

Fourth Session - Thirty-Eighth Legislature
of the
Legislative Assembly of Manitoba
Standing Committee
on
Social and Economic Development

Chairperson
Ms. Marilyn Brick
Constituency of St. Norbert

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MANITOBA LEGISLATIVE ASSEMBLY
Thirty-Eighth Legislature

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LEGISLATIVE ASSEMBLY OF MANITOBA
THE STANDING COMMITTEE ON SOCIAL AND ECONOMIC DEVELOPMENT

Thursday, June 8, 2006

TIME – 12 p.m.

LOCATION – Winnipeg, Manitoba

CHAIRPERSON – Ms. Marilyn Brick (St. Norbert)

VICE-CHAIRPERSON – Mr. Doug Martindale (Burrows)

ATTENDANCE – 11 QUORUM – 6

Members of the Committee present:

Hon. Messrs. Lathlin, Selinger, Hon. Ms. McGifford

Ms. Brick, Messrs. Derkach, Dewar, Goertzen, Hawranik, Ms. Irvin-Ross, Messrs. Martindale, Reimer

APPEARING:

Mr. Kevin Lamoureux, MLA for Inkster
 Hon. Jon Gerrard, MLA for River Heights

WITNESSES:

Bill 32–The Real Property Amendment Act

Mr. Louis Harper, Legal Political Advisor,
 Manitoba Keewatinook Ininew Okimowin (MKO)

MATTERS UNDER CONSIDERATION:

Bill 25–The Consumer Protection Amendment Act (Payday Loans)

Bill 29–The Degree Granting Act

Bill 32–The Real Property Amendment Act

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Madam Chairperson: Good afternoon. Will the Standing Committee on Social and Economic Development please come to order.

This meeting has been called to continue consideration of the following bills: Bill 25, The Consumer Protection Amendment Act (Payday Loans); Bill 29, The Degree Granting Act; Bill 32, The Real Property Amendment Act.

I will note that this committee will sit until 1 p.m. this afternoon.

We have three presenters registered to speak. To Bill 32, The Real Property Amendment Act: Louis Harper, MKO; Catharine Johannson, private citizen; and to Bill 25, The Consumer Protection Amendment Act (Payday Loans), Warren Mills.

Before we proceed with presentations, we do have a number of other items and points of information to consider. First of all, if there is anyone else in the audience who would like to make a presentation this afternoon, please register with staff at the entrance of the room.

Also, for the information of all presenters, while written versions of presentations are not required, if you are going to accompany your presentation with written materials, we ask that you provide 20 copies. If you need help with photocopying, please speak with our staff.

As well, I would like to inform presenters that, in accordance with our rules, a time limit of 10 minutes has been allotted for presentations, with another five minutes allowed for questions from committee members.

Also in accordance with our rules, if a presenter is not in attendance when their name is called, they will be dropped to the bottom of the list. If the presenter is not in attendance when their name is called a second time, they will be removed from the presenters' list.

Prior to proceeding with public presentations, I would like to advise members of the public regarding the process for speaking in committee. The proceedings of our meetings are recorded in order to provide a verbatim transcript. Each time someone wishes to speak, whether it be an MLA or a presenter, I first have to say the person's name. This is the signal for the Hansard recorder to turn the mikes on and off.

Thank you for your patience. We will now proceed with public presentations.

Bill 32–The Real Property Amendment Act

Madam Chairperson: On Bill 32, The Real Property Amendment Act, Louis Harper from MKO.

Hello. Do you have copies of your presentation to circulate?

Mr. Louis Harper (Legal Political Advisor, Manitoba Keewatinook Ininew Okimowin) : Yes, I do.

Madam Chairperson: You can proceed, Mr. Harper.

Mr. Harper: Okay, thank you, Madam Chairperson. Good afternoon, ministers, committee members. I am here to speak on Bill 32, The Real Property Amendment Act, and I am representing the opinion and views of MKO, Manitoba Keewatinowik Okimakanak, regarding the proposed act.

I also want to thank the committee for giving MKO an opportunity to make a presentation on Bill 32 as it impacts, in our view, on First Nation rights. Prior to making my presentation, I want to refer you to the last page of my presentation. It is with regard to the recommendation by MKO as it pertains to Bill 32. So, if you can refer to page 4, I believe, of the presentation.

So, with respect to the proposed legislation, MKO recommends that this committee report and recommend to the Legislative Assembly that Bill 32 neither be further considered or proceeded with unless and until the government provides evidence to the committee that the government has exercised its duty to consult with, and if necessary, Madam Chairperson, to accommodate, the Treaty Land Entitlement Committee of Manitoba, the Manitoba entitlement First Nations and those First Nations affected by the Northern Flood Agreement, the NFA Comprehensive Implementation Agreements and other settlement agreements in respect to Bill 32.

I also want to maybe just indicate here with regard to the duty to consult, that a notice of amendment does not constitute consultation with regard to First Nations people and that meetings between the government of Manitoba pertaining to Bill 32, short meetings, do not constitute consultation and that consultation must be adequate and this should be a formal process.

So the second recommendation by MKO is that we want to suggest an amendment to the proposed bill, to say for greater certainty, no interest in land or an easement shall be granted under this act in favour of a party referred to in clause 111(1)(h) without the consent of the parties to the agreement, such as existing agreements such as Nelson House has an agreement.

So those are the two recommendations we have. Following my presentation, I wanted you to revert to the first page, on the fourth paragraph, this is where I will start my presentation, where it says:

On April 11, 2006, the Minister of Aboriginal and Northern Affairs (Mr. Lathlin) introduced amendments to the legislation in Bill 32, The Real Property Amendment Act, that will, in our opinion, affect the transfer of lands by Manitoba to Canada under the treaties, the Manitoba Treaty Land Entitlement Framework Agreement, the Northern Flood Agreement and the successor Comprehensive Implementation Agreements and other settlement agreements involving Manitoba Hydro.

As you know, the purpose of these transfers of land is to create new First Nation reserves in the fulfillment of treaty or to address the adverse affects of hydro-electric development and operations in Manitoba.

Bill 32 proposes the creation of easements that are, in effect, a true legal interest in land for public purposes. Manitoba claims that Canada requires this legislation in order to accept land transfers from the Province that are subject to easements for public purposes. Manitoba also claims that Bill 32 will assist the Province in meeting its obligation to transfer Crown land to Canada for Treaty Land Entitlement, the Northern Flood Agreement and other hydro-electric impact settlement agreements.

*(12:10)

Bill 32 will provide the statutory authority for Manitoba to grant an easement in gross or a statutory easement that would transfer a statutory right under licence to use and occupy land held by an entity, such as a utility such as Manitoba Hydro, into a registrable interest in land that would run with the land.

MKO notes that no easement in gross or statutory easement in favour of a utility, such as Manitoba Hydro, is necessary while the lands are under the administration already by the Province of Manitoba. In fact, our understanding is that Manitoba Hydro's use of Crown lands for power production, flooding is authorized under The Water Power Act already.

MKO has been advised by the respective federal and provincial departments of Justice and by Indian Affairs that the authority for Manitoba to grant an easement in gross for lands used as transmission line corridors and lands used for the inundation or

flooding or storage of water would address certain gaps in the legal status of provincial utility easements in respect to the recognition of such easements by Canada.

MKO has been advised, also, that under Bill 32 the statutory easements issued by Manitoba, Manitoba would then be accepted and recognized by Canada as part of the transfer of administration and control of the lands being created as new First Nations lands. That is, the statutory easements granted by Manitoba under Bill 32 would run with the land and would be accepted and continued by Canada as an interest in the new reserve lands.

It has been further clarified, though, that prior to the lands being transferred we are being advised by the Province there will be agreements prior to the signing of these easements by a utility board or by Manitoba Hydro. However, the granting of statutory easements by Manitoba may serve to encumber those lands being transferred by Manitoba to Canada in a manner that may not be consistent with the letter in the intent of land transfer and easement provisions of the First Nation agreements, like the NFA, the Comprehensive Implementation Agreements, the Manitoba Treaty Land Entitlement Agreements, and that is involving the transfer of provincial lands to Canada for the purpose of converting these lands to First Nations.

As an example, if you look at the Nisichawayasihk Cree Nation, it requires that the administration and control of compensation lands shall be transferred by Manitoba to Canada free and clear of encumbrances, reservations, caveats, estate rights and interests in favour of any person other than Canada, and whose interest is claimed through Canada.

As well, although these First Nation agreements specifically contemplate the granting of easements to Manitoba Hydro that would apply to the new reserves, Bill 32 may grant interest in land that goes beyond the limited scope of these interests contemplated by these agreements. For example, the Northern Flood Agreement talks about that the easement is granted to Hydro solely for the purposes of the project, and that is basically what the agreement says.

In addition, the systematic granting of statutory easements by Manitoba as the preferred or the means of recognizing the existing use of future reserve lands for public purposes does not reflect the options for recognizing such land uses as set out in the

Indian Affairs Land Management Manual. The Supreme Court decision in *Opetchesah v. Canada* and B.C. Hydro, says Section 35 easements of the Indian Act are commonly used when a public utility requires land to run transmission lines—

Madam Chairperson: Mr. Harper, I am going to have to ask you to conclude your remarks.

An Honourable Member: On a point of order.

Point of Order

Mr. Kevin Lamoureux (Inkster): Madam Chair, I was just going to seek if we could get leave of the committee to allow the member to finish his report.

Madam Chairperson: Agreed? [*Agreed*]

* * *

Madam Chairperson: Please proceed.

Mr. Harper: I guess what I will do is I will try and shorten the presentation anyway. As a concern to MKO, the Manitoba government introduced this bill, and has proceeded to recommend that Bill 32 be considered by the committee without meaningful consultation with First Nations. From the outset, I said it will, in our view, impact on First Nation rights. It has not consulted with our organization, which advocates and protects treaty and inherent rights.

MKO and the Treaty Land Entitlement have each expressed concerns to the Minister of Aboriginal and Northern Affairs (Mr. Lathlin) and the Minister of Conservation (Mr. Struthers) regarding the lack of meaningful consultation on this issue, and the lack of collaborative transparency between government and the First Nation parties to the affected treaties and agreements that has characterized the development, introduction and consideration of Bill 32.

In this regard, on May 29, the Minister of Northern Affairs did meet with MKO and the Assembly of Manitoba Chiefs. They did agree to establish a working committee, and to us that is not sufficient to constitute a consultation, a duty to consult. Meetings such as these, it has to be a formal process.

Further, two decisions in the Supreme Court, as you probably are aware, in Haida Nation and the Taku River, the governments of Manitoba and Canada have acknowledged that under Section 35 of the Constitution of 1982 there is an obligation to consult, a duty to consult, and, if necessary, to

accommodate First Nation communities when any government action or decision might infringe on our rights.

I will also mention that one of the agreements in the North pertaining to Hydro has been characterized as a treaty. MKO would like to remind the committee that the Northern Flood Committee, what I was about to talk about, is recognized as a treaty by the government of Canada. In fact, one of the ministers from the NDP government said: "First, for the first time in the history of this House, the government of Manitoba recognizes that the Northern Flood Agreement is a modern-day treaty." On that basis, if the proposed legislation is going to be implemented, it is our view that it is going to affect the treaty, the Northern Flood Agreement.

As the minister has acknowledged in his statement to the Legislative Assembly that the intent of Bill 32 is to affect the transfer of Crown land to Canada in the fulfillment of the treaties, the Treaty Land Entitlement, the Northern Food Agreement, the Province owes a duty to consult, if necessary, to accommodate the Treaty Land Entitlement Committee of Manitoba and other First Nations.

So that concludes my presentation. You have our recommendations that we feel are important for consideration from the committee.

Mr. Gerald Hawranik (Lac du Bonnet): Thank you very much, Mr. Harper, for coming forward to the committee and making your presentation. I can advise you that we do support the bill for a variety of reasons, not the least of which you enunciated today as well. I would like to thank you for your thoughtful discussion and your presentation as well.

I note that you have made a couple of recommendations with respect to amendment, and we hope that the minister listens to your concerns on behalf of the over-50,000 treaty First Nations people that you represent. Clearly, easements involve an interest in land, and, as a result of giving up an interest in land, that diminishes the value of the land accordingly, depending upon the kind of easement that you have.

*(12:20)

Clearly, I think that, perhaps, there should be a mechanism within the bill itself, a compensation mechanism so that those kinds of issues can be dealt with adequately and differently than they are today, as opposed to agreement. There should be some mechanism to figure out a compensation for the

individual or group or whoever or the community that is giving up a certain right in the land. Is this something that would be useful to your group?

Mr. Harper: Yes, definitely. It relates to the last recommendation that we have, to consult with the First Nations that may be impacted on the statutory easements.

Mr. Hawranik: Okay. Thank you very much for that. I heard that you had consulted with the minister on May 29, I think, you had mentioned. I guess my concern is, was the draft bill presented to you prior to it being introduced in the Legislature, and were you briefed or were you consulted before it was drafted?

Mr. Harper: What I can tell you is, first of all, I did not attend that meeting myself, but there were representatives from our organization. Secondly, we were provided with a copy of the amendment itself. I guess, for myself, I saw it a week ago. So we were provided with that information.

Hon. Jon Gerrard (River Heights): Much of the comment regards easements that the Crown or Manitoba Hydro might seek on First Nations lands. But there may be application of this, the reverse, that is, easements that First Nations communities seek on Crown lands and other properties. I just wondered if this aspect is adequately covered because, certainly, there will be from time to time easements that First Nations seek, whether it is in regard to water management and drainage, whether it is in regard to access to communications or power or other things, services. Is this covered adequately from your perspective and has there been consultation on that?

Mr. Harper: Well, certainly, the amendments will benefit landowners, communities, utilities such as MTS and Hydro. It does provide, you know, an adequate mechanism, I guess, to acquire easements. However, the concern that we have from MKO is statutory easement, the granting of easement, by merely applying. Like, Hydro may want to apply for an easement, and the concern we have is that without due consultation from First Nation it will be granted. We want clarification from Manitoba that this is not the case, that there should be consultation with First Nation before the province invokes that power to give easement to Hydro or MTS. So I think that is the clarification that we want.

Madam Chairperson: Thank you very much for your—Mr. Lamoureux, a short question.

Mr. Lamoureux: A very short question, Madam Chair. Mr. Harper, the biggest concern that I have—it

looks as if you have done your homework; you have approached the government—the question I have, fairly precise, is that: Do you feel that the government was listening to the advice that you were giving?

Madam Chairperson: Just prior to answering, is there leave to allow the presenter to answer the question? *[Agreed]*

Mr. Harper: In my presentation I talk about the lack of consultation. Yes, we were provided with a copy of the amendments, but, because of the lack of capacity that we have even within our legal department, we were not given an opportunity to really review the impacts of this legislation. With the meetings with the government officials, yes, we were provided with information, but it may be one-sided information. So we were not given—I guess we did not have time. We did our homework the last two days in preparation for this presentation.

Madam Chairperson: Thank you very much for your presentation, Mr. Harper.

We will now return to bill—oh, I am sorry.

Catharine Johannson, private citizen.

Bill 25—The Consumer Protection Amendment Act

Madam Chairperson: We will now return to Bill 25, The Consumer Protection Amendment Act.

Is Warren Mills here, private citizen? Mr. Mills's name will be dropped from the list, as he has been called once this morning.

Bill 32—The Real Property Amendment Act

Madam Chairperson: Returning once more to Bill 32, The Real Property Amendment Act.

Calling once again, Catharine Johannson, private citizen. Seeing that Catharine Johannson is not present, her name will be dropped from the list.

This concludes the list of presenters I have before me. Are there any other persons in attendance who wish to make a presentation? I see none.

* * *

Madam Chairperson: That concludes public—

An Honourable Member: Madam Chair?

Madam Chairperson: Yes, Mr. Lamoureux.

Mr. Kevin Lamoureux (Inkster): Madam Chair, you know, earlier this morning, I raised the

opportunity in terms of the procedures and traditions of the committee to have allowed for individuals to come in the evening, when it is far more accommodating. If we listen to what Mr. Harper said in the conclusion of the answer that he had provided me, he had indicated that even himself the last couple of days had to prepare in order to be ready for this morning. I think that, traditionally, historically, as a committee, we have allowed for people to have the opportunity to present in the evenings. I am wondering if there might be a willingness on this committee to allow for the committee to sit this evening, if need be, or have the Government House Leader, maybe, indicate another day in which we could hear presentations in the evening. I think that there would be great benefit for Manitobans, in particular individuals like Mr. Harper, who obviously expressed a great deal of concern. I think it would be most appropriate if we could somehow accommodate that, if at all possible.

Madam Chairperson: Thank you very much, Mr. Lamoureux. I would just like to inform the member that this committee does not have the opportunity to do that. That is something that is decided by the House. So only the Government House Leader can call the meeting.

So, with that in mind, I am now—

Mr. Lamoureux: On that note, Madam Chair, I do think what the committee can do is it could ultimately decide to recess at this time. If the committee did decide that, then it would then be up to the government to recall the committee. Just so that people are aware that the opportunity is still there for us to allow for people to participate in this process on an evening. The government, you know, can call it as early as tonight, tomorrow evening. I just want to respond to, in particular, individuals like Mr. Harper who made a presentation, and there are many others, I believe, potentially, that could make presentation, if, in fact, it was in the evening, as opposed to the morning.

So what I would ask the Chair is: Is it possible, then, for the committee to rise, so in this way the Government House Leader would then be afforded the opportunity to call a meeting?

Madam Chairperson: Order. Thank you, Mr. Lamoureux.

What I have been informed is that that motion would have to come from a committee member, a suggestion. So, seeing that that has not happened, I

will now proceed with the—in what order does the committee wish to proceed with clause-by-clause consideration of these bills?

An Honourable Member: Numerical order, or whatever is on the Order Paper.

Madam Chairperson: As listed?

An Honourable Member: As listed.

Madam Chairperson: Thank you.

During the consideration of a bill, the table of contents, the enacting clause and the title are postponed until all other clauses have been considered in their proper order. Also, if there is agreement from the committee for the longer bills, I will call clauses in blocks that conform to pages, with the understanding that we will stop at any particular clause or clauses where members may have comments, questions or amendments to propose. Is that agreed? *[Agreed]*

We will now proceed with clause-by-clause consideration of the bills.

Bill 25—The Consumer Protection Amendment Act (Payday Loans)

Madam Chairperson: Does the minister responsible for Bill 25 have an opening statement?

An Honourable Member: No.

Madam Chairperson: Does the critic from the official opposition have an opening statement for Bill 25?

* (12:30)

An Honourable Member: Well, sure.

An Honourable Member: Well, yeah, but he is not here.

Madam Chairperson: Thank you. Shall clause 1—

Mr. Kevin Lamoureux (Inkster): Thank you, Madam Chair.

Madam Chairperson: Order. Just a moment. I am sorry; I am having a hard time hearing.

Mr. Lamoureux: Yes. Madam Chair, I know, in listening to the presenters, that there is a great deal of concern in terms of the need for—

Madam Chairperson: You cannot—you would be able to make a statement at the end.

By leave, you can make an opening statement, I have been informed. Yes.

Mr. Leonard Derkach (Russell): Well, I was going to say it is quite unusual for us not to allow opening statements at the beginning. By leave you can do anything in this committee, right?

An Honourable Member: I will wait till we get one of the—

Madam Chairperson: Okay. I have been informed that opening statements are allowed by the minister as well as by the critic of the official opposition. Any other members can make opening statements by leave of the committee.

So I am going to ask: Is there leave of the committee for Mr. Lamoureux to make an opening statement?

An Honourable Member: No.

Madam Chairperson: It appears that leave has been denied.

Shall clause 1 pass?

Mr. Lamoureux: Yes, Madam Chair, what I would—

Point of Order

Mr. Derkach: Madam Chair, I want to raise, because there are some cat calls coming from across the way here about the absence of the critic for this bill.

Madam Chair, this committee was called at a time when children gather in the Legislature and meet with their MLAs. The critic for this particular piece of legislation is meeting with a class of students from his constituency right now. It is nothing but the government's fault that we are dealing with this legislation at this hour because normally this would be done in the evenings when we do not have visitors to our Legislature. I think it is a priority for the critic for this bill, who has children in the Legislature, to meet with them. I would suggest that, perhaps, he be given the courtesy to do his opening statement at another point in time in the consideration of this bill.

An Honourable Member: To the same point of order, Madam Chair.

Mr. Lamoureux: Yes. On the same point of order, Madam Chair. If we take a look at the procedures, in fact, inside the Chamber the Speaker quite often interrupts discussion or debate, if, in fact, there is absence made or if a member makes reference to the absence of a member. I think the Member for Russell (Mr. Derkach) brings a valid point in terms of why it

is that we are actually sitting here at this point in time, and the critic should not be held to blame for unfortunately not necessarily being able to be here or not be here.

So I would suggest that the Member for Russell does have a point of order, that it is not appropriate to be making reference to a critic being here or not being here. I would leave it at that.

Madam Chairperson: Just prior to entertaining any other comments, I wanted to mention to members that it is absolutely our practice to not make comments on the presence or absence of members, but that is if it appears on the record. I am quite sure that Hansard will reflect that it did not appear on record. I did not even hear it, so—

Mr. Doug Martindale (Burrows): Madam Chairperson, I do not agree with Mr. Derkach very often, but today I do, and if his critic comes back shortly, which he probably will, because normally we meet briefly with students, if this bill is still before us, then I think, with leave of the committee, their critic could make a statement about the bill.

Madam Chairperson: Is that agreed? *[Agreed]*

* * *

Madam Chairperson: Shall clause 1 pass?

Mr. Lamoureux: Yes, Madam Chairperson. I had the floor before the point of order was brought up, and the reason why I wanted to get the attention of the Chair is that, as the Chairperson has indicated, not being a member of the committee that means I am not able to move amendments at this stage. The question that I have, from what I understand, is then, if I want to move amendments, it would have to be at the report stage before I could actually move an amendment?

Madam Chairperson: Mr. Lamoureux, I am informed that that is correct.

Mr. Lamoureux: Then, because I do have a number of amendments that I would like to see brought to the legislation, I am not too sure in terms of which amendments the minister, if there are any amendments that are coming from the minister—can the Chairperson indicate to me then how much time I would actually have to actually get those amendments in? Normally, what would happen is that we would be sitting in the evening, and then the following day you have 14, 16, 18 hours in order to advise Legislative Counsel.

I am just not sure of the process. Can I get an explanation in terms of how it is that I would actually be able to move an amendment to this legislation?

Madam Chairperson: I have been informed, for the members' information, the day that it is reported to the House is the day that you would have to put forward notice to the House, to the Legislative Counsel, but I wanted to mention to the member that if this committee concludes its work here this afternoon, this would not come back to the House until Monday, which is several days from now.

Mr. Lamoureux: So I have the assurances, then, of this committee that I will have until the end of the day to put forward an amendment, which would then be discussed. I can have till the end of Monday in order to put forward the amendments. I appreciate the clarification. Thank you.

Point of Order

Mr. Derkach: Madam Chairperson, on a point of order with regard to procedure, this bill will be reported back to the Legislative Assembly on Monday. If there are, in fact, amendments to this in report stage, the bill cannot then be dealt with for 48 hours. Is that correct?

Madam Chairperson: My understanding is that is correct, without leave. Unless the—

Mr. Derkach: Well, but how do you do that practicably if, in fact, there are amendments to the bill? They have to be drafted by Legislative Counsel, and the bill, in a normal way of proceeding, does not come back then till after the House adjourns. What happens to this piece of legislation then?

Madam Chairperson: I have been informed that the practice is that, if the current legislative session continues in September, then the bill would continue and move on to report stage, but if a new legislative session commences, then the bill would die and have to be reintroduced.

Mr. Derkach: Madam Chairperson, I guess I have to ask the question: Is there an intent, then, for the government to signal whether or not they intend to continue the session in September, because then it would give us some idea as to what we are supposed to do with this bill?

Madam Chairperson: Order. Mr. Derkach, I have to inform you that that is a House leader decision, and that is not up to this committee to decide.

* * *

Madam Chairperson: So moving to back to this.

Clause 1—

Mr. Lamoureux: Madam Chairperson, I do have a number of questions that I would like to ask the minister based on the presentations. The first one is in regard to if—

* (12:40)

Madam Chairperson: Excuse me. I am sorry. I just have to call members to order. I am having a hard time hearing the member.

Please proceed, Mr. Lamoureux.

Mr. Lamoureux: The question I have for the minister is: If this bill were to become law, would this law be a part of general application and will it apply, for example, to First Nation communities?

Mr. Selinger: The answer is yes.

Mr. Lamoureux: So would a payday loan company be able to establish on a First Nations facility or on reserve then?

Hon. Greg Selinger (Minister of Finance): It would a law of general application. It would apply to a payday lender anywhere in the province of Manitoba.

Mr. Lamoureux: What, then, would be the procedure for the application of this law to companies operating on First Nation communities?

Mr. Selinger: As a law of general application they would have to follow the procedures as outlined in the bill in terms of how they get licensed.

Mr. Lamoureux: There was a presenter from Canadian protections amendment on the bill that came from the Canadian Payday Loan Association and in their package I thought they did a wonderful job in terms of coming up with a series of amendments. The presenter had indicated that they had had some dialogue with the government. I do not know if it was the minister direct, if he has actually met with this group. Maybe that could be the first question I would have of the minister. Did he himself or members of his staff meet with that organization?

Mr. Selinger: The lobbyist for the payday lenders' association met with our staff to discuss their recommended amendments.

Mr. Lamoureux: As we go through the bill into the many different parts of it, I see in the presentation that was submitted that there were a number of

amendments. The question I have is: Did the Minister of Finance (Mr. Selinger)—or can he indicate to this committee whether or not he sees any merit to any of the amendments that were being put forward by this particular group, or would it be his intent at this stage not to entertain amendments?

Mr. Selinger: There is one amendment that I will be proposing.

Mr. Lamoureux: Can the minister indicate whether or not that would—does that deal with the definitions because if it does then I will hold off?

Mr. Selinger: No, it does not.

Mr. Lamoureux: If we look at 137 we get the definition of the payday loans and the organization was—

Madam Chairperson: Mr. Lamoureux, are you still on clause 1?

An Honourable Member: Clause 1, Page 1, the title.

Mr. Lamoureux: I think we can pass that then, Madam Chairperson. I will wait until we get to clause 137.

Madam Chairperson: Okay, so we will once again return. Shall clause 1 pass?

Mr. Derkach: Just one brief question, Madam Chair. On the ability for anyone to collect on—if a payday loan establishment establishes on a reserve, what authority provincially do we have, or does anyone have, to collect a loan on a reserve because right at the present time there is no mechanism for it?

Mr. Selinger: We are not in the loan business, but as a law of general application we would be able to enforce our legislation to a payday lender who might be operating on a reserve.

Mr. Derkach: Is that a legal opinion that has been researched in terms of being able, for anyone being able, to collect on a payday loan on a reserve because right now I do not believe that there is provision for that?

Mr. Selinger: Right now payday lenders are not licensed anywhere in the province. If this law passes, at the will of the Legislature, they will all be licensed anywhere in Manitoba, including on reserves, and will have to comply with the regulations and the requirements of the legislation.

Madam Chairperson: Clause 1—pass. Shall Clause 2 pass?

Mr. Lamoureux: Madam Chair, I do not want to let it slide by. What I am interested in is 137 on page 2—

Madam Chairperson: Which is in clause 3.

Mr. Lamoureux: That is what I am asking.

Madam Chairperson: We are in clause 2.

An Honourable Member: That is 3.

Mr. Lamoureux: So it is 3, okay, thank you.

Madam Chairperson: Clause 2—pass. Shall Clause 3 pass?

Mr. Lamoureux: Madam Chairperson, in the presentation this is one of the areas in which there was a recommendation that there be a change in definition. I do have a lot of concern even going into the committee this morning in regard to the definition, and then when the presenter made reference to it, I thought, well, here is a good opportunity for me to raise it and find out why it is the government has chosen not to address this issue.

So I am going to put it in a couple of different ways; maybe just to start off, I will stick right to the presentation that was made in which it makes reference, and I will quote right directly from it, Madam Chair. It states that a "definition of a payday loan must not be 'subject to regulations.' This reference must be removed from the existing definition. More specifically, the definition of 'payday loan' must be defined in the Act, and subject to change only through an amendment to the Act."

Mr. Doug Martindale, Acting Chairperson, in the Chair

It goes on to indicate that "as the entire Act governs payday loans the definition should be certain. If by regulation one can change the subject of the Act and its regulations, and the object of the hearings of the public utilities board hearings, then the effect and purpose of the legislation changes. Any change to the definition of payday loan is so fundamental that it should be done through changes to the Act, rather than regulation."

I am wondering if the minister could give comment on that particular rationale that was being expressed.

Mr. Selinger: Yes, the member earlier this morning was concerned that a payday loan definition of 62

days and \$1,500 might allow payday lenders to structure their loans to be longer and/or higher. By putting the definition of a payday loan in a regulation, recalling this is the first jurisdiction in the country to pioneer this type of legislation, if we saw there was an abuse of the legislation, we could, by regulation, amend it to cover off the cases the member was concerned about this morning, in other words, a 63-day loan or a 62.5-day loan or a \$1,501 loan.

So, by putting it in regulation, we still are accountable. It has to be published, but it allows a more timely response to a potential industry abuse of the legislation by trying to circumvent it in some way to the disadvantage of protecting consumers.

Mr. Lamoureux: Yes, I appreciate the answer from the minister, and that is why, in coming into the committee—and it intrigued me, the response, only because even shortly after there was another presenter, and I had posed questions in regard to the \$1,500 to even a couple of presenters because it is a concern that I do have. When you exempt, if you put aside the regulation, the \$1,500 as stipulated here, my understanding—and please correct me if I am wrong—is that if I have a Money Mart and I issue a loan of \$1,501, then I would be exempt from this legislation. Is that the correct interpretation?

Mr. Selinger: The short answer is that we defined a payday loan at \$1,500 and 62 days because empirical evidence had shown that the overwhelming majority of loans were far smaller than that for far shorter periods of time, and so the average loan, for example, is under \$300 usually for a period of a couple of weeks. Now, if a loan was made available to somebody over the \$1,500 or longer than the 62 days, then they are then covered by the Criminal Code, which means it cannot be more than 60 percent. So, in other words, the threshold would be more challenging. It is already established in the Criminal Code. So it is not like they go into territory that is unregulated at all; they then come back under the Criminal Code.

So we defined it this way to cover off the majority of activity with some latitude that is occurring out there to try and regulate it.

Mr. Lamoureux: Okay, so, if you take \$1,501 loan, then there is federal regulation that will protect the consumer, whereas if it is a \$1,500 loan, there is no federal legislation?

* (12:50)

Mr. Selinger: Right now, there is no regulation of the industry, but there is a Criminal Code provision, Section 347, which says that any loan by anybody cannot be more than 60 percent, period. All costs included. Nobody is enforcing that except the Province of Manitoba, through court action, through prosecution.

So we have across the country an industry which is operating technically outside of the Criminal Code, but is not being prosecuted by the law enforcement officials who make their own decisions about what are the priorities for prosecution. Manitoba is the only jurisdiction where the police have decided to bring charges against a payday lender for operating outside of the Criminal Code.

We are moving this from criminal law to civil law with this piece of legislation and a licensing regime with the regulation and licensing enforcement being done by our Consumers' Bureau. This will allow for more effective regulation, more effective inspections. It will ban some of the negative consumer practices which you were concerned about: rollovers, title loans and other practices like that. We defined it that way because we know that most loans are around \$300 for a couple of weeks, usually less. We defined it at \$1,500 in 62 days to capture the vast majority; I would say over 95 percent of all the activity. Where a loan goes beyond the definition that we have stated here, it falls back under the Criminal Code. It shifts back from civil law as per this bill, back under criminal law. The police can take action on it if they choose, if they think it is a concern that they want to act on.

Mr. Lamoureux: I am wondering then, based on what the minister has said, that nothing prevents us from putting it at \$2,000 because then, for example, we will be able to take civil action. One presenter talked about the types of individuals whom he has had cases, has dealt with, and these are individuals, or at least one of them, I think he made reference to \$50,000. There is a high demand for these loans. It is not just smaller loans, even though it might be a small percentage. You made reference to 95 percent of the loans at these facilities are similar around that \$300-mark, or definitely less than the \$1,500.

What would be the argument for not having it up to \$2,000?

Mr. Selinger: Well, first of all, it is an empirical argument. As I explained to the member, the overwhelming majority of the loans are short periods

of time for smaller amounts of money, usually no more than \$300. Is it the median or the average loan is around \$300? The average loan is around \$300. So this legislation captures that.

If you start having higher limits, you actually could set up a situation where the amount they paid for that loan from a payday lender might be higher, or would likely be higher, than what they could get on that loan from a more regular financial institution. We are trying to control the activity. The activity where the very high interest rates are charged is on short-term loans for smaller amounts of money. When you get back into a \$2,000 loan, your prospects of getting that from an existing financial institution, like a credit union or a bank, you could have access to those facilities if you wish.

So we do not want people to be taking out high-cost loans. We do not want to create an industry with a higher cap that allows for higher-cost loans at those higher amounts. We want to manage the activity that is going on right now, which is smaller amounts for shorter periods of time, where the interest rates are very high because the shorter the loan, the annual calculation on the interest rate goes up very quickly, if you understand what I mean. A one-day loan, the rate of interest on that is times 365 on an annual calculation. A two-day loan is by 26 because 26 two-week periods. So the longer the loan, the lower the rate of interest and the higher the loan, the greater the amount you pay for it. So what we are trying to do is control the existing activity.

Madam Chairperson in the Chair

If we saw a trend to loans between, say, \$1,500 and \$2,000, we could, by regulation, adjust the regulation to capture that activity. So there will be an ongoing need to monitor what is going on in the community. The advantage of having this done by the Public Utilities Board would have to, at least, review it once every three years. They could review it more regularly. If they see a pattern of activity that they want to act on, they could make recommendations back to the government to change the definitions. They have a power within the bill to make policy recommendations to government on practices they see happening in this area of activity that they think we should act upon with further regulatory measures.

Mr. Lamoureux: But, now, if someone gets a \$1,700 loan, the civil action then would not be available for them.

Mr. Selinger: If they took a \$1,700 loan from a payday lender at a rate of interest above 60 percent, they could be prosecuted under criminal law, which is a harsher law.

Mr. Lamoureux: But, if they took a \$500 loan at the same interest rate, they could also then be prosecuted from criminal law, too, right?

Mr. Selinger: No. The whole point of this bill is to take the small loan activity outside the Criminal Code and to regulate it through this bill, which is why we are asking the federal government to give us an exemption to Section 347 to regulate the payday loan industry. This is exactly the way tax discounting is regulated right now. It is a separate piece of legislation outside of the Criminal Code provisions. It has been in place since 1979. If I recall correctly, it might have actually been Warren Allmand that brought it in when I was involved back in those days. It was to control this type of activity, which was growing very rapidly, and did not seem to be of sufficient magnitude for criminal charges to be the focus.

So we are regulating it because it is not being regulated now, even though it is illegal. We are doing it civilly with a licensing inspection regime, which is more cost effective, gives more protection to consumers up front, in the way the legislation is drafted. Over and above that, you fall back under the provisions of the Criminal Code. For larger amounts of money, arguably, Criminal Code might be a more appropriate way to regulate it in the short run.

Mr. Lamoureux: So, then, we are not dependent then on Ottawa having to exempt us from 347?

Mr. Selinger: Yes, we are. This bill sets us up to get the Criminal Code exemption under Section 347. We can do all the consumer protection elements of this bill: rollovers, title loans, banning those kinds of things, information requirements. All of that can be done within our law. In order for the interest rate to be set by the Public Utilities Board, we need the Section 347 Criminal Code exemption. I have talked to the federal minister about that. He has shown a lot of interest in it, as the previous minister did, former Minister Cotler. They appreciate the approach we are taking. They think this kind of activity should be regulated under civil law and, without giving me a timetable, they have shown great interest in moving forward on that.

Mr. Lamoureux: In regard to the 60-day–

An Honourable Member: 62 days.

Mr. Lamoureux: I am sorry, 62 days. Is it the same rationale, or can the minister give some sort of an explanation why 62 days as opposed to, let us say, the 31 days?

Mr. Selinger: Exactly the same rationale. We are trying to capture the overwhelming bulk of the activity going on here, with some additional latitude and activity that occurs outside of those limits, once again, falls back under the Criminal Code.

Mr. Lamoureux: A major concern that was raised by several presenters was the whole issue of rollovers, but where in the definitions is that listed off?

Mr. Selinger: Well, this bill will ban rollover loans, period right? I will get you the specific section that we are working off of.

So I would ask the member to go to Section 152(1). This is where an extension or a renewal of a loan occurs; this allows us to regulate the charges. So you can see that, under Section 152(1), it will prohibit additional fees to be charged for loan extensions, or renewals, or for replacement loans.

Then the next section, 154, prohibits concurrent loans. Does the member see that on page 14?

Mr. Lamoureux: Yes.

Mr. Selinger: So that stops loans being stacked upon loans.

Madam Chairperson: Order.

Mr. Selinger: You can have an extension, a regulated extension without additional fees being stacked on, but you cannot stack one loan on top of another.

Madam Chairperson: Order, please.

Mr. Selinger: It stops the rollovers.

Madam Chairperson: The hour being one o'clock, as previously determined, this committee will rise.

I would like to ask committee members to leave behind their copies of these bills if possible, so we may have them for reference when we meet again.

Committee rise.

COMMITTEE ROSE AT: 1 p.m.

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