. Chairman, ladies and gentlemen, I thank you for the honour of appearing here today.

I have a little surprise for you. Everybody has the same sheet of paper on the top of their brief, but to try and make it a little interesting I included a few different papers for each person just to make it a little exciting. If you happen to have a paper that might be of interest to women and you are not a woman and you do not want to learn about the other half of the world, you share it with one of the women near you. If you can get permission from the Chairman, take it home, read it and then bring it back.

* (2050)

I have several items I would like to run over just quickly that came up today in the hearing. I am deeply offended at the censorship of these meetings. For a long time we have talked about "democracy includes the people, just not the people

who rule the people and the few people who come up to talk to the people who rule the people." For many years we have talked about your duty to provide cable television transmission of these hearings, so if there happens to be anything worth while that you say or that we say, the public should be able to hear it.

If the hearings are valuable, important, which most of us believe they are, because we think we are saying something worth while, and we find very many interesting questions from you and comments, and we would like the public to be able to share in it. They do not share in it through the regular media because they only give little, tiny, chitchat items, but three hours of cable television two nights in a row might even educate them a little bit about the subject you are talking about. We believe that many of you do not want them to be educated about it, because there might be an election where the people would make a decision concerning how big a majority should be continued. That is something that we must not mention at a time like this, so forgive me.

Tonight it was mentioned the very great need for legal and technical details, the problem of technical experts in hearings, in the assessment panels. I beg of you to realize the problem that we have since the lawyers and technical experts have come to dominate the hearings. We know how nice lawyers are—but. There are complicated technical issues, the Repap corporation. Twenty years ago they used to dump mercury in the river. That was considered a bad thing after they poisoned Indians all over the country. They did not know that a hundred years ago mercury was a known poison, and they did not care, and nobody else did apparently.

Now we have dioxin and furans, under the new Repap thing, they dump it in the river, exactly the same. The only high technology perfection is that they have an expensive eggbeater, and they stir it up on the river until it disappears. You have to be a technical expert to understand that, but it is all fraud. Then people stand up and say they did not know dioxin is poisonous or it only hurts a little bit.

We have our Mr. Manness saying that we are a million dollars in debt every day for debt in the Province of Manitoba and that is why we have to cut the budget. We have a window of opportunity that at the start of the recession we could borrow $5.5 billion, and the million people of Manitoba could owe $35 billion in interest over the next 50 years.

Now that is a window of opportunity we should seize, not energy conservation, because energy conservation might make back half the money it would cost. How is your forum going to provide us a proper forum to allow us to discuss these things in detail?

The Ombudsman has talked often, if you read the Winnipeg Free Press, about the brutality, stupidity and vicious cruelty of the bureaucratic hierarchy. Some people call it a patriarchy, I do not know what that means, but the brutality and the stupidity of a power structure is one of our problems everywhere.

When we talked yesterday about environmental funding, environmentalist funding, can you imagine how many times the environmentalists have to do—like we have had to do for the last eight years. Somebody will snap their fingers, they will roll over three times, and they will jump up and say bow-wow, and they will say we will give you a hundred dollars. That is no way to provide environmental funding, but it is a way to control the environmentalists so they are still powerless. I think that is the way the system works now.

There is a tiny thing called interbasin transfer, called by Rafferty-Alameda, and Frances Russell is the doctor who is in charge of that. She talked about it today, but we knew about it two and a half years ago, but there was no way for meaningful discussion, meaningful scientific examination.

The expert report on environmental effects of dams by the Sierra Club, called The Environmental Effects of Large Dams, was never made available in any of the public hearings and yet I now find it has been sitting in the library for three years. That is the state of the art of our technology, the state of art of our information, and it is the state of the overload of the environmentalists trying to work for peanuts to do a job for you free and being harassed.

I want to go to my written brief quite quickly. Much time yesterday was devoted to three topics. I will begin tonight quoting from my Oak Hammock paper to illustrate the problem and a possible solution.

My little Oak Hammock oral report—the corporate headquarters in a marsh is 100 percent wrong. Generous corporate donors will make up the shortage of Government funds to create the one world class education centre in the province.

Tax deductible gifts mean it will be 100 percent funded by mostly middle-class and lower-class taxpayers, because most prosperous donors take a

tax deduction. Maybe some of you may not be aware of that. So it will be all funded by Government but under the control of private business.

Will they teach balanced programs so that each year 2 percent of the hunters' children become camera hunters? Will they teach balanced education that large-scale long-distance tourism is an environment problem caused by 15 years of steady transfer of more excess income to the rich from the lower classes?

Will they teach the balanced history of housing size and luxury increase in North America is a problem that needs subsidy from lower classes all over the world? Will they teach a balanced education based on topics and information discussed at the world class Fate of the Earth Conferences, of which I have attended two in Ottawa and Managua, Nicaragua.

Will the library and teaching in the Oak Hammock March include a book like Endangered Kingdom by DiSilvestro, talking about our attack on the environment. Will it include The Environmental Effects of Large Dams: Report by Goldsmith. Will it include Zero Energy Growth by David Brooks, A Parcel of Rogues by Maude Barlow? Will it include Recolonization or Liberation, a new policy for the poor and the rich countries applied in Canada now under GATT and free trade?

Local people control of sustainable development education centre and of the environmental joint review process—will the aboriginal people have a part, the peace movement people, the social justice people, the trade union people, the feminist movement, the organic farming movement, the selective cutting non-chemical forestry movement.

Will the innovative ecologist environment movement have a place in the Ducks Unlimited education centre? Will the movement for civilized humane industrial system—not the one we have now—be there? Will the United Nations Association be allowed to have a part? Will the overwhelming need to reduce the impact of conspicuous overconsumption on the land and forests be discussed?

How many of you heard David Suzuki say that the 22 million people living around Los Angeles consume more of the world's resources than the billion people in India? Twenty-two million people in Los Angeles almost consume as much as the billion people in China. Each white civilized baby—and that includes Negro babies of rich people—is a plague on the earth like a locust equal to 40 or 50 Indian or Chinese babies.

Nobody is facing that in this country. Nobody is talking about it. We have not begun to think about a proper environmental assessment.

Our hydro projects in the North country are just like the United States Army Corps of Engineers, the most hated and feared, environmentally strong organization in the USA. That is what our Hydro looks like to Native people and environmentalists.

Ducks and wet lands are only 5 percent, a vital 5 percent, of the solution to the problem plaguing western Canada, and the world to devote literally millions of dollars to a private group to run the only high-profile environment education centre is further proof that Government and business are determined not to solve problems or to allow the people to solve the problems themselves.

Did you know that companies like Nestle's are again funding and giving out samples of baby formula in the hospitals to try and persuade and increase the number of women not nursing their children in Canada, and giving and paying sums of money—as much as $200,000—to be allowed to give free samples of baby formula in the hospitals in Canada? These are the kinds of things that should be talked about in an education centre. I want to go on from there.

The qualification of panel members was discussed at length last night, and it is a very important issue. Many know of possible benefits for business or Government projects. Few are really qualified to understand, in a comprehensive, holistic way, the interconnected disbenefits and disadvantages. Worst still very few have even heard of the many alternatives and the interconnected benefits of the alternatives and how they interrelate and multiply the benefits of the alternatives to other projects.

* (2100)

So if you have an alternative to Repap that is environmentally sensitive and takes care of the needs of the Native people to have control of the land around their reserves, which was deliberately ignored, very deliberately ignored, in the signing of the deal in Repap, and if you have a Hydro project that is not built and work is done on energy conservation and energy efficiency, you not only increase the environmental preservation and you

avoid environmental destruction, you create a huge number of local jobs which is, of course, of no interest to the major multinational corporations. It is of interest to the people in the community.

If you make the Manitoba Hydro do a massive, large effort in energy efficiency, you promote energy efficiency in the whole of the industrial sector of your province and make your province's industrial system more competitive on the world market without abusing the people. You allow the United States to pay the regular price for their energy instead of trying to figure a way to supply your United States competitors with lower-cost energy, which has been the duty of most provincial Premiers for 20 years, to put the environment destruction for hydro dams in Canada and supply the lower cost of electricity to the United States. Now that is what traders would do, not what loyal Canadians would do.

Until people who stand before you today and their colleagues are included on the panels in substantial numbers, no real improvement is possible. It is like talking to a farmer walking behind a one-man plow about how you glue heat-resistant panels on a space shuttle. Talking about the alternatives that we had discussed in depth since 1975, how many of you are aware of the conservative society study No. 27 put out by the science council? The best way to solve the unemployment of a million people in Canada is only to allow a hundred percent Canadian-owned companies to get into the energy conservation and renewable energy business.

Now we are working on free trade. The whole purpose of free trade is to sell as much hydrocarbons as we can to the United States to produce acid rain and produce global warming. As Mr.—there was a politician up here just ahead of me, a Mr. Cyril Keeper I think it was—he is a neutral politician now. He is a good politician now. He talked about energy conservation. I never thought anybody would mention that.

We have been trying for 15 years to talk to Governments about energy conservation. If energy conservation had been seriously practised instead of the energy megaprojects which helped to lead to the recession, we would only need a third as much imported oil today as the United States needs, a third or half as much, so they would not have had to go to Iraq for a war. So they interconnected into these issues, but that is a peace issue, that is an environment issue. How are we going to get those into your new studies?

There was a gentleman that was at the scoping session in the form of presenting a written brief, a Mr. H. Gavin, who had done some environment work, and he talked about a 15-year arrangement that had existed in the Province of Manitoba with the federal Government, a signed legal document, that when major projects came up that involved the provincial Government and the federal Government, there was in effect for 15 years an agreement between the Province of Manitoba and the federal Government that they would jointly work together to solve the problems of conflict of interest in hearings.

Now everything I have seen in the last four years of the screaming and foot stamping by Premiers when their projects were stopped in western Canada because they were doing illegal things, they were doing stupid things, they were doing environmentally bad things, they were doing undemocratic things by selling their country's resources without the people even knowing, and subsidizing to do it.

We believe that your need for this expeditious piece of legislation is to correct the problem of the delays to the mainly pulp and paper mills and hydro projects and power dams and that, therefore, there is no morally sound basis for the expediting. It is very likely that the effect is to correct any errors in the structure at present and speed up and make easier the development of the projects that the Government and the business want together.

Now that is not a very kind thing to say. I am sure all of the honourable people who worked on this thing would say it is not that way at all, but the experience I have seen in 10 years, in 15 years, that is what is happening. We talked with Bob Connelly for a whole day just a little over a year ago about fixing the federal FEARO to do something worthwhile.

The federal Government brought in new FEARO regulations on PCBs and they slipped in a little paragraph and now eight provinces have opted out of what we were told was an all-inclusive, tough legislation governing PCBs. We allowed eight provinces to opt out of it. We know with the new FEARO regulations, they are designed to weaken the FEARO system. We know that from people outside FEARO and people inside FEARO.

So you must forgive us if there is a concern at how this legislation is going to work out, because our last Environment Act was a disaster.

Our Manitoba Environmental Council is badly weakened, our finances crippled. The production we have been able to do over the last eight years has steadily declined. The quality of our work has declined. Our membership has declined. We have had a quota of 100 cut to a quota of 50, and it is being reduced further. Tonight I am making my final and firm resignation from the Manitoba Environmental Council. I am just so sick and disgusted, the way we have been treated for eight years by Environment Ministers and provincial Cabinet.

The quality of research: Research from many sources must be available. The right to call for research known or suspected to exist, the right to legally ask for explanations and background of why the research was conducted, who conducted it and how it was conducted, from Government, from contractors, from business researchers—we have long needed this and I believe it is denied. We are not allowed to call Government people to testify in the Clean Environment Commission hearings about reports that had been produced in Manitoba by Manitoba Government scientists and federal Government scientists. This is a dreadful abuse.

I think that when the Cabinet Members pay out of their own salary for research, they have a right to restrict it and keep it for themselves. That is their private business, but if the Cabinet Ministers allow a Government department to do research and they use the taxpayers' money to pay for it, that is our research. That belongs to the people.

That is the thing that I would ask the experts and the lawyers to check up on and see what can be done to allow the public access to all this research, when expert research comes in that not only the Government people can parade in with a bunch of silk-suited lawyers and testify about this and that, but the citizen environmentalists should be allowed to bring in their scientists and their reports and should be allowed to call for reports that they have heard exist and then bring the professional scientists who worked on these reports to explain the report and how they prepared it and what they understand about it. This is what we would believe would be the panel's desire, to bring out the facts and the truth. I do not believe it is that well designed at the present time, so I would ask you to examine that.

Funding: The powerlessness of armchair, token environmental representatives is a disgrace. I would humbly suggest that one of the things that is most desperately needed is a 1 percent capital fund. I have been talking about this for three years, and I have had agreement to the principles by some of the eminent environmentalists in Canada whom I have discussed it with. When you want to build a $1 billion project, 1 percent of the capital cost, only $10 million, should be made available automatically to all the environmentalists who want and need to participate under a committee of environmentalists who will dispense and manage the money and account for it properly, but where they do not have to jump through hoops and bow and scrape and spend 20 percent of their time satisfying a set of ridiculous requirements, bureaucratic machinery requirements, which is only designed to harass and reduce the effectiveness of environmentalists' work.

* (2110)

If that was to happen over a five-year or a 10-year period and every project of Government and business over $1 million put 1 percent of capital cost into environmentalist intervener funding, we would have a Manitoba Environmental Council where most of the guys could quit and go and work for the Eco-Network. They could quit the Eco-Network and form an independent group. We would have $1 million a year coming into it, $1 million a year coming into Ralph Nader's crew at the University of Manitoba, and we could do some worthwhile research and come to your hearings with meaningful alternatives and presentations, which we want to do. We know how to do it. That is the thing I ask you to include and consider in your work.

What is the record of our Government in these matters of environmental impact studies? I have taken part in Clean Environment Commission hearings for about 12 or 14 years. I took part in my first Hydro hearing 20 years ago, and I got in trouble because I said the crazy guys only had engineers on the Hydro Board and they needed an old Indian and an old fish boat captain on it, and I was right. It turned out later I was right because just six years ago, I had a big shot scientist give an excellent presentation and he said, we had no idea mercury would run out of the earth into the water and hurt the fishes when they took a river, a lake or a stream and made it handle 20 times as much water as it had.

We had no idea that would happen. We did not know the trees would fall into the water and interfere with fishing.

They made a scientific study and they forgot that there are waves on the lake. When they were looking at the lake underneath some building at the university, they did not see any waves on it. They forgot that the waves occur on the lake, and so there was a different shoreline when there are waves.

You have no idea of the infantile inexpertise of the world's greatest experts because you are looking at a natural ecosystem, you are looking at a river basin. Did anybody here, anybody in this room, ever go up and stand in the Churchill River and look at what the Churchill River looks like when nine-tenths of its water is taken away? You would cry with shame, just as you would cry with shame if you read my book, "Drumbeat" here about what our Government in Canada has done for a hundred years to their Indians, and what the forest policemen have done to our Indian Band in the North country because of the Supreme Court decision, and what the Government of Alberta did to the Lubicons, and what the brutal SUreté, the storm troopers of the Quebec Government did to the Oka Indians. You have no idea what is going on. That is why I supplied you a couple of nice little clippings in your little handouts.

I am not going to take any more of your time, except to remind you of something, gentlemen. Trading away our environment, GATT and Global Harmonization—now some of you got this before and I want to leave one more for one of you. Our experts tell us, and we have some pretty expert experts, that when free trade is completely implemented, and GATT—and GATT is to complement free trade—and the Meech Lake was originally designed to weaken the federal Government as part of the free trade deal, which is being forced on every country in the world under the International Monetary Fund by the multinational corporations; we know that as well as Elijah Harper. Though when free trade comes in and the new GATT is signed, almost any major effort you make is going to cost the company money to protect the environment, can be counterveiled and Mr. McGinnis and his sustainable development centre there is waltzing around in circles like a ballerina, totally non-productive impossible project because we will not be able to save our environment under free trade and GATT.

You look what has happened to the countries around the world where the corporations have a free rein, and I am trying to talk a place now—a good example would be a place called, there is a little city up in northern Manitoba called Manfor which a corporation up there in the pulp and paper business for 10 years, they ran wild. We have 83 of 120 corporations in Canada, we are breaking all the laws on pulp and paper mills. The Environment Minister in B.C. just resigned recently when they brought in imitation regulations to pretend to regulate the pulp mills. It is all a fraud, we know it is, we get confirmation every day.

So I beg of you, ladies and gentlemen, please listen to the people here that know what they are talking about. You may think I do not know what I am talking about because I just talk about vague generalities, but there are not vague generalities in the literature. We have documentation a mile high and so have all these people, and I work with some of them. You would not believe it. I do not say so out in public to name them and embarrass them, but there are a lot of us trying to work to help you save your country because you may not believe it. Some of the people killed in the Gulf may be children of people that we know.

There is a kind of book about people that are talking about the future. Frances Moore Lappe has 25 colleges in the U.S.A. talking about culture and lifestyle and democracy, and people power. Imagine that, people power in a managed democracy. People are doing incredibly innovative things; that is why I gave you your clippings.

Thank you for your time.

Mr. Chairman: Thank you very much, Mr. Emberley, for a very interesting presentation. Any questions of Mr. Emberley?

Mr. Emberley: Thanks very much.

Mr. Chairman: I would like to now call upon Mr. Bill Hunter, as a private citizen. He does not have a brief to be passed around. You may proceed, Mr. Hunter.

Mr. Bill Hunter (Private Citizen): If you would like I could give you a copy of my presentation later. I have just finished it recently, but I could type one up and submit it to you if that would help you out.

Mr. Chairman: You may present your presentation then. If there is any question, it will be at the end. Okay? Proceed.

Mr. Hunter: Good evening, Mr. Chairman, committee Members. I would like to start off by making you aware that at this moment, the doors to the Legislature are locked; access to these public hearings are being severely affected. I came in around 40 minutes ago, and I had to push past a guard to get into the Legislature.

I would like to ask you to free the access to the Legislature and these hearings. If these people are not allowed access, the effectiveness and integrity of these hearings will be severely compromised. There are presently 30 to 35 people awaiting to gain access to these hearings. I would like you to look into this before I go on.

Mr. Chairman: I will have the Clerk check on that for you. Proceed.

Mr. Hunter: If you do not mind, I would like to wait till I hear a decision.

Mr. Chairman: She is going to check on that. I do understand that there was a demonstration in the front regarding the situation in the Middle East, and I believe—

Floor Comment: High school kids.

Ms. Bonnie Greschuk (Clerk of Committees): University students.

Mr. Chairman: Yes, university students regarding the war in the Middle East, I believe it was. I was not aware that there were demonstrations regarding The Environmental Act.

Floor Comment: I think they are against the war in Iraq. I believe . . . .

Mr. Hunter: Yes. All I have been informed of this is that they would like to speak at these hearings; that is all I have been told.

* (2120)

Mr. Chairman: I believe they were wanting to make presentation on their concerns regarding the war; they were also there this afternoon, too. You may proceed with your presentation on this.

Mr. Hunter: Very good.

Mr. Chairman: Thank you.

Mr. Hunter: For a long time we have been in direct conflict with the natural environment; it is as though everything we see we need to destroy. Channels have been set up by Governments, and it is my understanding that these channels have been set up to make sure that human impact on our natural environment will be minimal and that a sustainable working environment be maintained. They have failed.

The evidence is in our atmosphere and stratosphere which are disappearing. It is in our water which is becoming a global embarrassment. I do not think there is a single aspect of our natural environment that has not been compromised. The problems with our preventative assessments are pretty well the problems of a lot of legislation. They are full of holes and very ineffective.

From what I have seen, decisions by groups responsible for the environmental assessments do not make sense. I think it is pretty well accepted that these decisions have been dictated from the political standpoint. Environmental assessments are quite often influenced successfully by business or industry as well.

There is also a great problem with what the panels can look at. The terms of reference are set by the Minister and politically influenced. The Minister has a lot of people pressuring him or her to let the economic things go through, and I think that is the reason why the terms of reference are so often very narrow.

We know from experience what the problems are, and we have not attempted to fix them. At the very worst, our planet is going to die. At the best, we are going to have to spend a lot of money to fix what we have destroyed, if we can fix it at all.

A good example of the cost is medical expenses. There are a lot of adverse health effects that are being created by our environmental damage. This is very expensive.

It is my opinion that these flaws can be fixed by a number of measures:

The Act must make sure that Manitoba plays an active role in any joint jurisdictional assessments and not, for example, rely solely on federal data;

The Act must make sure the panels are free of political influence of any sort and have no conflict of interest;

The Act must specify the use of panel members with some personal knowledge and experience in the area in question;

The Act must allow the panel to set its own terms of reference;

The Act must facilitate public involvement and provide financial aid for citizens groups at the onset of joint assessment;

The Act must give the panel the responsibility of determining the criteria for grants to citizens groups;

The Act must make sure the public is involved in any changes to the environmental policy with adequate notification.

Thank you.

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

I would like to now call upon Ms. Jenny Hillard of The Consumers' Association of Manitoba.

Mr. Chairman: If you could wait one moment, I believe the Clerk is coming right now.

If I could just interject here for a moment, there are people or groups of people out in the front who would like to come and witness our committee meetings hearing here. There are a number of groups there regarding the war in the Gulf. If there is any disruption during the meeting, the decorum of this meeting will prevail, and they will be asked to leave. There will be some people coming in to witness our proceedings.

Ms. Hillard (The Consumers' Association of Canada, (Manitoba)): Does that mean the doors are unlocked again?

Mr. Chairman: Then the doors are unlocked again.

Ms. Hillard: Before I start I would like to say, as I always do when I come here, I really hate giving briefs on environmental issues around a table littered with styrofoam cups.

The Consumers' Association of Canada is an independent, non-profit, volunteer organization representing and informing consumers. CAC has about 140,000 members in the national organization, 7,000 of whom reside in Manitoba. We have two local offices and branches, one in Brandon and one in Winnipeg.

CAC (Manitoba) is very supportive of the concept of combined environmental assessments in as much as it makes economic sense to avoid two similar hearings and prevents conflicting decisions on the same issue. Manitoba is however concerned that the environmental assessment process may be weakened by Bill 24 and the draft regulations as they now stand.

CAC has a national policy that in all co-operative arrangements or harmonization agreements the highest standard must always be maintained. We feel that the environmental assessment process of the provinces that border Manitoba are weaker than ours. As Bill C-78 is currently under revision, we would be buying a pig in a poke if we committed ourselves to the federal process at this time.

CAC Manitoba urges this committee to ensure that Bill 24 guarantees Manitobans the highest possible standards for any environmental assessment. CAC Manitoba is concerned that any assessment panel not only be independent, but be seen to be independent. We feel that it is more important that the public, rather than the Minister, see the panel as impartial. Panel members must be accountable to Manitobans. At no time should the responsibility for environmental assessments be delegated to a group which contains fewer than three Manitoba members.

CAC Manitoba is concerned with the Technical Advisory Committee as outlined in the draft regulations. Many major projects in this province are sponsored by Government, Crown corporations or large companies that have Government support, all in the interest of industrial development. We are, therefore, dubious as to the neutrality of advice the panel would receive from such a TAC that is comprised of Government employees.

CAC Manitoba feels that it is essential that the panel have the ability to hire independent, technical and scientific advisors of their own choosing. CAC Manitoba has always been concerned that environmental impact studies are carried out by the proponent of a project. As consumer advocates, we would always advise against making a major purchase without doing one's own research and obtaining at least two independent proposals and quotations.

Yet Manitoba buys into projects that have major environmental impacts on the basis of one study provided by the seller of the project. We find it hard to believe that this makes sense to anyone except, perhaps, the proponent.

CAC Manitoba requests that Bill 24 and its regulations ensure that the panel and/or the interveners not only have the authority and financial ability to obtain an independent study, but that such a study is mandatory on major projects. CAC Manitoba is pleased to see a requirement for intervener funding included in Bill 24, but we would prefer to see the mechanisms and eligibility requirements included in the regulations and the possibility for public input into writing of these regulations.

Although the system of cost awards as used by the Public Utilities Board is very effective in ensuring productive interventions, it is very difficult for interveners to be without some up-front funding. CAC Manitoba would not like to see the same system written into Bill 24.

CAC Manitoba is pleased to see so many opportunities for public participation written into the draft regulations. Any environmental legislation must include openness if it is to have public credibility. We are, however, concerned that the public participation and the intervener funding will lead to a lengthy, costly and quasi-legal process. Although we recognize the need for a more formalized process than that currently used by the CEC, it is hoped that the purpose of Bill 24 is to economize, not to create a system which keeps lawyers and consultants on full employment.

CAC Manitoba is concerned that the inclusion of the amendments in Bill 24 into The Environment Act in no way creates loopholes that would allow avoidance of a full environmental assessment. We were very disturbed by the manner in which the Government of the Day pushed through the Limestone hydro-electric project without a full public examination of its environmental impacts. We would like to be assured that such an occurrence can never happen again.

* (2130)

We urge this committee to ensure that this Bill and its regulations are re-examined and amended in such a manner as will in no way weaken existing legislation. Thank you.

Ms. Cerilli: With respect to intervener funding, we have been wondering, Jenny, if you have given much thought to how that could be handled in terms of the amount of money that can be given to an intervener.

Ms. Hillard: The system that has been sort of evolving through the Public Utilities Board process but is not in legislation—it has to be done by a special amendment every time it is done—is that they give what they call a cost award, a certain amount of up-front funding which gives us something when we are out there begging with lawyers and consultants to do this amount of work on spec, and then afterwards there is a cost award based on the bills that we submit.

The little bit of money we get up front is really not adequate to do anything with, but it does at least cover some of the disbursements at the beginning—so maybe a combination. This is why I would prefer to see it in the regulations than in the Bill, because if we come up with a system and then find it is not working, if it is in the Bill it takes so much longer to get it changed to something we can all live with than if it is in the regulations.

As I said, the cost-award system at the Public Utilities Board is very effective in maintaining the standards of the interventions, because all the time you are doing one you are very concerned that you be effective. Otherwise you are not going to be paid, but you really need something ahead of time to be working with. It is incredibly difficult to persuade lawyers and consultants to work for you not knowing whether or not you are going to be able to pay them at the end.

Mr. Paul Edwards (St. James): Ms. Hillard, given your experience at the recent PUB hearings looking into the Conawapa project and the comments you have made tonight, the terminology suggested by the Government is that there be intervener funding for major projects. I am not sure what that means, but maybe you can shed some light on what projects you think would require intervener funding specifically.

I do not know if you are familiar with the way The Environment Act sets up Class 1, 2 and 3 projects and whether or not any and all assessments under the proposed 13.1, that is joint assessments, in your view would require some participant assisted-funding program.

Ms. Hillard: I would think that anything that warranted a joint assessment would certainly require intervener funding. Under the other projects, I really do not know enough about it. You know we are a consumer group, we are not an environmental group. We would and do only intervene at environmental hearings where we feel there is a direct impact on the consumer. The environment groups are special interest groups. They have far more time and far more expertise in this area than we do, so we would only intervene where we felt there was a direct consumer impact.

Mr. Cummings: I wonder if you have any thoughts on what you consider independence of panel members. I realize you did not bring it up in your presentation, perhaps—

Ms. Hillard: Well, I did. I said they should be independent to the public rather than to you.

Mr. Cummings: Well, that was my concern. There is one word that has caused a fair bit of discussion the last couple of nights, and that is, the terminology of whether they would be free of bias, whether they would be free of political bias and if you had any thoughts on that.

Ms. Hillard: I know what I would like to see. I do not know how you are going to choose them. I would not like to see the panel be made up completely of experts, but on the other hand if you use experts one would hope that their professional credibility would keep them honest and independent. I think it depends more on the character of the people you choose.

The Public Utilities Board is a Government-appointed board, but we have been quite happy and quite confident in their lack of bias and their ability to make independent decisions. Even if we do not get one we like, we still think they look fairly at the evidence and assess it fairly.

I think it depends more on the character of the people who are chosen than setting a particular criteria for choosing them. That is something that can only be done by the wisdom of the people who choose them.

Mr. Chairman: Thank you very much, Ms. Hillard.

I would like to call upon Wayne Neily, the Manitoba Environmental Council. The presentation is just being distributed so you may proceed, Mr. Neily.

Mr. Wayne Neily (Manitoba Environmental Council): Mr. Chairman, Honourable Members, we welcome this opportunity to make a presentation on the Bill 24. I expect most of you are aware of the Environmental Council, have some idea of what it is. For any who are not, just briefly it was a body established in 1972 consisting of about 100 members representing all the regions of Manitoba and a variety of sectors in Manitoba's society, including the urban municipalities, the City of Winnipeg, a variety of professional organizations—the Teachers' Society, the Canadian Institute of Forestry, things like that—and attempts to have input from a wide range into its deliberations.

Now it happens that the council does view the environmental impact assessment process as one of the keys to sustainable development, and we favour anything that will improve the process. We have had a strong interest in this subject for a number of years, and one of our standing committees specifically deals with the environmental impact assessment process, so I regret that our brief is so brief. You may not feel that way having had a number of lengthy ones over the past few weeks, but we would have liked to have had a more in-depth analysis of this proposed legislation and regulations. Unfortunately, it has been a bit of a moving target.

As you may recall, it was originally introduced as draft regulations in November and October, then the legislation came out a little later as a Bill. Then, after we get back from Christmas holidays, there was another set of regulations. Because of the number of constraints that we have been operating under, we have not been able to analyze it as a council in any depth. As you heard allusions to the limitations of budget and so on, we have not been able to meet monthly as a board of the council. One of the members whose nomination has not been reappointed—his membership expired last time—was the chair of our environmental impact assessment committee.

All of these things have limited our input; however, we did in our December meeting make some recommendations specifically with respect to the Bill as we had it at that time, Bill 24. I will present those to you, and I do want to say as a preface to that, that we commend the Government's initiative to try and improve the process and we recognize the need to have co-ordination of the processes between the Governments where there is more than one involved. It may be that in some cases when we see a particularly bad project that looks as though it is going to get improved, we would rather have it go through several processes and have a better chance that it is rejected, and yes, that can even happen in as enlightened a place as Manitoba.

We recognize that in the long run it is probably in the best interests of the environment to have a process that is co-ordinated and as efficient as possible. Indeed that was one of the recommendations of the Assembly of Environmental Councils that met here last year, that co-operation between jurisdictions should be encouraged including co-operative and joint EIA processes as long as this does not dilute the quality of these processes. That of course is a big concern here. We support the concept of Bill 24, but with amendments to it. We do not consider that the regulations are adequate in this respect.

* (2140)

There are some things that need to be included in the Bill itself, particularly the requirement to ensure public input into the terms and conditions of the specific joint process agreement and the joint panel terms of reference. Those things are sort of fundamental; they should be right in the Bill. How they are done can be put in the regulations but even more important perhaps, that the Bill be amended to ensure that the joint process established include the more or most open, and the more or most comprehensive provisions of the two or more processes involved. That should not be too complicated to simply state that right in the Bill. You can put all the details of how you are going to do that in the regulations, but if it is in the Bill then there is something to fall back on if there is a question about the process or if it is challenged. That is essentially the presentation that has been approved by the board of council.

Our committee has looked at the regulations. There has not been a complete agreement among the executive and the committee on other points, and we have not had an opportunity to discuss it with the board. One thing which I think we do have a consensus on is that the panel should be seen as the primary controlling mechanism for most of these things that have been delegated to a Technical Advisory Committee here.

In Section 3(b) of the regulations, there are a lot of things in there which, under the present legislation, The Environment Act, I believe the power of the director or, for Class 3 projects, of the Minister, that they seem to be given to a Technical Advisory Committee here, which may or may not be an improvement, but we would suggest that they should be under the direction of the panel.

I am working on the assumption that this panel would apply to all projects that come under this joint process. That is not absolutely clear from the legislation, but the assumption that I have from reading it is that if there is going to be a joint process there will be a panel. So the idea would be to have this panel appointed as early as possible and to have it supervising the development of the various things that the Technical Advisory Committee would be dealing with under the proposed regulation.

I have a number of personal comments which I could give on this as well, if you wish, with respect to the details of the legislation. I think the only other general comment I would like to make on behalf of the council is in response to some of these discussions about the panel criteria.

At the assembly in September, one of the things that was recognized across Canada as being a problem with environmental impact assessments is generally the lack of knowledge of the biophysical data base and the need for more understanding of that by the panels, whether they be a commission or whatever. Now in the federal one they normally have someone with biological expertise on the panel. I certainly do not think that everyone on the panel should have to have scientific expertise, but I think it is important if we are going to be assessing environmental impacts to have someone with a good knowledge or a basic understanding of ecology and ecosystems on any such panel as well as the chemical impacts which are represented in our current commission's expertise.

Okay, should I proceed with the individual comments, or do you want to just question on this first?

Mr. Chairman: We can take questions if you like.

Mr. Cummings: Let him finish. I am just going to ask one question for clarification. I just wanted to ask Mr. Neily. I am quite prepared to proceed whatever way he is comfortable with. When you said individual comments, were you referring to the various sections of the Bill?

Mr. Neily: Yes.

Mr. Cummings: Oh, that is fine.

Mr. Neily: Yes, I am not going to go off too far away from the specifics here.

One thing I must comment on, as I do not often get an opportunity to address the Law Amendments Committee, is that I would urge you to have someone with a good command of the English language to review all of these things before they come before the Legislature. If you look through this, there are all kinds of dangling clauses, verbs without subjects, subjects without verbs, and punctuation which does not make any sense. I find it very hard to understand. I do not know how a judge would interpret it if it ever came to court. That is one thing I noticed. I do not mean to impugn the particular authors of this, but with a lot of legislation one of the great benefits of having the French versions is that they are written by somebody who is an expert in the language as well as in law. They are quite legible and they are correctly written. Unfortunately I do not

have the French version of these regulations, so sometimes it is a bit difficult to understand.

I can give you some examples on that if you want to, but I do not want to go into details on such picky items. It is just embarrassing to me as a Manitoban to see legislation come out that is mutilating the language. I used to think that it was necessary for legalese, and I have since learned that it is not. It just needs more review.

Just for one example, this Section (c) of Regulation 3 says, "appoint representatives from the participating jurisdiction . . ." Who or what is the subject of that?

Mr. Cummings: That was why I asked my question earlier, Mr. Neily. You are referring to the regulations, which were not the subject of what we were wanting to get into.

Mr. Neily: Oh, okay, you wish me to restrict myself to the Act.

Mr. Cummings: In defence of the way the regulations are written, I am quite prepared to indicate that in preparing them and amending them and repreparing them for public discussion, as you are aware that they were done in that fashion, the staff was sometimes under some considerable time constraints to get them out.

Mr. Neily: I can understand that, and I see it is marked "draft."

Mr. Cummings: Is there something specific about the regulation? I do not mind entertaining one question, but I hope we can stick mainly to the Bill and take it from there.

Mr. Edwards: Mr. Chairman, I object to the censure by the Minister of discussion on the regulations. These have been circulated as draft regulations. This Bill is a Bill which the Government is seeking to get vast powers to make regulations, and they have put this forward. Let us discuss the regulations, and let us discuss them all the time that Mr. Neily wants us to discuss them.

Mr. Steve Ashton (Thompson): Yes, I want to indicate my own concern too. Perhaps the Minister hopes there will not be questions on the regulation, but I believe it is well within the mandate of this committee for committee Members and members of the public to address the regulations that have been distributed in conjunction with the Act. They are certainly relevant to the Act.

I would just hope that while the Minister may not wish to discuss the regulations that there would not be any impression left with the presenter or members of the public that they cannot make reference to the regulations. As a committee member, not only do I think it is their right, I think it is their obligation to make comments on the regulations as well as the Act itself.

I suggest, Mr. Chairperson, we allow the presenter to proceed. In fact, some of us as committee Members may very well have some questions on his comments related to the regulations.

Mr. Cummings: I think the last person whom I would restrict would be Mr. Neily. Let us get that straight. The issue, however, of the validity of the regulations, we all know that they are going out for public discussion and revision. They are not written in stone here tonight. Advice that is received from all of the presenters that is relevant to the operation of this Bill and which could be included in regulation is advice that we are prepared to receive.

I simply was indicating that ultimately when we get down to clause-by-clause discussion, as we will I hope later tonight, that primarily will be a question of what is in regulation and what is in the Act. The department has prepared draft regulations, and obviously they are not all here tonight.

It is really the incomplete aspect of that, that I want to make sure we all understand what it is we are referring to, because there is much more work to be done on the regulation side.

* (2150)

Mr. Neily: Thank you, Mr. Chairman. I appreciate the Minister's clarification on that and especially the understanding that there will be a further opportunity for input into the regulations at a later time.

The one thing with respect to the Act that we had difficulty in understanding is to what extent the rest of the legislation of The Environment Act would apply to projects that come under this joint process. It would appear from the regulations that are drafted here that some aspects of it at least will be changed.

There are some things indicated in the regulations here, such as the requirement to advertise the proposal and file a summary of it in the registry and things like that, which are already in the Act if the rest of the Act is to apply to them.

I would appreciate some clarification. If there are some sections of the Act that would not apply to these joint processes, which sections? There is nothing in this amendment as far as I can see that says all other aspects of The Environment Act would apply to them. As far as the specifics here, we do not have any specifics other than what we have identified in the resolution with respect to the Bill.

Mr. Cummings: Yes, unless there is some nuance, there is some wording that I am not aware of, there certainly is not any intent to restrict other parts of the Act with this Bill.

Mr. Nelly: The sections then that apply to the evaluations right now would also apply to these joint processes. I assume there must be some exceptions, since there are regulations that would give certain powers to the panel and so on. Except for those exceptions is that the intent?

Mr. Cummings: A joint agreement with the federal jurisdiction would obviously have some impact, but not at the subrogation of our Act nor at the subrogation of theirs. Subrogation is probably the word—make it subjective to I guess is the word I am looking for, not subrogating.

Mr. Nelly: Okay, I think we have covered the comments on the Act, if I could just briefly mention some points with respect to these draft regulations, which you may have already taken into consideration.

I had some difficulty understanding just what developments would be included. It says, for which a Manitoba regulation or federal and provincial Minister of Environment determines that a co-operative assessment review is necessary. Does this mean that there is going to be a regulation that will specify what sort of things are necessary?

Ms. Cerilli: Mr. Nelly, it would really help the people on this side of the table if you would explain where you are reading from so we can follow along better.

Mr. Nelly: Okay, I am sorry. I am in the draft to the regulation, Section 1, the definition of development.

Mr. Cummings: If I understand correctly what you are referring to, it is my understanding—the intent is that we are trying to say that there is nothing that says there must be a joint review. It would be a decision that it would be an option, not that there must be. I think that is what that wording is meant to say, unless I picked up wrongly on what area you are referring to.

Mr. Nelly: I just wanted to clarify that section for which a Manitoba regulation determines that it is necessary. I thought perhaps there is the intent to have the regulation that would specify certain areas, or maybe some such regulation already exists.

Mr. Cummings: The word is referring to what would be our existing class.

Mr. Nelly: I see. Okay. I assume this joint process could apply to any of the three classes. Is that correct?

Mr. Cummings: That is possible, but the fact is that the intent behind this is that it is an option that is available, not something that is mandatory.

Mr. Nelly: Thank you. I had a number of things in here indicating that they seem to be required by the Act, if the Act applies, such as Section 3(a)(i) and 3(a)(iv). They are basically good ideas, but they may already if the Act applies anyway be redundant. I do not know.

The 3(a)(ii), I did not quite understand, reading the whole thing after, follows: (a) Public input into the process will be encouraged through; (ii) opportunity for public involvement in the scoping of issues, where applicable. Does that mean the scoping of the assessment? I assume it means providing an opportunity to go with what will be encouraged. You can just note these if you like and respond later, they are just comments on the way through.

Mr. Cummings: Would you repeat your last question? I got the first one, but the second one, I was seeking an answer at the moment.

Mr. Nelly: Okay. This 3(a)(ii), to follow through with the sentence: will be encouraged through. I assume that should be: providing an opportunity for public involvement in the scoping, and I assume that means scoping of the assessment, determining the scope of the assessment or in the scoping of the issues.

Mr. Cummings: That is correct.

Mr. Nelly: Under Section 5. Opportunity to comment on the TAC. I assume we are talking about Technical Advisory Committee here, I would suggest that it would be a good idea to include the TAC review on the public registry as well and to specify that there. As you may know that is one of the complaints that a lot of people have had with the existing processes.

We do not have general access on the public registry to the TAC reviews and in some cases those

are the only reviews that are done of projects under the existing licensing system. Then, of course, there is this famous major development in Section 8. We think it is a good idea, the provision of participant assistance program, how major developments are defined. I would agree with the last speaker that if a project is significant enough that it requires a joint review then probably it should be significant enough that it should have independent interveners who are funded. Perhaps you could simply delete the major there, say any developments that come under this section.

The incorporation of the Technical Advisory Committees into the regulations, we have no problem with the principle of that, but as suggested earlier we would prefer to see them—most of these things that are in here are actually done by the panel, perhaps with the recommendations of the TAC as well as the public. Alternatively if there is not a desire to have the panel do the things that are identified in here as duties of the TAC, that is reviewing the proposal, scoping issues, et cetera, then there should be some non-Government representatives on the TAC.

I think I will leave it at that. There are details under Section (c)(i), it says so long as the Minister appoints or approves the appointment of the chair or co-chairs that seems to apply that the Minister would not appoint the other members. I am not sure if that was the intention.

Those are just some detailed comments for your consideration. Thank you for this opportunity.

* (2200)

Mr. Edwards: Mr. Chairperson, I know the Minister will want to respond to some of your questions. While he is speaking to his officials, I want to go back to your Manitoba Environment Council part of your presentation, which you were speaking on their behalf.

You indicate that the council supported Bill 24 with an amendment, that the Bill be amended to ensure public input into the terms and conditions of the specific joint process agreement. How did the council envisage that actually occurring in practice? Would the Governments who were entering into the joint assessment process construct an agreement and then take it for public review each time that they wanted to enter into that type of a joint assessment process?

Mr. Nelly: I think in most cases—it is hard for me to generalize that because you are going to get some perhaps that are class types where you may have several projects of the same type. It may not be necessary to have each one of those opened up for review again, but whenever a new type of agreement is established, there should be a requirement for it to have public input. I think that was the intent; it just is not stated in the Act.

Mr. Edwards: The other, sub 2: The council also recommends "That the Bill be amended to ensure that the joint process established include the most open and comprehensive provisions . . ." and you have suggested that those very words could simply be included. My only concern about that is the same concern I have about people saying that they want to ensure the highest standard. That is, that words like "highest" and "comprehensive" and "open", as we all know, are subject to very differing opinions as to what they actually mean in practice, and the words connote to us perhaps tonight what we may be aspiring to, but in the context of a specific proposal and the technical details and the comparing of one act to another act, it strikes me that those terms are subject to the same type of discretionary ability to bypass what really may be the highest standards that we are seeking to get rid of. Do those words strike you as sufficiently strong to ensure the highest standards?

Mr. Nelly: We had a fair amount of discussion about this, and it is very difficult undoubtedly to put something like that into legislation. It is fine to state that your intention is to have the better of the two processes, and then it comes down to, how do you decide which one is the better? It might be useful simply to state in a Preamble to this Act that the intent is that the better of the two processes apply, but that would be very difficult to enforce in a court because it is a matter of judgment as to which is better in most cases.

We came up with these two aspects of the process which we felt were key to determining which one is better or which is a higher one; one is the extent to which it is open to public involvement, the other one is the extent to which it is comprehensive and looks at all aspects of the question. I think that using those is better than simply saying the joint process should adopt the best of the two processes involved. It does give more direction. Perhaps you can come up with something that is better still, but

that was the best that we could come up with on short notice.

Mr. Edwards: I appreciate that. I appreciate the restrictions that the Environment Council has had placed upon it which you have talked about. Would it not be better and more secure to include in our own Act the very—perhaps detailed—but the very provisions which guarantee us that openness and that comprehensiveness? Would it not be better when we are embarking upon this type of a major change in the way we are going to be doing these assessments and the major projects affecting this province, to take the time to put into the Act the detailed provisions which are going to make it open and make it comprehensive? Put those in detail so that we are sure that any joint assessment we get into has those specific criteria included in it.

Mr. Nelly: Yes, there is certainly a fair amount of sympathy for that position in the council. Our consensus was that it would be almost impossible to predict all of the situations that might come up and to plan them in the kind of detail that you might want and put it in the legislation; then if you did put it in the legislation it would be difficult to change it, and that it might be better simply to state the principles in the legislation or the basic requirements and to leave the details of the process to the regulations. So that is why we did include that Section 1, that those two particular points would be required by the legislation: to have public input, any agreements that are developed, and the terms of reference for each panel. The rest of it, the details, we ended up not recommending that they go into the legislation.

Mr. Edwards: Just one final question and feel free to speak for either the council or yourself, because we appreciate your own personal advice as well. As you know, both in the Province of Ontario and federally, there has been quite a bit of setting out of detailed criteria with respect to intervener funding, with respect to what is expected of a panel, much more so than there has been in Manitoba. Those details have been worked out in law, albeit the regulations. We do have some guidelines therefore to look to as to what we might want to include to make it more open and more comprehensive.

Do you not think that we might look to those examples, attempt to improve upon them, but look to those, not as an exhaustive list perhaps of what we want, but at least have something that we can put in that would guarantee us minimal standards of openness and comprehensiveness in this legislation?

We are front runners I am sure you are aware, and I certainly keep in mind throughout this, we are front runners in the country in doing this. I think we want to set a standard that others can look to and try and match in terms of the very principles you are talking about—openness and comprehensiveness.

Mr. Nelly: Yes, I am sure we would not object to having any good, sound, general criteria in there that would improve the process. I recognize that Ontario and, as a matter of fact, several of the other provinces have developed some quite useful regulations that could and probably have served as guidelines for the people who were drafting these to some extent, and I think a lot of improvement to the regulations could be done. Now whether you can do that within the legislation as well or not, I leave that to you.

An Honourable Member: We will certainly try.

Ms. Cerilli: I want to clarify something that you said at the beginning of your presentation. I understand that you said initially you thought the intention of this Bill was going to be covered just in regulations. What was the basis for that understanding?

Mr. Nelly: In October, public meetings were held with draft regulations that would cover this, and it was only later that it was decided to bring it before the Legislature as a Bill.

Ms. Cerilli: So at those meetings there was no mention made that there would be a Bill that would also be brought in.

Mr. Nelly: Yes, that is correct.

Ms. Cerilli: When did you realize that there was also going to be some legislation?

Mr. Nelly: When we heard the legislation introduced in the Legislature.

Ms. Cerilli: Was there a meeting with the Manitoba Environmental Council and the Minister to review this Bill?

Mr. Nelly: Not yet. This is it maybe.

Ms. Cerilli: Did you not find that odd or troubling?

Mr. Nelly: I was a little surprised when we heard of the meetings with the other groups that we had not had a meeting, but I assume there must have been a good reason for it.

Mr. Cummings: Well, I do not think I am going to get into a debate with how many times this Minister

has met with MEC and how many times previous Ministers met. I do not think that would be too useful, except it might be beneficial to my reputation.

An Honourable Member: Come on, let us hear it, let us hear it.

Mr. Cummings: The Member says he wants to hear it. I will let him ask Mr. Neily himself if he wants to, but the issue that I wanted to give Mr. Neily and MEC some comfort on, on the subsequent development of regulations, it gave me some concern that you felt a little bit surprised that there would be further public discussion and consideration of the subsequent regulations. That certainly has always been my understanding, and in fact I think it is mandated by the Act. We certainly will be taking the draft regulations you see before you plus draft regulations on intervener funding. Those will all be going out for further public consultation, and I am sure people such as yourself and your organization and a lot of others will have considerable comment at that time.

One thing I would like you to give us some comment on because of your background and your interest is what your thoughts are on criteria for appointment of panelists.

* (2210)

Mr. Neily: That is an interesting question. I think the criteria for appointment of panels are probably the same as they should be for appointment of the Clean Environment Commission, perhaps even for appointment of the Environmental Council. They should be of persons who are going to make a worthwhile contribution. I think in each case there should be a certain basic level of knowledge of the environment, some comprehension of functioning of ecosystems, not necessarily everybody a scientist. As a matter of fact, not everybody a scientist. Very often local knowledge is important. Expertise, as one of the previous speakers mentioned, comes in various forms. It may be local knowledge, it may be scientific expertise of one type or another.

How the appointments are selected is always a problem because whatever Minister is in power is going to have to make these appointments, and with bodies such as the commission or the council which are standing, there is always a suspicion if they are not on recommendations of some independent body. It may be that something like the recommendations of the Bar Association for judges would be a useful factor in having appointments, standing appointments at least, for such bodies, recommendations from some existing independent group. It is a little more difficult to find a professional association for environmentalists, but you do not really want a professional necessarily anyway.

I think it is important to have some expertise in the biological field, some in the chemical field for most projects, some in others, depending on what the project is, plus some general knowledge, local knowledge of special interests, for a particular panel.

Now, if you have all of that in a commission that is a standing body as well, so much the better, and they can pick and choose as to panels for the Manitoba projects.

Does that answer the question?

Ms. Cerilli: I wonder, Mr. Neily, if you could comment on how that criterion matches up to the members who are now available for the Clean Environment Commission hearings.

Mr. Neily: I think I would rather not comment on that. I could comment individually; I certainly could not on behalf of the council. We have expressed to the Minister over the years the importance of having certain expertise on the commission which does not exist. I mentioned that earlier, the specialization in biology or ecology. There are some other expertises which are very good on the commission and a number of people with good general knowledge who have shown their concern for the environment over the years.

Mr. Edwards: I just have one further question about the process. You have talked about the regulation which was floated back in October of last year, and I have a copy of that in front of me. It came with a covering letter from the Minister. I appreciate you do not have a copy in front of you, but in reviewing that, what it talks about is a co-operative process in which a co-operative report would be issued at the end of the day by a jointly appointed panel, and that is all it talks about.

When I first got Bill 24 and saw what is proposed in 13.1(b), that is, the power for the Government not only to establish that joint process, but, in effect, to abdicate its responsibility to another jurisdiction and provide by executive authority for the use of that other jurisdiction's assessment process in its entirety, that struck me as fundamentally different than what was contemplated in the October hearings, which is purely one of a co-operative joint

process. The document floated in October said nothing, on my reading of it, about one jurisdiction doing the process for the other jurisdiction. Did that strike the Environment Council at all as a surprise when it came forward in Bill 24, and did the council have any thoughts on sub (b) specifically?

Mr. Nelly: Yes, we had some concern about that. I believe we discussed it with members of the department and got their explanations as to why it was there. I think that it is probably unnecessary in any case. A joint process could be identical to either of the others as far as that is concerned, and it probably would be politically advisable simply to delete that, but that is your decision as Members of the Legislature. I cannot see that it serves any useful purpose from the point of view of the Environmental Council.

Mr. Edwards: Just one further question on that. Do you contemplate—and I am not asking for a political assessment, I want your assessment as an environmentalist. Can you contemplate any down side to leaving it in, any potential for abuse by whatever administration, that power in effect in the executive authority of Government?

Mr. Nelly: Certainly if the other amendments we have suggested are not put in place, there is that potential. That is one reason why we are so anxious to have this statement that the joint review process should be at least as comprehensive, require as thorough an impact assessment and should have at least as much public input as the more open and more comprehensive ones involved. If that is in there, then I think you have a safeguard; if it is not, you do not.

I am trying to—there was another point I wanted to make in relation to that, and it has escaped me at the moment. Oh, well.

Mr. Cummings: I would like to ask Mr. Neily, the question that he just answered, relevant to the use of another jurisdiction's assessment process, an area that I see this being something that is due some consideration is if you have a project where the federal Government has a very large interest on Native lands with navigable waters where 80 to 90 percent at least of the work would be required by that jurisdiction, regardless of provincial interest.

Do you have any concern if the province then uses that information as part of its decision-making process, because immediately after Section (b) in 13.1, it says: for the purpose of gathering the information necessary to make a decision to issue or refuse a licence.

Nowhere is the decision-making process being delegated, it is only for the collection of information, which is the assessment process. Does the scenario that I describe give you any other comfort in terms of how this could be a reasonable approach?

Mr. Nelly: First, the point that I had intended to mention in relation to that is that was one reason why I was asking whether the rest of our existing legislation applied to everything that came under this Act, because that is not entirely clear, and that is a safeguard as long as it does.

* (2220)

If somehow that could be interpreted by a lawyer as excluding something from some aspects of our Act, I would be much more concerned. As to the question of the use of that jurisdiction's assessment process, if the semicolon were deleted there that would be appropriate. It seems to be in a separate clause. That semicolon there ends this one, and it may be unintentional, but that is just a dangling phrase at the end there. If that were part of Section (b) then I could see that.

I am not sure just—but gathering the information is not I think the same as the environmental impact assessment process. If it is only intended for the information-gathering part of that process, fine, but the understanding of the way it is written there that we had is that it would be utilizing the whole process including a panel from the other jurisdiction, et cetera.

If you delete that semicolon and put the additional words into that section, I do not have any particular problem with it. I think you should use information from whatever sources you can get, though I do not know that it needs to be in the legislation.

Mr. Cummings: Well, I believe that I fairly described what was intended in the writing of this section. I bow to your thoughts on grammatical correctness. I would have to ask our drafters to look at how that changes the intent, and certainly we can look at that.

Mr. Edwards: I just want to add, for Mr. Neily's edification, and he has raised the concern, that in some way this provision would nullify certain provisions of the existing Environment Act. It is my reading of it that certainly is the case and that particularly with respect to 13.1(b), that is to provide for the use of that jurisdiction's assessment process

another jurisdiction's assessment process even if it is for the purpose only of gathering the information.

Sections 10, 11 and 12 in our Act do include provisions about the assessment process. They put in specific requirements that the Government has to meet.

Now what this purports to do in projects that are involving more than one jurisdiction is it allows the Government to by-pass those sections and in effect give over in entirety the process to another jurisdiction.

Ultimately, the political decision rests with our Government. That is true. Certainly we would not be involved in this debate if we all did not believe that the ultimate decision was intimately linked to the process. You cannot divide the two. If you have a bad process, you will have a bad decision. If you have a good process sometimes you will still have a bad decision, but you have a higher likelihood of having a better decision.

So my view is certainly that you are correct in your fears, Mr. Neily. I certainly see no basis on this wording to have any confidence that the Minister's view, albeit put forward with the best of intentions, is correct.

Mr. Cummings: Perhaps before Mr. Neily steps down, and he may not even need to respond to this but I think it is an appropriate juncture to respond, that given the intent of what I said, then I think what we are struggling with is clarification of that intent. I am encouraged by your approach to the Bill. As Members of the committee, it will be our job to wrestle with the question you have raised.

Mr. Neily: Yes, I would like just to comment briefly on that. If the intent is simply to use another process for gathering information, I do not think there is anything in the legislation or the regulations that prevents that anyway. So it might be possible simply to eliminate that and not have to worry about it.

Mr. Cummings: The whole intent behind this Bill is to make sure that the intent is clear, and not after the work is all done, subject to interpretations other than what the drafters meant, not just this clause but the whole amendment process that we are embarking on with Bill 24. You could argue that almost anything that we want to do under Bill 24 could be done today, but you might not be able to successfully argue it on a technicality. I guess I say to you and to other Members of the committee that is why we have these amendments before us, to make sure that there is a clarity as to the legality and the intent of what could be conducted under the Bill.

Mr. Neily: In considering that, I might make a suggestion then that you simply amend (a) to say: to establish a joint assessment process which could provide for the use of that jurisdiction's process in gathering information—something to that effect. That way you would still have the requirement for a joint assessment process, but you could use the other ones for information gathering, if you wish.

Mr. Cummings: I cannot give you under that an interpretation of what effect that has, except to tell you that is a suggestion I am sure all Members will want to take a look at. My first thought was that might fundamentally change the intent of (a), but perhaps I am not well-enough trained to realize that.

Ms. Cerilli: It seems to me one of the things we are trying to get away from with this legislation is having a proponent do the research and manage the assessment process. Knowing that we have Government often as the proponent, what if, under what we are considering here, it was a federal Government project or a federal development that was supported by the federal Government? Then I would see that this would be again totally unacceptable. Would you agree with that?

Mr. Neily: This whole question of the proponent doing the assessment is one that we have some concerns about, and exists under our entire Manitoba Environment Act. The proponent always does the assessment by contract and we feel that that is a weakness of the Act. I do not know if we can change it in this particular amendment, though. That is something that is pretty fundamental through the Act.

Mr. Chairman: I would like to now call upon Mr. Dennis Breed, the Canadian Public Interest Organization. Mr. Breed does not have a brief to present. You may proceed.

Mr. Dennis Breed (Canadian Public Interest Organization): To start with, I would like to refer to this public hearing, if that is what this is called. It seems you have had a public hearing and not invited the public. There was very little notification of this hearing. The only one I was able to catch was one television notice, and I think that there should be further notification to the public if you were—

Point of Order

Hon. Harry Enns (Minister of Natural Resources): Mr. Speaker, on a matter of order, I just take the occasion to make note for the record that Manitoba is the only jurisdiction in Canada that provides this opportunity for the public to make presentations of any and all Bills that we intend to pass, so I take some exception to your suggestion.

Mr. Ashton: I do appreciate the advice from the veteran Member from the House, but I believe members of the public have the right to express concerns, as this member is, about the lack of notice. One of the difficulties we do have is that sometimes some of our committee hearings are more publicized than others. Certainly during the Meech Lake crisis, the public hearings were well known to the public, but I believe—

Mr. Chairman: If I could interject, I would like to thank the Members for their—there is not a point of order.

Mr. Ashton: Well, Mr. Chairperson, I am addressing the point raised by the individual making the presentation. I just wanted to complete my sentence, if I could, to say that I wish that Members of the committee would allow presenters to make comments and not engage in debate with them. That is the role of this committee hearing, to allow members of the public to present their views.

* (2230)

* * *

Mr. Breed: As I say, there was not adequate public notification, in my opinion, and in that respect I think it would be a good idea to put in a legislation requirement specifying the amount of notice of public hearings if they are to be held. Why not?

As I am not exactly familiar with the Act as I have not really be paid to look at it or anything, I will just address some of the pertinent points.

I would suggest that the Act, not the regulations, be used to get to some higher standards of environmental quality, that these standards must be spelled out in the Act and not the regulations. That would make sure that we know exactly what we are dealing with and would have a higher probability of success in improving the environmental quality.

In terms of understanding the need for impact assessments, if there is some proposal, well, that is where you proceed, and if you object to impact assessments I guess that tells us something about you, meaning that before you do something, you think about it.

That is what impact assessment means, instead of just going ahead impulsively, so I think the term impact assessment is a good requirement in anything we do.

With regard to the administration of public funds, the administrators must demonstrate reasons for an action and not merely base their action on whims or anything else. They have to demonstrate it, I would believe, and provide reasoning for their actions. Otherwise perhaps that action would be irrational, who knows?

On that Section 388, I believe it is "where assessments are required for major projects", I would just say that assessments should be required for all projects whether it is an extensive assessment or not, but as I say, think about what you do before you do it, and you will not have any problems perhaps.

Coming down to the definition of "environment", some people isolate it from "economy", for example, but really the term "environment" means everything, and that does not leave anything out, so it is a very comprehensive term. It includes the people as well, environment, as the wildlife and the trees and everything else. It also includes economics, social impact, so I really do not think there is much of a reason to divorce economics from the environment as some people do. We should be integrating the situation and evaluating perhaps both aspects into one.

There were some interesting terms used such as "impartiality" and "freedom of political influence". Now those are interesting, but I think you could define them further to define exactly what that means. There has been a problem with some terms in that the working terminology for the Round Table has been stakeholders. That term in itself defines a conflict of interest, so therefore it is invalid. I do not see why people are using this term, stakeholders. I think some better terminology should be developed.

As far as the definition of "independence", this is a good point. I think that the best assessments would be independent, and what this would mean, we could start with the legal definition and you could look it up yourself, but it basically means that the person in question is both competent and free from

bias. That is the requirement that is required of a judge, for example.

The definition can be made more detailed, but basically what is needed are persons with this particular intellectual ability. This is a particular ability that people have whether they are independent or not. There are a few persons like this actually, but you would be best advised to hire them you know no matter what your business because they will be able to help you if you can find them.

Another thing that should be required is public interest assessments. Public interest is the reason for being of Government. Funds taken by the Government must be used in the public interest or that is abuse of public funds. Now there should be some type of evaluation along these lines as to whether a proposed project is in the public interest or not.

This would, of course, not interfere with private interests as such until it comes into the public domain, but the public interest can be used as a test of use or abuse of public funds.

Just to touch on one subject—someone suggested the Clean Environment Commission be abolished. I thought that perhaps would be an idea, but there is an alternative to that in that the members could be certified to be independent as such and, therefore, you would get some results, but with my experience with the Clean Environment Commission, they generally do not do that good a job. One member I can think of has a conflict of interest, but nobody has paid attention to that.

One person last night indicated that should there be Government malfeasance, any Act would be useless. So I suggest putting it in stone that the Government be required to obey the law, and to which persons would have to have recourse to this.

One smaller example of this is on freedom of information. An impact study was done, but the present Government has not released it, and this one is particularly the insect control report initiated by Jay Cowan. That has not been released, and I believe, actually somebody told me, that it is sitting in Norm Brandson's office, but he has not released it yet. I am just thinking it would be very reasonable and in the public interest to release that.

We have done a press release on it which also indicates the Article 19, the International Centre on Censorship has cited Canada with administrative recalcitrance in providing access to Government information. I think this is just another case of administrative recalcitrance by that insect control report not being made available. Now this was paid for with public funds. Why should it not be used? Why should the public not have access to this?

* (2240)

Another example was when this Minister received a letter from me informing him that his permits were illegal. He went ahead with them anyway. What I refer to is the pesticide permits. The recourse to litigation was directly blocked by Legal Aid failing to fund a court case against the pesticide use, which is interfering with civilians. The chemicals labelled as pesticide, as to nature and character of substance, are actually anti-personnel chemical warfare agents that are being used at some level against civilian Manitobans similar to what Hussein had done. The United Nations had authorized military action against that Government.

My question is: What recourse has this Government offered when this Government breaks the law? What can the citizen do when the Government breaks the law? What has happened in history when the Government breaks the law? That is my presentation.

Mr. Chairman: We do have one last presenter, Mr. Toby Maloney. He does not have a brief to present for handout. You may proceed.

Mr. Toby Maloney (Private Citizen): Thank you for the opportunity to speak briefly. I did not know until a few minutes ago what a privilege this is to speak at a Legislative Committee. I asked to speak at the last moment, because it has just come to my attention that the Resource Recovery Institute voted earlier tonight to shut down and that tomorrow will be the last pickup for the 10,000 homes served by the blue-bag program.

I think this is relevant to the discussion here tonight, because many Governments today and in the past have characterized environmentalists, especially with regard to assessment of large projects, as negative or as naysayers, but here is a shining example of a positive effort by environmentalists that has been shunned by Governments and is shutting down because of the lack of provincial and city funding. I would just like to say good-bye to the RRI and bring this to everyone's attention.

Mr. Chairman: Are there any questions of Mr. Maloney? Thank you very much for your presentation.

That brings to an end the presenters on the Bill. I will ask one more time, are there any other presenters for the Bill? If not, before we proceed on to the Bill itself, would we suggest a 10-minute recess? Five minutes?

An Honourable Member: The Liberals need 10 minutes.

Mr. Chairman: A 10-minute recess.

* * *

The committee took recess at 10:44 p.m.

* (2250)

After Recess

The committee resumed at 10:55 p.m.

Mr. Chairman: I call this meeting to order please. We will proceed with the detailed consideration of the Bill. Does the Minister have an opening statement?

Mr. Cummings: Mr. Chairman, given the lateness of the day, I will keep it very clear.

The first thing I would like to put on the record is that it has always been the stance of this Government concerning federal jurisdiction—

Mr. Chairman: Could you—I call you to order in the back please. If you have a conversation, would you please go out in the hall? Thank you very much. I am sorry, Mr. Minister.

Mr. Cummings: No problem. I just want to reiterate to the Members and put on the record that the approach of our Government has always been in relationship to federal jurisdiction on environmental matters. I believe somewhat different from what has occurred in a number of other jurisdictions and we hear them very regularly referred to. I guess, to emphasize my point, I would borrow from Justice Muldoon, when he ruled on Rafferty-Alameda, and he said that you must embrace the guidelines warmly. I have never said, nor has this Government said that they wish to do otherwise. In attempting to make these amendments to enable joint process, we take that as a principle that we are starting from.

I think a couple of examples we need to keep in the back of our mind as we go through these amendments: Shoal Lake is an issue which is largely outside of Manitoba's boundary and a concern which may very well benefit from the type of situation we are trying to anticipate with the amendments that we are making.

We are well aware that a strong federal environmental presence may very well be our only protection in many cases involving upstream developments. We are, after all, downstream in most cases from all jurisdictions around us and it makes what we do, particularly in terms of where there is impact outside of our boundaries, quite important.

The federal and provincial processes are designed to achieve the same objectives and employ similar principles in their execution. We are concerned that this state of affairs may result in two orders of Government conducting separate but very similar reviews, probably not to the benefit of anyone except perhaps those who are acting as consultants and lawyers.

No province should attempt to exclude the federal Government from their legitimate role in the area of environmental assessment, nor should any jurisdiction, federal or provincial, attempt any scheme which will result in environmental review process for projects of joint interest which does not respect the requirements of both the federal and the provincial processes. Duplication and confusion can be avoided by legitimate co-operation.

We feel that this is not a case of which process is best, and any joint process must respect the requirements of both processes. We must, I believe as we bring this Bill forward, ensure that there is sufficient legal authority in The Manitoba Environment Act to permit the development of a joint review process.

* (2300)

We envisage circumstances when environmental jurisdiction interest of either Manitoba or Canada might, for a particular project, be quite small, and that is the matter which I referred to in my exchange with a number of Members, but particularly with Mr. Neily earlier this evening.

That is an abridged version of what I wanted to put on the record, but I think that hits the highlights and I am certainly prepared to yield the mike to my critics.

Ms. Cerilli: I think it is amazing that in this day and age of increasing public awareness of the environment that a Government could bring in

legislation which is going to open up The Environment Act, and they would not expect that people would be demanding that it is going to actually improve the environmental legislation. For something as important as the environment impact assessment, to have it done in the rushed way that was excluding public input, until it was forced, is completely unacceptable.

Our Party has prepared a number of amendments that we are going to bring forward, seeing as, if the Government does not follow the advice given to them from the environment community and incorporate some things that would actually improve the environment assessment process, which they have claimed that they are wanting to do.

One of the main things that they have said all along is that they want to have the highest standard used, and one of the things that we want to see through the amendments is that these high standards are actually stated in the Act.

We also mainly want to get away from having environmental assessment process as part of a political process, to get them away from political influences, and, as I have said already, to get away from having proponents controlling the environment assessments and Governments who are proponents controlling the environment assessments.

The main things that are being addressed that we will try to address through our amendments will be intervener funding, the fact that Manitoba has the democratic right to ensure that an assessment is done which is going to include Manitobans and include the guarantee that Manitoba's interests are going to be protected. One of the other things would be to specify that the terms of reference be set by the panel, and that the panel become independent, free of bias and conflict of interest.

I hope that the Minister and the Government would be open to hearing our amendments, and they will actually try to improve this legislation.

Mr. Edwards: Mr. Chairman, I want to start by thanking all of the presenters who came before us in the last two evenings. Some are still here, others are not. I think that it should be mentioned on the record that I think the quality of presentations was very high and that I certainly gained insight from the comments made.

The Minister indicates in his comments that this Act, and this process, is about simplifying and streamlining the process. I take issue with that as the real, even the most important, reason behind this legislation. Certainly those concerns have given rise to it. I think it was indicated by Mr. Pannell, when he spoke in front of us, that environmentalists would generally prefer two kicks at the can, because they know from experience that you can sometimes correct the wrongs of the first time in the second round. You can sometimes expose the authorities to ridicule in the second round and get a better hearing.

That is preferable to one process which does not give the environmentally concerned individuals in this province full access to all of the information, access to a panel that is free from political influence and has the technical expertise perhaps itself, but certainly the ability to retain the technical expertise necessary to make an informed decision, the ability to have funding to present their case, present the evidence from the their points of view, and firm criteria and expectations of that panel set out, what that panel is to give the ultimate decision maker. Without that it is preferable to have the old system.

If we are going to put together a system and have a joint assessment process we cannot do it at the expense of the quality of the process. I make that point because the Minister has indicated that two processes only create work for consultants and lawyers. They certainly do that, there is no question. They also, hopefully, provide the information and the recommendations which give rise to better decisions by Government.

As has been indicated by many speakers, we have a horrendous history in this country, not just in the last number of years but in the last decades. In the last number of years, the environment has become an issue worthy of media coverage as it was not in the past. That has brought many of these issues forward in people's minds. Because of an increased awareness and concern about the environment, we have seen many of these fought successfully in the courts, and we have seen politicians run for corners, run for shelter in the wake of a very disillusioned and demanding public.

I think that if we want to really put our money where our mouths are, and I call on the Minister and the Premier (Mr. Filmon) to do that when they are talking about the highest standards, what they really want for this legislation and for this province in these processes as we face these years in Manitoba when we have major projects coming up—we have the

second phase of Repap, we have Conawapa, we have the Bipole, we have the north-central transmission line—if they really believe that and if they really want to instill in the public some confidence, we will put in this legislation what we have been talking about.

We will put in this legislation specific criteria about intervener funding, we will put in this legislation higher standards for panel appointment, we will put in this legislation a truly co-operative process and we will not get sucked into giving any executive authority, whatever Government they may be, now or in the future, the ability to abdicate the process entirely.

We will put in this legislation what we expect from the panels. We will not restrict them, but we will tell them what we expect of them. All of those things we have talked about, all of those things I and many of the environmentalists who have come before us and the individuals before us have heard spoken in general terms by the Premier and by this Minister and in specific terms in the meetings that we have had. We have discussed those. There have been agreements, not just in principle, but in some detail. That agreement should be held to here tonight. Those things that we have talked about, if we really believe them, and if they were good ideas a month ago and we want to instill the confidence that we say we do, in the public, about what we are trying to do and trying to achieve, let us put them in the legislation. Now is the time. Thank you.

Mr. Cummings: Mr. Chairman, it is a little out of order in terms of the way we normally operate. I presume you will immediately move into clause-by-clause evaluation. So that we can facilitate the discussion, I have copies of some amendments that I am prepared to propose. I would ask the Clerk if she would distribute those. If there are a few extra, I presume the people in the public would appreciate a copy or two. I do not think we have enough for everybody, but I will speak to the amendment when we come to the section where I wish to place it.

I would only say this, and there has been considerable discussion the last two meetings of the committee, tonight and last night, about amendments and whether or not specific amendments should be presented. When I said I wanted to hear the public and I wanted that benefit of all the discussion that could surround this Bill, that was certainly intended and was part of the intent. I can tell you that this approach and this group of amendments are here tonight as a result of discussions that have evolved over the last two months.

* (2310)

I hope that, when we go through clause by clause, we can adequately show to the Members of committee that between these amendments and regulatory adjustments that can be made and will be taken out for public discussion, can answer, while probably not all, a large percentage of the concerns that have been raised and I present them to you in that light.

Mr. Chairman: We will now proceed with the consideration of Bill 24, Clause 1—pass; Clause 2.

Mr. Edwards: Mr. Chairperson, I have an amendment. We are on Section 2 of the Bill?

Mr. Chairman: Section 2.

Mr. Edwards: I move

THAT the proposed section 13.1 as set out in section 2 of the Bill be amended by striking out clauses (a) and (b) and substituting the following:

to establish a joint assessment process

(French version)

Il est proposé que l'article 13.1 soit amendé par suppression de ",selon le cas:" ainsi que des alinéas a) et b) et par adjonction, après "en vue", de "d'établir un processus conjoint d'évaluation.".

Mr. Chairman: On the proposed motion of Mr. Edwards to amend Clause 2, Section 13.1, with respect to both English and French text, shall the motion pass? All in favour?

Mr. Edwards: Mr. Chairperson, if I might comment on it by way of introduction. I understand that there may be other Members who want to speak to it. I would like to point out the intent of this amendment.

The intent of this amendment is to dispose of sub (b) of the proposed 13.1. Sub (b) is the section which provides for the use of another jurisdiction's assessment process in its entirety. This has been a subject of some discussion in the last two evenings. I have listened carefully to the Minister's explanations of why he feels it is necessary, and I am unconvinced. The fact is that the initial proposal which went out in October only envisaged a joint and a co-operative process; that is what this whole discussion has been about. When this Act came

forward, it surprised not only myself but the participants in those discussions back in October.

This is a very, very dangerous provision. I believe it is unnecessary, and it is unwise to give any executive authority like this to anyone. This allows this province, by way of executive authority to go beyond our own assessment process, to go beyond a joint assessment process, whatever we may hope to have in that, and in fact to give over the entire information-gathering and public-hearing process to another jurisdiction. That is unacceptable in my view in this day and age.

I do not care how minor the involvement of the Province of Manitoba in a particular project is; it could be 1 percent as far as I am concerned, Mr. Chairman. We should not allow any Government to abdicate its responsibility to deal with the environmental implications of any development of any magnitude in this province. That is simply untenable in this day and age. A joint assessment process can envisage our participation to a greater, or a lesser, degree. We can have flexibility in those joint assessment agreements.

When the Minister talks about us having 10 percent, or 1 percent, or whatever it is, that is a red herring. The fact is what this contemplates is us, whether we have 1 percent or 99 percent involvement, having the opportunity to give to someone else what is the constitutional and the legal responsibility of this province over the lands and waters and air that we have jurisdiction over as provincial representatives. That is not acceptable, and I call on the Minister to recognize that that power and authority he does not need and he should not want.

Mr. Cummings: Mr. Chairman, notwithstanding the powerful argument that the Member attempts to make in terms of responsibility, there is nothing in the Act that delegates the decision-making responsibility of the province and the ultimate responsibility for its natural resources and decisions pertaining to them. I think there is a time in this country when we have to start looking in a broader sense as to where we as provinces, and as a country as a whole, are heading.

I can tell you that in discussion at the national Ministers' conference, where we talked about harmonization of environmental processes across the country, where we talked about a new type of federalism, where we worked with the federal Government rather than against them, where we worked particularly in the area of co-operation surrounding the environment, even Quebec seriously considered making one exception to attending federal-provincial meetings, and that was the environment.

I suggest to you that it is a new area, that it is not without some concern that any of us would even propose this, but I think it is about time that somebody step forward and said they were prepared to work with the federal Government. We are prepared to work with our neighbouring jurisdictions in the interest of the environment, and we are prepared—and I hope that you would take time to look through the amendments that we are proposing, which would impact, to try and answer some of the concerns that the Member has raised, to deal with the realistic problems that are in front of us and to try and set aside the jurisdictional issues.

The Bill is intended to protect Manitoba's decision-making ability. It is meant to use the very best information-gathering capacity. The amendments speak to that, and I will speak to them later.

Perhaps you could argue that strategically I should have presented these amendments a while ago. They were not ready a while ago. There were comments and different aspects, all of which were gathered from different people, different sources. They are now together in one package. Perhaps if the Member wishes to caucus with his fellow Member, or if there is other discussion that he would like to have about the proposed amendments that we are putting forward, I believe he would find that the amendments we are proposing will answer his concerns in terms of making sure that I or anyone who might be appointed to my responsibility could not abdicate his responsibility within the province. I reject the thought that we could, or would, do that. Therefore, I would urge either the withdrawal or the striking of this amendment.

* (2320)

Mr. Ashton: I just want to indicate that we had an amendment with almost identical impact. We certainly will support this amendment. I appreciate the comments of the Minister, but if he can understand one thing, I think it is important, and that is, there is a great deal of skepticism about this so-called federal-provincial co-operation that the Minister is talking about; skepticism built not on even

decades of experience, but even terms of recent experience, about the commitment that has actually been in place. Certainly the words are there, now the environment is talked about as an issue.

I remember when I was first elected in 1981-82, people used to laugh at environmentalists right in this committee. I remember people laughing about people driving up in Volvos eating granola as if somehow environmentalists were removed from the mainstream. Perhaps they were at the time. They were ahead of their time in terms of a lot of issues, a lot of concerns.

Now, however, concern about the environment is mainstream and politicians of every stripe are tripping all over themselves to mouth the phrases, to attempt to be as green as possible, I suppose. I know the Member for Lakeside (Mr. Enns) accused the NDP of being the green Party of Manitoba. So be it, if that be his assessment I think many people in our Party would treat that as a compliment, Mr. Chairperson.

My point is in fact that there has been a great deal of politics surrounding the environment in the last number of years and there is still a great deal of skepticism. Now indeed if the Minister is right we will see the intent of this amendment, and the intent of the amendment we had drafted as well is to ensure that we do not abrogate our responsibilities here by accepting another assessment process.

While indeed the Minister may be correct, in terms of the decisions resting here in Manitoba, what I think is important in terms of the environment from the experience of the last number of years, I am talking about 10 years ago, but even the last year or two, is the fact that process and decision are linked. They are one and the same. The decision follows from the process, and I think the very real concern has been expressed that the legislation is drafted, and I appreciate the fact that the Minister now is attempting to introduce an amendment to further clarify his intentions, but there is a very real concern and it is built on decades of skepticism by people who are concerned about the environment, about the gap between the rhetoric of Governments of all stripes, of all levels, and the reality.

I believe that the sense is that we need to have that control that goes with having a joint assessment process rather than someone else's assessment process. That is the only control we really have over proper processes by maintaining that with proper conditions. For that reason I would not only suggest that the Minister should not be talking about this amendment being withdrawn, but that he should perhaps consider it himself. I would suggest, Mr. Chairperson, all Members of this committee support this amendment.

Mr. Edwards: Mr. Chairperson, I want to respond to some of the comments made by the Minister in an attempt—he has asked me to consider withdrawing it. I remain unconvinced that I should do that. I want to attempt to persuade him to support it.

Let me go through his statements. He indicated that there is nothing in here that binds the Government in its decision making to another jurisdiction. That is true.

As my colleague, the Member for Thompson (Mr. Ashton), points out, and as we all know, we would not be here if we did not think that the decision was not intimately linked to the process. That is what this is all about. That is what environmental assessment reviews are all about. They are about having a process which leads to a better decision, a better informed decision on environmental issues. Therefore, to try and distinguish the process that leads to the decision—and the decision itself is a fallacious distinction and one that does not get to the root of what this amendment is about.

Secondly, the Minister said that he wants to have a relationship, a new style of relationship with the federal Government, one that is co-operative and that he is prepared to work with other jurisdictions. That gives me no comfort.

We saw three successive federal Environment Ministers attempt to cut some kind of back-room deal on Rafferty-Alameda, three successive federal Environment Ministers—the same Premier in Saskatchewan, mind you, but no less than three at the federal level.

It gives me no comfort to think that two of the other jurisdictions which we might enter into agreements with are the federal Government and the Province of Saskatchewan. Mr. Chairperson, the fact is that we all want to be co-operative with other levels of Government and try and minimize cost and maximize efficiency, but not at the expense of getting the right decision.

In fact, if you look at what the Minister has just passed around, which are his proposed amendments, there is only one of those that speaks

directly to sub (a) and not sub (b). That is, there is only one obligation in his amendment which he would have to take on that he would not otherwise have to take on, should he be willing to support this amendment, and that is, if there was a joint assessment and no other alternative, he would have to appoint some members to the panel. That is sub (d) which restricts this application to Clause 1.(a), the joint assessment process.

If he accepts this amendment, that is all he is accepting. Otherwise, all of the other ones apply to sub (b) anyway, as he has freely indicated. All of the other guarantees he is willing to give us: public hearings, comments and objections, intervener funding program, although even that we are going to have some comments about. All of those other things apply to sub (a) and sub (b). The only thing he is committing to or taking on that he is not otherwise willing to take on by accepting this amendment is that he will always have to appoint at least one member to the panel. That is all.

I would say that whether we have 1 percent impact in a development we should want to have at least one member on that panel, at least some representation. I do not think that is an overly onerous thing to ask this Minister.

Conversely, by adopting this amendment, he, I believe, secures the confidence that he is not trying to do, or he will not do, or any of his successors will not do, what we have seen happen in the past and what is clearly the potential danger of this amendment.

Ms. Cerilli: I would just like to also urge the Minister to reconsider and delete the ability to give away our right to have our own assessment. It seems like the Minister has in mind that we would have a group that would make a decision possibly based on the research and committee hearings from another jurisdiction. That, I think, is also unacceptable. He does not even allow, or specify, that it would be the federal Government we would enter or give off our assessment process to.

So one of the other points of objection is to at least make it clear that it would not be another province or another state that we would have this kind of an agreement with.

I support a lot of the other comments that have been made already, but I think that it is important, if we are going to be looking at making a decision, that we be part of the process and not just have that right given away.

* (2330)

Mr. Cummings: Only a couple of comments. The reference that the Member just made to a state, a province could not enter into an agreement with another country. That would not likely fall within our legal capacity. We would rely, in a case such as that, on the federal authority, the same as we found we had to under the Rafferty-Alameda and Souris River situation.

I find it a little ironic, if my memory serves me right, both Opposition Parties have, from time to time, been quite adamant about their high regard for the Ontario process, and we continually have the concern being brought forward about whether or not we are contemplating other jurisdictions. Frankly, the only jurisdiction that, at this point, is an example I have given is the federal jurisdiction. I submit that even in Ontario, which has just recently had a new administration put in place, there appears to be a willingness to look favourably upon the recommendations that have come in regarding their assessment process, a great deal of which will be very similar to what we are talking about here.

Mr. Chairman: On the proposed motion of Mr. Edwards to amend Clause 2, Subsection 13.1, with respect to both the English and French. Shall the motion pass? All in favour, say aye. All opposed, say nay. In my opinion, the Nays have it.

Mr. Edwards: Mr. Chairperson, I would request a recorded vote.

A COUNTED VOTE was taken, the result being as follows:

Yeas 4, Nays 6.

Mr. Chairman: The motion has been defeated.

Ms. Cerilli: I have an amendment for 13.2. A joint assessment process established under Section 13.1—

Mr. Chairman: Could we have it distributed first please?

Mr. Cummings: Did you say 13.2? We have not finished. I have an amendment for 13.1 before we go to 13.2.

Some Honourable Members: We are all in Section 2.

Mr. Ashton: We are on Section 2, Mr. Chairperson. The amendment is in order. -(interjection)- This is in Section 2.

Mr. Chairman: Section 2.

Mr. Ashton: May I suggest that the Member read the motion and we deal with it.

Mr. Chairman: We will have it passed around. It has been pointed out that the amendment of the Minister which is 13.1 would have precedence over the amendment that has been put forth by 13.2.

An Honourable Member: It is not true.

Mr. Ashton: I believe we went section by section. We are on Section 2. This is relevant . . . . In terms of this committee, the Minister has no amendment until he is recognized and moves the amendment. The Member, Ms. Cerilli, was recognized and is in the process of moving her amendment. I would suggest we deal with this amendment. Then if the Minister has a further amendment, it is his right to be able to move so, but he has no official amendment until it is moved. He has not been recognized, and he has not moved it.

Mr. Chairman: The Minister's motion has been previously tabled and was presented prior to the one that was presented. If it does come down to a legal interpretation, the interpretation is that the Minister's motion would have precedence.

Mr. Edwards: Mr. Chairperson, I object and I must support the Member for Thompson's conclusions. While the Minister passed out his amendment, he certainly did not move it. He certainly was not recognized by the Chair and officially move it. He passed it out so that we could have the benefit of looking at it and that was his choice, but he was not recognized and he did not move it. Any amendment as recognized coming by you within Section 2 has to be dealt with before we can move on. I think we should deal with the Member for Radisson's amendment.

Mr. Cummings: Mr. Chairman, I hope that this is not seen as a matter of one Member wanting to take precedence over the other. It is simply a matter that my amendment would be an amendment to 13.1. My NDP Critic has moved an amendment for Section 13.2 and, chronologically, I would suggest it makes sense to deal with the 13.1 first.

Point of Order

Mr. Ashton: Mr. Chairperson, on a point of order, first of all the Minister may table whatever future amendments he plans on dealing with at any time, but that does not, however, constitute moving the amendment. I would point out that the Member had been recognized and was in the process of moving the amendment. I would suggest the simplest way is that we allow the Member to complete moving the amendment, deal with that amendment, and we can then move directly to the Minister's amendment and deal with it.

Mr. Edwards: I just want to add—I mean, I have heard across the table here what I think is some confusion about the process we are involved in. It seems to be understood by some, and perhaps yourself, that we were doing this 13.1, we are going to vote on that; 13.2, we are going to vote on that. That is not the case. That is not what we are doing. We are doing this in the normal course which is section by section. All of the proposed new Section 13 is within Section 2 of this amendment Act. That is what we are dealing with. Any amendment that is recognized by you, following within Section 2, has to be dealt with before we can move on to a new one.

Mr. Chairman: I would like to refer to Beauchesne's, Section 697, and I would like to read it into the record:

"When several amendments are offered at the same place in a clause, an amendment to leave out words in order to insert other words takes precedence over an amendment merely to leave out words. Subject to this qualification, the Chairman normally calls amendments in the order in which they would appear in the Bill. It is also within the discretion of the Chair to decide that an amendment is being offered at a wrong place or that it should be moved as a new clause."

Ms. Cerilli: The Minister's amendment says that he is amending it under Section 2, which is also where I am amending it.

Mr. Chairman: I believe they are both being put forth under Section 2; 13.1 went chronologically before 13.2.

Mr. Ashton: Mr. Chairman, I appreciate that, but you had recognized the Member. She was moving the motion. To my mind we can solve a lot of difficulties and a lot of procedural points of order if

we just continue. I am sure the Minister is going to have his chance very soon.

Mr. Chairman: I will ask the will of the committee. What is the will of the committee?

Some Honourable Members: The rule of the Chair.

Mr. Cummings: Mr. Chairman, I would concur with your interpretation of how this Bill should be handled. I believe before we move beyond 13.1, if there are amendments, we should deal with them.

Mr. Ashton: On a point of order, I would like to ask if we are now developing a new procedure that we table all the amendments and then deal with them sequentially because up to this point the functioning of our committees is based on recognition by the Chair of individuals who wish to place amendments.

There has been no set order. The House of Commons are substantially different in terms of Rules of Procedure from this House.

Quite frankly, Mr. Chairperson, are you now saying that you recognize the Member, but now you are unrecognizing her? She was in the process of moving a motion, and I do not believe a point of order was even raised by the Minister. The Minister had expressed his hope, I believe, that he might go first but I am sorry she was recognized. I would suggest we continue with that.

An Honourable Member: We go by Beauchesne's all the time, and Beauchesne's says as -(inaudible)-.

Mr. Ashton: Are you going to lecture us on the rules, Ed? Have you read Beauchesne's?

An Honourable Member: He said Beauchesne's, and you always say Beauchesne's is right. He just read Beauchesne's.

Mr. Ashton: It is different. If you will check the rules, Ed -(interjection)- no, the new rules are based on this House. Check our own rules.

* (2340)

Mr. Chairman: I would point out, also in the Section 697 that it is at the discretion of the Chair. The discretion of the Chair is recognizing the amendment put forth by the Minister, which is Clause 13.1.

An Honourable Member: There has been no amendment put forward.

Mr. Chairman: He has officially tabled that amendment.

An Honourable Member: When?

Mr. Chairman: Did you have that amendment before you?

Mr. Ashton: On a point of order, the Minister distributed an item he said he would be introducing later. It was not introduced.

I have a number of pieces of paper before me, which have no more legal impact than the paper that was distributed by the Minister. He did not move his amendment. He had not been recognized to move his amendment. Ms. Cerilli had been recognized to move the amendment. There are not two amendments before us—two motions to amend this Bill, there is only one. That is why I cannot understand why we have spent the last 15 minutes on this particular point. We should proceed with Ms. Cerilli who had been in the process of moving an amendment and then the Minister may move his amendment afterwards. Simply tabling a piece of paper before this committee does not constitute moving an amendment -(interjection)- and we have different rules in Manitoba, Ed, if you would like to check—

Some Honourable Members: Oh, oh!

Mr. Chairman: I would like to point out that if there is a disagreement on the ruling of the Chair, then there can be a vote as to the decision. We will put it to—

Mr. Ashton: If we can do things properly, I challenge the Chair's ruling.

Mr. Chairman: The ruling of the Chair has been challenged. All those in favour of sustaining the ruling of the Chair say Yea.

Some Honourable Members: Yea.

Mr. Chairman: Against say, Nay.

Some Honourable Members: Nay.

Mr. Chairman: In my opinion, the Yeas have it.

* * *

Mr. Cummings: Mr. Chairman, I would like to move an amendment.

THAT section 2 be amended by renumbering the proposed section 13.1 as subsection 13.1(1) and by adding the following subsection as subsection 13.1(2):

Equivalent assessment

13.1(2) The minister shall not enter into an agreement under subsection (1) unless the minister is satisfied that the agreement provides for an

assessment that is at least equivalent to the assessment that would otherwise be required under this Act and provides for

(a) notification of the public in Manitoba about the filing of the proposal through the use of the central registry and by way of advertisements in the media;

(b) comments and objections from the members of the public related, at a minimum, to the proposal, the guidelines for the assessment of the proposal, the assessment and the review of the assessment;

(c) public hearings or other meetings in Manitoba about the proposal by a panel established for the purposes of the assessment process;

(d) the appointment jointly by the ministers who are parties to the agreement of the members of the panel when a joint assessment process is established under clause (1)(a);

(e) a requirement that the minister be satisfied that each proposed member of the panel is unbiased and free of any conflict of interest relative to the proposal and has special knowledge or experience relevant to the anticipated environmental effects of the proposal;

(f) a program relating to the provision of financial or other assistance to members of the public participating in the assessment process when in the opinion of the minister such a program is desirable;

(g) opportunity for the minister or the director, as the case may be, to require further information from the proponent before making a decision regarding licensing if, in the opinion of the minister or the director, the assessment process has not produced sufficient information on which to base such a decision.

(French version)

Il est proposé que l'article 2 soit amendé par substitution, au numéro d'article 13.1, du numéro de paragraphe 13.1(1) et par adjonction de ce qui suit:

Evaluation équivalente

13.1(2) Le ministre ne peut conclure l'accord visé au paragraphe (1) sauf s'il est convaincu que cet accord prévoit, d'une part, une évaluation équivalant au moins à celle qui aurait par ailleurs été requise en vertu de la présente loi et, d'autre part:

a) des avis au public, au Manitoba, concernant le dépôt du projet au moyen de l'utilisation du registre central et par voie d'annonces faites dans les médias;

b) la possibilité, pour le public, de faire des commentaires et de formuler des objections se rapportant au moins au projet, aux lignes directrices relatives à l'évaluation du projet, à l'évaluation et à la révision de celle-ci;

c) la tenue, au Manitoba, d'audiences publiques ou d'autres assemblées, concernant le projet par un comité constitué aux fins du processus d'évaluation;

d) la nomination, par les ministres qui sont parties à l'accord, des membres du comité lorsqu'un processus conjoint d'évaluation est établi en application de l'alinéa (1)a);

e) l'obligation pour le ministre d'être convaincu que les membres proposés du comité n'ont pas de parti pris et ne sont pas en situation de conflit d'intérêts à l'égard du projet et qu'ils ont des connaissances particulières et une expérience se rapportant aux effets environnementaux prévus du projet;

f) la création d'un programme d'aide, notamment d'aide financière, aux membres du public participant au processus d'évaluation lorsque le ministre est d'avis qu'un tel programme est souhaitable;

g) la possibilité pour le ministre ou le directeur d'exiger du promoteur des renseignements supplémentaires avant de rendre une décision concernant la délivrance d'une licence si, à son avis, le processus d'évaluation n'a pas permis de recueillir les renseignements nécessaires à la prise d'une décision.

Mr. Edwards: Mr. Chairman, I would like to propose an amendment to this amendment, a subamendment as follows:

I move—

Mr. Chairman: Could I ask you to distribute it, please.

Mr. Edwards: I do not have it because I only got this a couple of minutes ago. I am moving it orally and I am moving it in both English and French.

Mr. Chairman: It has to be written.

Mr. Edwards: I will write it down, as I speak.

I move

THAT the proposed amendment by Mr. Cummings to add subsection 13.1(2) be amended

(a) in clause (e) by adding ", free of political influence," after "unbiased";

(b) in clause (f), by striking out everything after "assessment process."

(French version)

Il est proposé que l'amendement proposé par M. le ministre Cummings et visant l'adjonction du paragraphe 13.1(2) soit amendé:

a) par substitution, dans l'alinéa e), à "n'ont pas de parti pris", de "sont impartiaux, n'ont pas de parti pris politique";

b) par suppression, à l'alinéa f), des mots qui suivent les mots "processus d'évaluation".

Mr. Chairman: I have to ask whether that is in French too.

Mr. Edwards: I move that in English and in French.

Mr. Chairman: It has to be written in French too.

Mr. Ashton: We operate in one official language at a time. The Member is allowed to move a motion in one of the official languages, and it is then translated, but it is moved in English and French as translated. It does not have to be moved in both languages. -(interjection)- Yes, but we do not have to translate it; that is what I am saying. -(interjection)- No, no, we, MLAs, do not have to translate it.

Mr. Chairman: There has been a request for a short recess while this is translated into French.

Mr. Cummings: Can we debate it until it is translated?

Mr. Chairman: We can proceed with debate on it.

Mr. Edwards: Mr. Chairman, I am moving this amendment for two reasons, the two separate parts of the Minister's amendment, which I am hoping to improve in keeping with the spirit and also the detail of what we have heard in the last two evenings.

Firstly, with respect to sub (e), the Minister uses wording, unbiased and free of any conflict of interest relative to the proposal. I think we have heard various presenters talk about political influence. I believe the federal wording is, fully free of Government. I believe that the words, free of political influence accurately capture what we are hoping to attain in panelists on this type of project. Free of political influence does not mean free of political involvement. What it means is, what it denotes is, free of any influence which would unduly affect the ability of a person to make an unbiased, neutral decision. It is important to put that in, I believe, because unbiased, as well as free of any conflict of interest relative to the proposal, does not accurately capture, I believe, the further indication that we want people to know that there is no political influence either over it or otherwise affecting panelists.

I think that is an appropriate criteria for a panelist. I believe it would serve the public interest in instilling further confidence in panelists which we might appoint. I think that it is important to recognize that individuals who serve on panels may be fully competent and of neutral mind to do the right job, but the essence of bias is perception not just reality. Someone can be perceived to be biased and it can do as much if not more damage to a process than if they really are biased, because the essence of this process is that it leads to a political decision. It must be seen to be made by competent and neutral people. So any way we can enhance that in the public view, I believe, is a move we should make. I also believe that substantively it adds to Clause (e).

* (2350)

With respect to sub (f), I am extremely concerned about the Minister building into that the discretion in his hands to decide when an intervener assistance program is desired or desirable. Obviously, that reflects back on him. It is desirable in his view, in his opinion, and it is my view and it has been supported by a number of speakers here in the last two evenings, that any joint assessment process we were to enter into should have some intervener assistance program. We should be willing to commit to that type of a program.

We are not saying here, the level, the extent of the program—I am going to be proffering further amendments to outline criteria which I hope the Minister will find acceptable but I think that we should, for these types of projects, given that the agreement itself is in the hands of the Minister and

the Minister alone, I think that we should provide in every case for some form of intervener assistance. So it is in that vein that I make the second part of this amendment. I call on the Minister to recognize the comments that have been made in the last two evenings and accept those amendments.

Mr. Cummings: Notwithstanding the good faith in which the amendments are proposed, I think even the discussion that I heard from the Member's Leader last night indicated that using the term "free of political influence" causes some discriminatory consideration. Certainly by using the word "unbiased," one that is legally I believe easier to define, and I am not a lawyer, but I put that forward on the advice of people that I trust.

Certainly, in terms of intervener funding, I have maintained from Day One—and those who have chosen to publicly discuss what I consider private discussions regarding this Bill earlier know full well and can confirm that I have said all along that the Province of Manitoba has said that this Government said that we would move as a province to provide funding for major projects, full stop, and that we want to take regulations and guidelines for those opportunities for funding out for discussion. We will stand by that. Therefore, I would urge that these two amendments be defeated.

Mr. Ashton: Just on the amendments, I want to indicate that we will be supporting the amendments. In fact, the amendments, in similar wording, were part of the amendment we were seeking to introduce earlier, so we will support this subamendment. We are, in fact, going to be seeking further amendments to the amendment of the Minister afterwards, so we do support this.

Mr. Chairman: On the proposed—I do not have a copy of it yet.

We will just take a short recess until we get this amendment in front of us.

* * *

The committee took recess at 11:55 p.m.

* (0000)

After Recess

The committee resumed at 12:05 a.m.

Mr. Chairman: Order, please.

I would like to just refer, before we start, back to Beauchesne Section 695, Subsection 2: "The practice has been that Members proposing to introduce amendments have given them to the Chairman and to the clerk of the committee who ensures that they are translated, compiled and circulated for the information of the members of the committee." Just for your information.

On the proposed subamendment by Mr. Edwards to Clause 2, Subsection 13.1. Shall the motion pass? All in favour, say aye. All opposed, say nay.

Mr. Edwards: I would like a recorded vote, Mr. Chairman.

A COUNTED VOTE was taken, the result being as follows:

Yeas 4, Nays 5.

Mr. Chairman: In my opinion, the Nays have it.

Ms. Cerilli: I have a subamendment. I move that the proposed amendment by Mr. Cummings—

Mr. Chairman: Can we have it circulated?

Point of Order

Mr. Ashton: Mr. Chairperson, on a point of order.

Mr. Chairman: On a point of order?

Mr. Ashton: Yes, it will be read and then it will be distributed; that is the normal procedure. The Members of the Committee have to realize this is a subamendment. We just saw the Minister's amendment a number of minutes ago. It has been drafted rather quickly, so we will move it. There is only a small section that requires translation. So once that has been translated, it will be distributed probably within a minute or so.

Mr. Chairman: Is there agreement?

Some Honourable Members: Agreed.

Ms. Cerilli: I move

THAT the proposed amendment by Mr. Cummings to add subsection 13.1(2) be amended by striking out everything after 13.1(2) and substituting the following:

A joint assessment process established under section 13.1 shall include the requirements set out in sections 10, 11 and 12, and an agreement under section 13.1 shall provide

(a) for the joint appointment by ministers from each jurisdiction of a joint assessment panel comprised of persons who, with respect to the development,

(i)

are unbiased and free of any potential conflict of interest,

(ii) are free of any political influence,

(iii)have special knowledge and experience relevant to the anticipated technical, environmental and social effects;

(b) for public hearings to be conducted in Manitoba by the joint assessment panel as set out in section 7, with necessary modifications respecting the members of the joint assessment panel;

(c) that a copy of the proposed development be filed in the public registry, and that the location of the public registry and the right of the public to inspect the proposal be mentioned in notices of public hearings given under subsection 7(1);

(d) for a program of financial and other assistance to assist groups and individuals to participate in public hearings conducted by the joint assessment panel;

(e) that the joint assessment panel may amend any terms of reference, including its own terms of reference, prescribed for the assessment.

(French version)

Il est proposé que l'amendement proposé par M. le ministre Cummings et visant l'adjonction du paragraphe 13.1(2) soit amendé par substitution à tant ce qui suit "13.1(2)", de ce qui suit:

Le processus conjoint d'évaluation établi en vertu de l'article 13.1 doit comprendre les exigences visées aux articles 10, 11 et 12 et l'accord conclu en vertu de l'article 13.1 doit prévoir:

a) la nomination, par les ministres de chaque autorité législative, d'un comité d'évaluation mixte composé de personnes qui, à l'égard de l'exploitation:

(i) n'ont pas de parti pris et ne sont pas en situation possible de conflit d'intérêt,

(ii) n'ont pas de parti pris politique,

(iii) ont des connaissances particulières et une expérience pertinente aux effets techniques, environnementaux et sociaux prévus;

b) la tenue, au Manitoba, d'audiences publiques par le comité d'évaluation mixte, conformément à l'article 7, ainsi que les modifications nécessaires à apporter à la composition du comité;

c) le dépôt, au registre public, d'une copie de l'exploitation projetée et la mention, dans les avis d'audiences publiques donnés en vertu du paragraphe 7(1), de l'emplacement du registre public et du droit du public d'étudier la proposition;

d) la mise en oeuvre d'un programme d'aide, notamment l'aide financière, permettant aux groupes et aux particuliers de participer aux audiences publiques que tient le comité d'évaluation mixte;

e) la possibilité, pour le comité d'évaluation mixte, de modifier les mandats prévus dans le cadre de l'évaluation, y compris son propre mandat.

Mr. Chairman: Can I have that written and translated please?

Ms. Cerilli: Many of these amendments are included or defined in the EARP guidelines. The Minister seems to think that we can have the federal Government do assessments for the province; then it would seem that it would be understandable that it can go in the legislation. I would be interested in having the Minister explain why the section should not be in the legislation.

Mr. Chairman: I have to have the Bill. The Bill is being xeroxed for copy. An amendment has to be translated and xeroxed for distribution, so we will have to wait a minute. If you would like to proceed in debate on the—

Mr. Ashton: I want to proceed, I think, to explain to Members of the committee. This is similar in content to the amendment we had planned to introduce a few minutes ago but were unable to do so. It deals with similar subject material. It is similar in that sense to the amendment made by the Minister. There are some components that are similar in wording, but it deals with a number of the omissions in the Minister's proposed amendment. That is why we decided, rather than attempt to splice onto the Minister's amendment with several subamendments, to introduce what we feel is a stronger and a more substantial amendment to the Bill in the form of this subamendment.

It deals with a number of items that have been dealt with just previously but in greater detail, which is in keeping with our roles particularly in terms of political influence. I believe that is something that

was an omission of the initial amendment of the Minister. I think it is important that environmental decisions not be subject to decisions made by bodies that are politically appointed. I think we have to recognize that it does not work any more, and I am not blaming any Government for that. That has been all Governments.

* (0010)

I believe that it is important at this point in time because, as has been pointed out, you do run into not just conflicts of interest in the commercial sense, but political conflicts of interest. If you have a politically appointed body, people who are like-minded with the Party in power and they have a project which they have a vested interest in, there is nothing legally that says they have a conflict of interest, those members on the committee, but I think it is common sense to expect that members who are appointed, who feel they are appointed at least—or may in fact be appointed because of their political affiliations—may feel influenced by the position of that Government regardless of what political stripe.

That is why this subamendment includes that particular aspect. It strengthens the original suggestion by the Minister in terms of conflict of interest and deals with not just direct conflicts, but also potential conflicts of interest. Those of us who are aware of laws related to conflict of interest I think are aware of how complex and far-reaching they have become, certainly in terms of Members of the Legislature and Members of Parliament, and some of the difficulties inherent with that. I believe that, given the importance of the assessment process, it is important to deal not just with immediate conflicts of interest, but also potential conflicts of interest in the future.

We also have some other concerns in terms of recognizing social effects, which is something that was omitted by the Minister and also, quite fundamentally, that the joint assessment panel have some ability to deal with its terms of reference, particularly in the case where the terms of reference may be considered to be too narrow to provide the type of assessment that is required.

Those are the reasons why we have introduced what is a substantially stronger subamendment in comparison to the original amendment introduced by the Minister.

Mr. Chairman: The subamendment has not been brought back for cirulation yet, so we will have to wait until we get it before we can vote.

Mr. Cummings: Mr. Chairman, I do not think I could fully debate it until I have seen exactly what it is that is being proposed, although I think I got the gist of most of it from the comments of the Members.

The Members put forward the issue regarding the panel and terms of reference, a fair bit of discussion about whether or not the Manitoba Act encompassed a panel setting its own terms of reference. As I see the Manitoba Act, the wording that refers to the panel being able to instigate inquiries is not interpreted the same way as some of the people who have brought presentations forward. I do not see that as the right of the panel to set its own terms of reference, and to that extent I am not sure what the Members are basing this proposal on. Beyond that I will wait till I see the written proposal.

Mr. Ashton: Yes, I can provide the Minister with a copy of the body of the -(inaudible)- perhaps it might facilitate the discussions. The only thing that is different, of course, is the instructions in terms of the subamendment. The rest of the text is the same.

We had copies of the amendment. This is now in the form of a subamendment -(interjection)- I will explain to you one of these days. I will have a seminar on the rules for you.

Mr. Cummings: Essentially, I guess, I have answered the recommendations. A number of these amendments are parallel or the same as the amendments that I proposed, except in two areas—the one that we have already debated on using the term "political influence." I want to reiterate that political influence and the ability to be unbiased—you cannot be unbiased if you are politically influenced, and I think the word "unbiased," in fact, provides greater restriction than the other term does. I have already explained my concerns about the other one in relationship to the arguments that have been made about it being the manner in which our Act presently operates. Nothing in this Bill is intended to make the present assessment Act subject to—nothing changes in our Act, and I would propose that our panels continue operating in the manner that they do. Therefore this is virtually redundant.

Mr. Edwards: I think it is a mass of misreading of this amendment to say that it is redundant. The

Minister cannot be serious in making that statement. The fact is that this amendment does put forward some very critical things that are lacking in the Minister's own proposal. If he wants to take out some of the things that he feels are truly redundant, and they are redundant, let him do that by a subamendment. But do not let him say that this amendment in its entirety is redundant.

One of the most significant things, I believe, that is in this and one that I had intended to put forward as well is that the assessment panel itself have control over the terms of reference. The proposal put forward by the Minister in essence can be completed without consultation with the panel.

That is what is stated here. The Minister must be satisfied of these things: That the public has been notified, that comments and objections can be heard, that there will be some public hearings or other means—whatever that means—and the terms of reference by the panel itself is not specifically dealt with. I believe it must be and it has to be made clear that the panel itself is going to have control over that. If the Minister does not fear that, and I do not see why he should, then there is no reason why he would not be willing to put that in this Act. It is an important guarantee of the neutrality and the effectiveness of the panels that he is contemplating. It is an important power that they have. If he intends to give it to them, as I believe he has indicated he would have no problem doing, let us put it in the Act.

* (0020)

Ms. Cerilli: It seems to me the amendments presented by the Minister are in some ways worse than what we started with. What we are trying to do is get rid of initially some permissive language in a few of the clauses, put in some "shalls" for some "mays". We have included some more things that would improve having the panel set the terms of reference and intervener funding, but now what the Minister has done is given himself the authority over all of those things that are in the Bill. So unless we have some careful thought, I think we are going to end up with something that is worse than what we started with.

Mr. Cummings: Mr. Chairman, nothing in Bill 24 is intended to change the manner in which The Manitoba Environment Act presently operates. It does not take away from the way the panels are instructed.

Mr. Chairman: On the proposed subamendment to the amendment of Clause 2, Section 13.1, shall the subamendment be passed? All in favour, say aye. All opposed, say nay.

Mr. Ashton: Recorded vote.

A COUNTED VOTE was taken, the result being as follows:

Yeas 4, Nays 5.

Mr. Edwards: I move

THAT the proposed amendment by Mr. Cummings to add subsection 13.1(2) be amended as follows:

(a) by striking out "the minister is satisfied that" in the words preceding clause (a); and

(b) by striking out "or other meetings" in clause (c).

(French version)

Il est proposé que l'amendement proposé par M. le ministre Cummings et visant l'adjonction du paragraphe 13.1(2) soit amendé:

a) par substitution, à "s'il est convaincu que cet accord", de "si cet accord", dans le passage introductif;

b) par suppression de "ou d'autres assemblées,", à l'alinéa c).

I move that in English and French.

If I could speak to this, Mr. Chairman, I am not making these frivolously or to keep us out early into the wee hours of the new day. I truly believe that these amendments should be acceptable to the Minister. I say that based on statements he has made in the past, both to me individually and as well I believe publicly.

I think that again in order to—and I do not impugn the motives of this Minister. I simply say that in order to send the right message and make sure that this legislation is as good as we can make it, let us take out the overriding discretion of the Minister which colours his whole amendment.

My reading of this amendment that he has put forward is that the Minister's satisfaction is to apply not just to the equivalency of the agreement that would otherwise be required under the Act, but also all of the other sub parts of his amendment. His satisfaction put into law invests in him a level of discretion which I would suggest is unwarranted, unnecessary and unwise. I do not say that in any way to impugn him personally, but simply that in this day and age and in this province and in this country,

given what we know of the abuse of discretion by politicians, that is not something we should be building into this legislation.

If we are going to be front runners and trend setters in this country, let us do it right. Let us not build in as a prerequisite to everything we say we want to do, the Minister's satisfaction, the Minister's ability on a subjective basis to make a decision. Let us have the wherewithal, and I am calling on this Minister to have the gumption to put his money where his mouth is and take that caveat out which severely undercuts everything else he says.

The second part of this with respect to "other meetings," after the words "public hearings", makes no sense at all to me. I am willing to hear the Minister's explanation, but the fact that you say, "public hearings or other meetings" suggests only, logically, that they can be non-public meetings. Surely in joint assessments like this, joint jurisdictions involved, we want public hearings. Let us just say it. We want public hearings. That does not say how many we have to have, or where we have to have them, but we have to have some public hearings.

Why build in other meetings, whatever those may be? Those could be other meetings simply of the panel itself, I call to the Minister's attention, all of this further restricted by the Minister's satisfaction. It is incredible the watering down of the high words that appear in this amendment by the overriding discretion on a subjective level of the Minister, and I think the Minister should have no reason to fear withdrawing that Preamble, that part of the restriction he has placed on everything else he says in the amendment.

Mr. Cummings: Mr. Chairman, in the first part of the amendment that is proposed, there does have to be a test relevant to the subject—(a) to (g) amendments. The Member makes a point that I have no problem with in Subsection (c) referring to other meetings. That was not intended to circumvent in any way, and in fact raises a reasonable point that perhaps I should be remote.

To clarify what I am saying, of the subamendment that is being proposed, I believe that I cannot just accept the writing here without—accept one part without the other, so I would be proposing a subamendment unless perhaps Mr. Edwards would like to propose another subamendment amending (c).

Mr. Edwards: Mr. Chairman, I will withdraw that portion the Minister said he will not support because I know full well the decision that will be made. I do want to comment before I do that, and I want the Minister to consider his response to objecting to removing his own satisfaction as the test. Removing those words "the Minister is satisfied that" does not remove the test from that section. The test is still there. The test is one which is repeated throughout laws in this province. Not every section that sets a test incorporates the Minister's satisfaction.

In fact, the incorporation of that phrase imparts to this section and this whole amendment put forward by the Minister a very high level of subjectivity which directly affects the reliability of this section to those who are concerned about effective joint assessments. It directly reinvests in the Minister's hands in effect what he had in the regulatory power, which is the ability to exercise a high level of discretion on the details. Let him not say that the test is removed by this subamendment. The test is altered; it is strengthened.

* (0030)

Mr. Cummings: Well, I take the contrary view. The example of not requiring the Minister to be satisfied means that you could very easily water these down. The (a) to (g), in my opinion, could be some other version that would be less than satisfactory and the Minister would find himself in a position, I believe, of not having to make a decision if some inappropriate process were brought forward.

Every time you enter into an agreement, as we are proposing to do, there is going to have to be a decision-making point, and obviously the responsible person, whether we like it or not, is the Minister. The conditions that we have added here as amendments are attempting to tie the Minister's hands a little bit more. I quite recognize that is the intent and the concern that people are expressing, that the Minister, whoever he or she might be, has to act and make decisions based on certain parameters and perhaps the simplest way to deal with this would be if the Member is withdrawing the first part of his amendment, that is satisfactory; if not, I would propose myself to withdraw the other—

Mr. Edwards: I will move that. I want to respond briefly to what the Minister said. The equivalency test is a test which would be interpreted were it challenged, were any of these not felt to be equivalent by someone, and if it was challenged,

equivalency would be determined based on the facts that came forward. By importing the Minister's satisfaction, you reduce that test for a future court. You in effect tell the court not just that they are to look at equivalency, but that their opinion of what is equivalent is not what ultimately counts, it is the Minister's opinion of what is equivalent, and in that they will be obliged to give the Minister some leeway. They will be obliged to say that his decision must have been without foundation, unreasonable, patently unreasonable, in order for them to overturn it.

So this phrase does definitely lessen the standard that is going to be available to people who object in the future to these standards not being met. I will just leave it at that. I will, because I doubt if the Minister—I see him shaking his head. I do not think we are getting too far, but I do want that to be known, that that is what is happening in this amendment.

I will withdraw the subamendment I have put forward and replace it with this subamendment, the following subamendment:

THAT the proposed amendment by Mr. Cummings to add subsection 13.1(2) be amended as follows:

a) by striking out "or other meetings" in clause (c).

(French version)

Il est proposé que l'amendment proposé par M. le ministre Cummings et visant l'adjonction du paragraphe 13.1(2) soit amendé:

a) par suppression de "ou d'autres assemblées,", à l'alinéa c).

That is my subamendment.

Mr. Chairman: As a matter of clarification, Mr. Edwards has withdrawn part of his proposed subamendment and the proposed subamendment will now read,

Moved by Mr. Edwards

THAT the proposed amendment by Mr. Cummings to add subsection 13.1(2) be amended by striking out "or other meetings" in clause (c).

(French Version)

Il est proposé que l'amendement proposé par M. le ministre Cummings et visant l'adjonction du paragraphe 13.1(2) soit amendé par suppression de "ou d'autres assemblées,", à l'alinéa c).

Mr. Chairman: Is that correct? We will now vote on the proposed subamendment to Clause (2), Section 13.1 with respect to both English and French. Shall the motion pass? All in favour say aye.

Some Honourable Members: Aye.

Mr. Chairman: All opposed say nay. In my opinion the Yeas have it.

Mr. Edwards: Mr. Chairman, I am on a roll here. I move

THAT the proposed amendment by Mr. Cummings to add subsection 13.1(2) be amended by adding the following after clause 13.1(2)(g):

(h) that the report of the joint assessment panel include, but not be restricted to, the following:

(i) the comments and concerns of the public, as expressed at public hearings conducted by the joint assessment panel and otherwise, respecting the development,

(ii) the application of the principles of sustainable development to the development,

(iii) any alternative methods of carrying out the development, including methods to mitigate the expected environmental consequences of the development,

(iv) possible cumulative effects of the development on the environment,

(v) possible socio-economic effects of the development,

(vi) possible bio-physical effects of the development,

(vii) identification of any aspect of the development that, in the opinion of a member of the joint assessment panel, requires additional study or consideration.

(French version)

Il est proposé que l'amendement proposé par M. le ministre Cummings et visant l'adjonction du paragraphe 13.1(2) soit amendé par adjonction, après l'alinéa 13.1(2)(g), de ce qui suit:

(h) l'inclusion des points suivants dans le rapport du comité d'évaluation mixte:

(i) les commentaires et les préoccupations du public à l'égard de l'exploitation, dont il a été fait état notamment aux audiences publiques

tenues par le comité d'évaluation mixte,

(ii) l'application, relativement à l'exploitation, des principes de développement viable,

(iii) les autres méthodes de réalisation de l'exploitation, y compris celles visant la réduction des conséquences environnementales prévisibles de l'exploitation,

(iv) les effets cumulatifs possibles de l'exploitation sur l'environnement,

(v) les retombées socio-économiques possibles de l'exploitation,

(vi) les conséquences biophysiques possibles de l'exploitation,

(vii) la détermination d'aspects de l'exploitation qui, de l'avis d'un membre du comité d'évaluation mixte, nécessitent d'autres études.

* (0040)

Mr. Chairman: Before we proceed on that we will get a copy of it.

Mr. Edwards: Yes, it is coming. Mr. Chairman, I will speak to this briefly. The copies will be circulated, and I move that in English and in French.

I am seeking simply to add here again something that I hope—and I do not have too much of a track record so far tonight to expect—but I hope that the Minister will consider simply an addition to his amendment which enhances it in fact and also again in the public view.

What I am seeking to do is give the joint assessment panel some guidelines, some expectations from Manitobans as to what we would like them to consider. It is not restrictive. It is not exhaustive. It simply indicates that we want them to hear the public, and again that is set out in sub (b) of the Minister's amendment to some extent, although I think the proposed subamendment enhances that and certainly does not contradict it.

Sub (ii) of my amendment—that they be asked to apply the principles of sustainable development to the development itself, and given this Government's stated intention to apply sustainable development to all activities, I think that is appropriate.

Sub (iii)—that they consider any alternative methods of carrying out the development including methods to mitigate the expected environmental consequences. I think that is a very important one, that we ask the panel not just to consider the impacts of this project but to also consider what other ways of carrying out the same project could be brought forward.

Sub (iv)—that they consider the cumulative effects.

Sub (v)—the socioeconomic effects.

Sub (vi)—that is something we have heard about tonight expressed by Mr. Neily—the possible biophysical effects of the development, which is something that had been lacking in prior panels, as indicated by Mr. Neily.

Sub (vii)—the identification of any aspect of the development that in the opinion of any member of the panel requires additional study or consideration. That is not saying that additional study or consideration must happen. That is saying that any member of the panel who feels that some aspect requires additional study or consideration should be articulated. It is simply indicating that articulation will be expected by a panel member. It is not to say that some, if not most panel members might not say that, but there may be those who would hesitate to say that on a panel in a cumulative report, would hesitate to inject, if they felt they were the only one, some reservation about the research, the study that had been done on one aspect.

Let us make clear to them that any panel member who has those reservations should articulate them, not that they will necessarily be acted upon, but we want them to make that statement if they have those feelings.

I do not think that this subamendment in any way detracts from what the Minister is hoping to achieve. It does not tie his hands. His own satisfaction is at the root of all of this, as we know, and it simply lays out in greater detail what we will be expecting from the panelists.

Mr. Cummings: Mr. Chairman, I do not question the manner in which the Member has put this forward. What he is attempting to do in this proposal I would suggest however, is write the guidelines for any proposed projects. We do not do that in The Manitoba Act today in advance. We write them, and try to make sure that all of the areas are covered that are pertinent to the project.

What the Member is attempting is really putting into regulation the process, and while he may feel

that there is nothing here that should not be included in the guidelines, certainly it is only a first cut at what a panel should be able to have in front of it. I think we are trying to put into the Bill a situation that goes far beyond what we contemplated in Bill 24 which was simply to provide the opportunity for joint assessment, and have that authority clearly established within our Act.

He wants to put something into this Act that we do not presently have in the balance of our Act, and I would encourage him to consider it in that light. It is not an area that I feel we need to be straying into as part of this amendment. Certainly these types of discussions come as part of a greater review of how environmental assessment is carried out in this province.

Mr. Edwards: There is certainly no attempt to hamstring a panel in any way, and that is not the intent and that is not what this subamendment says. It says "including but not restricted to" these areas. There is nothing wrong, there is nothing improper in Legislators giving guidance to panels they want to do a very important job. In fact the contrary is true: it is unfair not to give guidance to a panel as to what you expect from them; not to restrict them, but not to let them embark on an important task without some guidance as to what we are looking for.

If the Minister's only objection is that it does not appear in the Act already and therefore it does not cover the existing CEC, that is a very, very weak objection. To say that the Act is bad, and therefore let us not make it better in one aspect without making the whole Act better is indeed a weak response I would suggest. If in fact this should apply as well to the CEC, I invite the Minister to do that at a later date. We are now talking about joint assessments, in all likelihood, on the biggest environmental projects which are going to be affecting Manitobans in the coming years. These are the most important assessments which are going to take place, a very good place to start to make the Act better.

Again, if we want to make these amendments later with respect to the whole Act and the CEC hearings, let us do it. I would welcome that. Frankly, we cannot wait for this Minister to come forward with those amendments for the whole Act. We have projects which are going to be being assessed imminently. The Minister knows that full well. If we are going to improve this Act, we have to do it now if we want these in place for the very important assessments which we are about to embark upon.

Mr. Chairman: On the proposed subamendment by Mr. Edwards to the amendment by Mr. Cummings of Section 13.1, Clause 2, shall it pass? All in favour say aye.

Some Honourable Members: Aye.

Mr. Chairman: All opposed say nay.

Some Honourable Members: Nay.

* (0050)

Mr. Edwards: Mr. Chairman, I would like a recorded vote.

A COUNTED VOTE was taken, the result being as follows:

Yeas 4, Nays 5.

Mr. Chairman: In my opinion the Nays have it. The subamendment is defeated.

On the proposed motion of Mr. Cummings—Mr. Ashton.

Mr. Ashton: There is a further subamendment.

Ms. Cerilli: I move

THAT the proposed amendment by Mr. Cummings add subsection 13.1(2) be amended.

THAT there be added after the word "unless" a colon and (a) and then it would read:

(a) the minister is satisfied that the agreement provides for an assessment that is at least equivalent to the assessment that would otherwise be required under this Act; and

(b) the agreement provides for

and then after that that the letters (a) (b) (c) through to (g) be changed to sub (i) (ii) (iii), et cetera.

The reason for that is what we are trying to do here is take some of—

Mr. Chairman: I would like to just point out I think it is a different—

Ms. Cerilli: Okay, I will add—

Mr. Chairman: I am not too sure whether we have got the right Bill that has been passed around for—just one moment if we can get clarification on this.

Ms. Cerilli: What I will do is I will go over these as well.

Mr. Chairman: If you could just clarify it.

Ms. Cerilli: I am not familiar how to—basically all I was wanting to do with that part of it was add a semi-colon and two better brackets, but—

Mr. Ashton: Yes, might I suggest that might be something the Minister would consider for report stage amendment in terms of clarifying the structure of the amendment that he has moved. That way we do not have to deal with it, but the point has been raised. Rather than go to the bother of writing it out in detail, it might be something the Minister could consider for report stage.

Mr. Chairman: If we could get clarification on what is being proposed. As to clarify, Ms. Cerilli, if—

Mr. Cummings: Mr. Chairman, the motion that just proposed the removal of "or other" in Section (f)—

Mr. Chairman: I would like to just, Mr. Minister—it has not been put forth on the table yet.

Mr. Cummings: You have not—

Mr. Chairman: No. I think that what we would like to do is clarify exactly what has been put on the table for consideration. If you could reread exactly the amendment that you are going to put forth. Thank you very much.

Ms. Cerilli: I would like to move

THAT the proposed amendment by Mr. Cummings to add subsection 13.1(2) be amended

(a) In clause (f) by striking out "or other";

(b) in clause (g) by striking out "from the proponent".

(French Version)

Il est proposé que l'amendement proposé par M. le ministre Cummings et visant l'adjonction du paragraphe 13.1(2) soit amendé:

a) par substitution, à ", notamment d'aide financière,", de "financière" à l'alinéa f);

b) par suppression, à l'alinéa g), de "du promoteur".

To begin with, I would like to have the Minister explain what he has in mind when he is providing a program. Do you accept that?

Mr. Chairman: Could I bring the Committee to order please?

Mr. Cummings: Mr. Chairman, I would recommend to the committee we accept these amendments.

Mr. Chairman: On the proposed subamendment put forth by Ms. Cerilli on the motion put forth by Mr. Cummings on Section 13.1, Clause (2), shall the motion pass? All in favour say aye.

Some Honourable Members: Aye.

Mr. Chairman: All opposed say nay.

Some Honourable Members: Nay.

Mr. Chairman: In my opinion, the Yeas have it. The motion is passed.

Ms. Cerilli: I am not quite sure how to proceed. We had another amendment that I was trying to sneak in with the last section, but I guess we could consider it separately. We will have to get that drawn up.

Mr. Cummings: As I understand the intent of what the Member was about to raise, it is a changing of the structure of this to clean up the drafting. We understand the intent and agree. So we will have it redrafted that way.

Mr. Ashton: Is the Minister thinking of bringing it back at report stage?

Mr. Cummings: I guess if we do not want to do it that way, we had better move it here or we are going to be in trouble, are we not?

Mr. Ashton: Yes, I am just suggesting, if the Minister wants to move it at report stage that is quite acceptable.

Mr. Cummings: Well, we had better clean it up now.

Mr. Chairman: We will take a short break to get it circulated.

* * *

The committee took recess at 12:59 p.m.

* (0100)

After Recess

The committee resumed at 1:15 a.m.

Mr. Chairman: On the proposed motion of the Honourable Minister to amend Clause 2, Subsection 13.1, as amended by subamendments, shall the main motion as amended be passed? All in favour say aye.

Some Honourable Members: Aye.

Mr. Chairman: All opposed say nay. In my opinion the Yeas have it.

Ms. Cerilli: I would like to withdraw the amendment that I was making for 13.2.

Mr. Edwards: Mr. Chairman, I move

THAT the proposed Section 13.2 as set out in section 2 of the Bill be amended

(a) by adding "(a)" after "The Minister";

(b) by adding the following at the end of the section:

(b) shall establish a program to provide financial or other assistance to a person or group participating in an assessment process established under section 13.1.

(French version)

Il est proposé que l'article 13.2 soit amendé par adjonction, à la fin de l'article, de ce qui suit:

De plus, le ministre met en oeuvre un programme d'aide, notamment d'aide financière, afin de faciliter la participation de personnes et de groupes à un processus d'évaluation établi en application de l'article 13.1.

and THAT the following be added after the proposed section 13.2 of the Bill:

Eligibility criteria in regulation

13.3(1) A program established under clause 13.1(2)(f) shall include criteria for determining eligibility for financial and other assistance, and shall require consideration of whether a person or group applying for assistance

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

(b) would provide representation respecting the interest that would assist the joint assessment panel and contribute to the public hearing;

(c) has insufficient financial resources to enable it to adequately represent the interest;

(d) has an established record of concern for and commitment to the interest;

(e) has attempted to bring related interests of which the person or group was aware into one group to represent the interests at the public hearing;

(f) has a clear proposal for its use of any assistance that might be provided under the regulation;

(g) has appropriate financial controls to account for any financial assistance received and expended.

(French version)

Il est proposé que le projet de loi soit amendé par adjonction, après l'article 13.2, de ce qui suit:

Critères d'admissibilité

13.3(2) Le programme qui est pris en oeuvre en application de l'alinéa 13.1(2)(f) fixe les critères d'admissibilité à l'aide visée à cet alinéa et prévoit que l'on détermine si la personne ou le groupe qui présente la demande d'aide:

a) représente un intérêt clairement vérifiable que l'on devrait faire valoir à l'audience;

b) ferait valoir un intérêt qui aiderait le comité d'évaluation mixte et qui contribuerait à l'audience publique;

c) a des ressources financières insuffisantes pour faire valoir adéquatement l'intérêt en question;

d) a démontré un intérêt et un engagement indéniables envers l'intérêt en question;

e) a tenté d'intéresser un autre groupe à des intérêts connexes dont elle ou il était au courant afin de les faire valoir à une audience publique;

f) a une proposition claire en ce qui concerne l'aide qui pourrait être accordée en application des règlements;

g) est doté des mesures de contrôle financier voulues pour rendre compte de toute aide financière reçue et de son utilisation.

* (0120)

Eligible expenses

13.3(2) A program established under clause 13.2(b) shall prescribe expenditures eligible for assistance, which shall include the following:

(a) professional fees for advice or assistance, including the fees of legal and expert advisors;

(b) salaries of persons employed for the purpose of researching and preparing materials, including research staff and secretarial services;

(c) travel and accommodation expenses;

(d) the purchase of information material such as maps, documents and reports for the purpose of information, presentation and analysis;

(e) the collection and dissemination of information;

(f) accounting and audit services;

(g) rental of office space, equipment and meeting rooms;

(h) photocopying, stationery and postage;

(i) telephone rental and charges;

(j) advertising, including posters and radio, television, and newspaper advertisements, for the purpose of giving notice of meetings;

(k) translation services.

(French version)

Dépenses admissibles

13.3(2) Le programme que est mis en oeuvre en vertu de l'article 13.2 prévoit les dépenses qui sont admissibles à l'égard de l'aide, notamment les dépenses suivantes:

a) les honoraires professionnels versés pour les conseils ou l'aide fournis, y compris les honoraires des conseillers juridiques et des experts-conseils;

b) les salaires des personnes employées à la recherche et à la préparation de documents, y compris l'équipe de recherche et le personnel de soutien;

c) les frais de déplacement et de logement;

d) les frais d'achat, à des fins d'information, de présentation et d'analyse, de documents d'information tels que des cartes et des rapports;

e) les frais de cueillette et de communication de renseignements;

f) les frais de comptabilité et de vérification;

g) les frais de location de locaux, d'équipement et de salles de réunion;

h) les frais de photocopie, de papeterie et de poste;

i) les frais de location de téléphone et d'appels téléphoniques;

j) les frais de publicité, y compris les affiches et les annonces faites à la radio, à la télévision et dans les journaux, portant sur les avis de réunion;

k) les frais de traduction.

Ineligible expenses

13.3(3) A program established under clause 13.2(b) shall prescribe expenditures that are not eligible for assistance, which shall include the following:

(a) lost income, including wages lost as a result of attending a public hearing conducted by a joint assessment panel;

(b) capital expenditures and overhead;

(c) advertising to promote the point of view of the applicant or any other person or group.

(French version)

Depénses non admissibles

13.3(3) Le programme mis en oeuvre en vertu de l'article 13.2 prévoit les dépenses qui ne sont pas admissibles à l'égard de l'aide, notamment les dépenses suivantes:

a) le revenu perdu, y compris les pertes de salaire que le requérant a subies en raison de sa présence à une audience publique tenue par un comité d'évaluation mixte;

b) les dépenses en immobilisations et les frais généraux:

c) les frais de publicité engagés afin de faire connaître le point de vue du requérant ou d'une autre personne oud'un autre groupe.

I move that in both English and in French.

Mr. Chairman, the intent of this amendment is obvious. It is in order to give flesh to the amendment we have just passed on behalf of the Minister allowing for participant-assistant programs to come to the fore. What we are doing here is simply laying out the criteria for determining eligibility, and I might add ineligibility of expenses as well as setting out the criteria for eligibility for funding in the first place. Much of the wording here is taken from documents that I know this Minister supports.

I have looked not only to the wording which I know he has expressed support for in the past, but also to the wording that has come forward from other jurisdictions. I think this represents a pulling together of those in a way that should be acceptable to the Minister.

* (0130)

I bring to his attention specifically that included in this are ineligible expenses, which should give him some comfort with respect to the way that monies will be spent, which may be the monies of the proponent, but they may also be the monies of the Government. As well, there is a specific provision which I think should also give the Minister some comfort, which is sub (g) of 13.3(1) which indicates that in order to qualify, a person or group has to have

appropriate financial controls to account for any financial assistance received and expended.

We know from the history of this Government that is an extremely important aspect of any grant given to any agency. I put that in there specifically to give comfort to this Minister that monies will be well-spent and will be accounted for.

The eligibility criteria, again, I think do not need elaboration beyond the statement that they are ones that are recognized in the community that have been largely given force in other jurisdictions. We are not in effect going beyond what the other jurisdictions have already set out and shown to have worked. They are fair, and I believe they are relatively complete.

With respect to the eligible expenses, professional fees for advice or assistance, obviously a reasonable expense; (b) salaries of persons employed for the purpose of researching and preparing materials, obviously a reasonable expense; travel and accommodation expenses, again, a necessity in order to do a proper job. The purchase of information material, who could question that if you were intending to give a detailed analysis of a project; collection and dissemination of information, accounting and audit services, obviously necessary, as the Member for Kirkfield Park (Mr. Stefanson) rightly points out, an essential service certainly in this context if one is to meet the criteria (g) of having appropriate financial controls; rental of office space and equipment and meeting rooms, photocopying, stationery and postage, telephone rental, advertising for the purpose of giving notice of meetings and translation services.

I would ask the Minister to seriously consider which one if any of those would not be acceptable expenditures given the overriding guarantee that appropriate financial controls will be in place to account for the financial assistance, and given that we have already passed an amendment committing him to establish those financial assistance programs. We got over the first two hurdles. It is essential at this point, I think, to flush that out.

Lastly, there are ineligible expenses put forward here, which I think speak for themselves. I had considered including in there, activities of an applicant that do not relate to the assessment process. That speaks for itself. I do not believe that it is necessary to put it in there. Obviously in accounting for the monies a person who had received a grant could not claim for compensation for activities that did not relate to the process. I do not think that is necessary. The others, I believe, are important to have in there and again, I put them in there for some comfort for the Minister. I recommend this amendment to him as consistent with the amendment we have just passed at his behest.

Mr. Chairman: As a point of clarification, we are dealing with the proposed subamendment to Section 13.2

Mr. Edwards: As well, it adds 13.3.

Mr. Chairman: Yes, 13.3 Subsection 1 and Section 13.3 Subsection 3, is that correct?

Mr. Edwards: Subsection 2 and Subsection 3. I am adding a Subsection 13.3. Do you see what I am saying?

Mr. Chairman: Yes.

Mr. Edwards: There is no 13.3 now. I am amending 13.2, adding 13.3.

Mr. Chairman: On the proposed amendments to Section 13.2, all those in favour say aye.

An Honourable Member: Aye.

Some Honourable Members: Nay.

Mr. Chairman: In my opinion the Nays have it. The motion is defeated.

Mr. Edwards: Recorded vote, please.

Ms. Cerilli: Is this 13.2?

Mr. Chairman: Amendment to 13.2, yes.

Mr. Edwards: And adding 13.3.

A COUNTED VOTE was taken, the result being as follows:

Yeas 4, Nays 5.

Mr. Chairman: In my opinion, the motion is defeated.

Mr. Cummings: Mr. Chairman, the amendment that we just voted on, I do not think anyone means to discredit the thoughts that are in here. What we were looking at encompasses material that needs to be discussed in the public venue on regulations, and I would think that is a fair way of dealing with it.

Mr. Chairman: Clause 2 as amended—

Ms. Cerilli: I have an amendment for Clause 13.2. I think it is being photocopied.

I move

THAT section 13.2, as proposed in section 2 of the Bill be amended by striking out "or other".

(French version)

Il est proposé que l'article 13.2, figurant à l'article 2 du projet de loi, sort amendé par substitution, à "notamment une aide financière,", de "financière".

* (0140)

Mr. Cummings: Mr. Chairman, I am a little baffled as to the intent in removing this because rather than enlarging the capability to get assistance for interveners, I think removal of this would provide a restriction of that capability.

There are a number of things. It does not say, instead of, and certainly the intent of the use of this would be that there can be a requirement of proponents by the Minister to provide other materials, information—expertise, pardon me, not materials—expertise that the Minister may not otherwise be able to require them to produce.

This is seen as not instead of money, but other types of assistance that may in fact be of great importance to those who are interveners, and it is there to be facilitative not restrictive.

Ms. Cerilli: This is included under the section for funding of proponents, and it is clear that there is, or other, and I fail to see what that would mean. It seems to make it more clear that if it is meant to be information or other services, perhaps it should be included under another section and defined in that way.

Mr. Cummings: The first three words are that, the minister may. This relates to what the Minister may require from the proponent, and, therefore, I would like to see this clause kept intact.

Ms. Cerilli: Just to state further that groups are interested, interveners are interested in financial assistance, and they want it very clear that is what they are going to receive, not something other than that.

Mr. Cummings: That is what this will deliver.

Mr. Chairman: On the proposed subamendment of Ms. Cerilli to amend Clause 2, Section 13.2, will the motion pass? All in favour please signify by saying aye.

Some Honourable Members: Aye.

Mr. Chairman: All those opposed say nay.

In my opinion the Nays have it. The motion is defeated.

Are there any other proposed amendments to 13.2? Section 2 is completed as amended.

Mr. Ashton: There is some confusion here. We have an amendment on 13.3 which is part of Section 2, adding a 13.3, yes.

Ms. Cerilli: I move

THAT section 2 of the Bill be amended by adding the following after the proposed section 13.2:

Review of Act in 1991

13.3 The minister shall cause this Act, including the assessment process, to be reviewed before December 31, 1991, and the review shall include public hearings.

(French version)

Il est proposé que l'article 2 soit amendé par adjonction, après l'article l3.2, de ce qui suit:

Révision de la Loi en 1991

13.3 Le ministre fait réviser la présente loi, y compris le processus d'évaluation, avant le 31 décembre 1991, notamment au moyen d'audiences publiques.

It seems that this is obvious why we would need this. The amount of interest that has been shown here the last two evenings, the amount of paper that we have gone through tonight, the amount of differing opinions. It seems that it is clear that it has been alluded to that there are other sections of the Act that would be affected, or could be affected by this amendment, and it has also been suggested and considered by the Minister, and I feel even agreed to by the Minister, in meetings prior to Christmas that this would be something that he would be interested in as well. There are a number of other areas in the Act that need improvement. This is the first step, and I would encourage the Minister to consider including this as part of this Bill.

Mr. Chairman: On the proposed motion of Ms. Cerilli to amend Clause 2, Subsection 13.3, shall the proposed motion be passed? All in favour please say aye.

Some Honourable Members: Aye.

Mr. Chairman: All opposed please say nay.

Some Honourable Members: Nay.

Mr. Chairman: In my opinion, the Nays have it.

Mr. Ashton: A recorded vote, please.

A COUNTED VOTE was taken, the result being as follows:

Yeas 3, Nays 5.

Mr. Chairman: In my opinion, the Nays have it. The motion is defeated.

Mr. Edwards: Mr. Chairman, it has just been brought to my attention that there may be one other amendment to the passed—the amendment of the Minister which has been passed, which I would like to make. I think it is important.

The Minister's amendment, in that it deals with participant assistant funding, does impart to the Minister, discretion, where he feels it is desirable to give that assistance. He explained that—and of course in major projects that would of course come, and then he went on to say that he wanted to preserve to himself some discretion. Therefore, I move that the proposed amendment by Mr. Cummings—I am sorry, I move

THAT subsection 13.1(2)(f) be amended by adding—

An Honourable Member: We passed that; you cannot go back to it.

Mr. Edwards: We are still in Section 2.

An Honourable Member: No, we passed it.

Mr. Chairman: No, Section 2 is passed.

An Honourable Member: Yes, you are done.

An Honourable Member No, her amendment on 13.3—

Mr. Cummings: Still Section 2.

Mr. Chairman: Proceed.

As a matter of clarification, we are now on Subsection 13.2, participating funding by proponents.

* (0150)

Mr. Edwards: Yes, let me start the amendment again and then it will be clear. I move this in English and in French.

I move,

THAT subsection 13.1(2)(f) be amended by adding, after the word "process":

(a) of a major project; or

(b) when in the opinion of the Minister such a program is desirable.

Mr. Chairman: Can we get that in writing, please?

The Minister's amendment has been passed already. You cannot go back to the Minister's amendment.

An Honourable Member: This subamendment to the amendment, you cannot do it.

Mr. Chairman: What you are referring to has already been passed, Mr. Edwards.

Mr. Edwards: Mr. Chairman, I will simply register my objection. I do not intend to dispute with the advice you have received. It strikes me that it is passed as part of Section 2. We are still on Section 2, but if the advice that you have received is contrary to that and you are saying that an amendment to Section 2 at this point, as it has just been passed, is out of order, I will accede to your advice—if that is your advice.

Mr. Chairman: There is a clarification between—you are referring to Section 2 or Clause 2? There is a Section 2 of 13.2 or Clause 2 that you are referring to.

Mr. Edwards: I mean, I am referring—it is Section 2, of course, but I am seeking to amend the Subsection 13.1(2), which is the clause which we have recently passed at the behest of the Minister.

Mr. Chairman: The clause that you are referring to has been passed, which was the Minister's clause as amended—has been passed. We are now moving on—

Mr. Edwards: Mr. Chairman, I will then ask for the consent of the committee to revert back to the Minister's amendment 13.1(2) in order that this subamendment may be before the committee properly.

Mr. Chairman: What is the will of the committee?

An Honourable Member: Put it to a vote.

Mr. Chairman: Put it to a vote. All in favour say aye.

Some Honourable Members: Aye.

Point of Order

Mr. Ashton: A point of order, Mr. Chairman, perhaps so we can clarify it. I think some of the confusion relates to whether we are going clause by clause or we are going section by section. Since we are dealing with some very significant, major changes in some of those sections, I think that is probably what is confusing committee Members.

I think at this point, if it is your ruling, it does require leave. We should not really be voting on it. If there is not leave, there is not leave, but I do think the Member for St. James (Mr. Edwards) raised a legitimate point. I think it is partly the confusion of

where they were going. In most cases, we would proceed clause by clause, but in this case it is section by section because of the complexity of the various sections and the number of amendments.

* * *

Mr. Chairman: Mr. Edwards has asked whether there is leave.

An Honourable Member: Denied.

Mr. Chairman: Leave is denied. Okay, we will proceed then. We will have to strike Mr. Edwards' amendment from the record then. Leave was denied on it. Agreed? Agreed.

Mr. Ashton: Mr. Chairperson, I am sorry to be a stickler, but it should read that it was ruled out of order because the section had passed. It is still on the record.

Mr. Chairman: It was not ruled out of order. I just want it to go back for introduction.

Mr. Ashton: What I am saying is that the Hansard will still record the content of it. It is not stricken from the record in that sense.

Mr. Chairman: Are there any other amendments to Clause 2? Clause 2, which includes Sections 13.1 and 13.2. If there are no further amendments, shall Clause 2 as amended be passed? Okay, it is passed.

We go to Clause 3. Are there any amendments to Clause 3? Clause 3—(pass); Clause 4—pass; Preamble—(pass); Title—(pass).

Shall the Bill as amended be reported? It is the will of the committee that I report this Bill as amended. Thank you very much.

Committee adjourned.

COMMITTEE ROSE AT: 1:58 a.m.