



Legislative Assembly of Manitoba

STANDING COMMITTEE

ON

AGRICULTURE

Chairman

**Mr. Morris McGregor
Constituency of Virden**



Monday, June 11, 1979 3:00 P.M.

**Hearing Of The Standing Committee
On
Agriculture**

Monday, June 11, 1979

Time: 3:00 p.m.

MR. CLERK: Order please. With the absence of your regular Chairman, your first order of business will be to elect an Acting Chairman. Are there any nominations?

MR. BLAKE: I move that Morris McGregor get up.

MR. CLERK: Any further nominations?

MR. USKIW: I move that nominations close.

MR. CLERK: Mr. McGregor, will you take the Chair, please?

CHAIRMAN: Mr. Morris McGregor (Virden).

MR. CHAIRMAN: I call the Committee to order to deal with Bill 18 and I will ask for anyone wanting to make a presentation. I do have two on the list: Tom Dooley, on behalf of Scarth and Company; Mr. Bert Hall, on behalf of the Agricultural Producers' Marketing Board. Are there any additions to those two?

MR. TOM DOOLEY: Mr. Chairman, Tom Dooley. I'm with Mr. Hall, so there is really only one of us.

MR. CHAIRMAN: Thank you.

MR. USKIW: Mr. Chairman, on a point of order. I wonder if the Chair can advise the Committee as to when we might have Legislative Counsel before committee.

MR. CLERK: I'm going to phone him while this gentleman is making his presentation.

MR. CHAIRMAN: They're just on the way. It's just a momentary . . .

MR. USKIW: Okay.

MR. CHAIRMAN: I will call, then, Mr. Hall, to make his presentation.

MR. BERT HALL: Thank you, Mr. Chairman, and Members of the Agricultural Committee. Regarding Bill 18, the Act to Amend the The Natural Products Marketing Act, I am acting as spokesman today for the eight producer marketing boards that we have in the province. I will read through the presentation which we have distributed. It is not very lengthy and I think perhaps the best way is to simply read it, because it's quite concise and straightforward.

As a representative of the Agricultural Producers marketing boards in Manitoba, I appreciate having this opportunity to address some comments to you concerning Bill 18, which proposes amendments to The Natural Products Marketing Act.

As members of the Committee may be aware, representatives of producer boards during recent months, have had a number of discussions with the Minister of Agriculture concerning the need for major revisions to The Natural Products Marketing Act with respect to the supervision of producer boards and the provision of a mechanism for persons affected by orders and regulations made under the Act, to receive a fair, impartial and judicial hearing on any complaints they may have.

The amendments proposed in Bill 18 do not deal with the main thrust of our concerns, although

they do touch on one or two points. However, we have been gratified with the minister's indication of willingness to explore further, following the conclusion of the current session of the Assembly, problems we have raised with the Act and possible ways of dealing with these problems.

This matter aside, Bill 18 does deal with a number of matters which are of significance and importance in the eyes of producers of commodities regulated by marketing boards, and I believe it is accurate to say that with one exception, the amendments proposed in the bill have the support of the eight producer boards which I represent. Although it might to some seem a rather insignificant change, we believe the proposal to change the name of the Manitoba Marketing Board to the Manitoba Natural Products Marketing Council is a sound one. The title given originally to this body, has given rise to some confusion, especially amongst those not closely associated with the operations of producer boards. Farm organizations have recommended on a number of occasions, a changing of the title of this body to one more indicative of its function, and which would more clearly differentiate it from producer boards. This proposed amendment has our support.

Bill 18 will also deal with the serious situation facing egg producers in Manitoba. The Manitoba Egg Producers' Marketing Plan, operating under the current provisions of The Natural Products Marketing Act, provides for the establishment of producer quotas based on the number of dozens of eggs a producer may market. This places Manitoba in a position of being out of step with the control system used by the Canadian Egg Marketing Agency and other provincial egg boards which provide for the establishment of producer quotas based on layer numbers; i.e., production controls, rather than marketing controls as in Manitoba. If Manitoba is found to have layer numbers in excess of its provincial quota, the Federal-Provincial Egg Agreement provides for a penalty of \$1.00 per over-quota layer per month. Because the Manitoba Egg Producers Marketing Board has not had authority to restrict the size of laying flocks, Manitoba has been subject to significant penalties under the National Agreement. All other provinces have adjusted their control systems in keeping with the provisions of the National Agreement and it is of major concern to egg producers in Manitoba that producers in other provinces are now able to produce and market as many eggs as their quota layers can produce while Manitoba's producers are penalized if they upgrade the quality of their laying flocks. It will be seen that producers in Manitoba are currently in a very disadvantageous position. The amendments proposed in Bill 18 would alleviate this concern and we would urge members of the committee to support this important change. It has been indicated that such an action would be supported fully by egg and pullet producers in Manitoba in that resolutions calling for such a change have been submitted to and passed by three successive annual meetings of the Producer Board here in Manitoba.

Our concern with Bill 18 rests with Section 10 sub-section (4)(b) which proposes to give the Manitoba Marketing Council the power to grant in whole or in part the appeals of individuals against the decisions, directives or orders of any given producer board. The producer boards are concerned that this provision would leave room for individuals or entities to be dealt with differently relative to any decision, directive or order in question. Very simply, this provision could mean that the Council could decide that a given decision, directive or order should not apply to an individual and could grant his or her appeal. However, the offending decision, directive or order would remain in place and would apply to everyone else unless they in turn successfully appealed its application. The producer boards firmly believe that should the Council, after a hearing, determine that a decision, directive or order of a particular producer board is improper, then the offending decision, directive or order should be deemed equally improper for all people, not just for the appellant.

To alleviate this concern, we recommend strongly that the current 10(4)(b) be deleted and be replaced by a clause which would provide the Council with authority by a proper order of its own, to set aside any decision, directive or order or a portion thereof, if it is judged after a hearing to be improper. Such an action would mean that the producer board involved would be forced to re-think and re-draft its decision, directive or order, or the improper portion of it, and that the action taken by the Manitoba Council would ensure equal treatment for all persons affected by it.

We are also concerned that 10(4)(b), if left as currently proposed, could result in producer boards becoming the simple administrator of government policy and programs, and having to bear responsibility for such policies and programs, if The Manitoba Council is allowed to grant whatever an appellant requests in his appeal. This, in the minds of the producers of commodities regulated by boards, would be totally unacceptable. We would sooner have no regulation on the point in question than become administrators of and assume responsibility for decisions, directives and orders of a board appointed by government.

During the debate on Second Reading of Bill 18, the Minister of Agriculture indicated that he was aware of our concern in this regard and that he was prepared to consider an appropriate amendment to alleviate this potential problem at the Committee stage. We urge the Minister strongly to introduce such an amendment and all members of the Committee to support its adoption.

Once again, Mr. Chairman, I express my appreciation for the opportunity to direct my some comments relative to Bill 18 to the Members of the Committee and for their attention to them. We have listed the eight producer boards which have met together and are all supporting this presentation. Thank you.

MR. CHAIRMAN: Thank you, Mr. Hall, and if you'd just stay to the mike, there is someone who may want to question you. The Honourable Minister of Agriculture.

MR. DOWNEY: Mr. Chairman, I really don't have any questions directly to him. I just would like to indicate the appreciation by myself and the government, for coming forward and speaking on the amendments, because I had indicated in the Second Reading in the House we were prepared to look at an amendment and alleviate some of the problems that were of concern to the producer boards, and we are prepared to do that at committee stage.

In general, at meetings the representative of the producer board has indicated that I have indicated to the producer boards that over the coming months if there are other problems that we haven't dealt with at this particular time, that we are prepared to discuss with the producers and those concerned citizens of the province, on the changes they might want to recommend at a future time. So I just want to thank the member for support on it this time, I don't have any questions to direct to . . .

MR. CHAIRMAN: The Honourable Member for Lac du Bonnet.

MR. USKIW: Well, Mr. Chairman, I too want to thank Mr. Hall for making his views known. Perhaps he isn't aware of it but he sounded as if it was a speech that was given by myself and the Member for St. George just a few days ago, in that the points that he raises are exactly the points of concern that were raised by the member for St. George and myself on second reading. As a result of which, Mr. Chairman, we have prepared an amendment to be presented to this committee and deals with the question of the powers of the appeal body. It deals with the question of the powers of the marketing council. It is our belief that if the Minister doesn't wish to have certain powers exercised by a marketing board, then it's within his rights to deny those powers in the first instance. But once they are given or delegated to a marketing board, then there should not be another body to overrule this body, that is the marketing board itself.

So we propose in our amendment when we get into clause by clause, to amend the bill with hopefully support from the government, to the extent that appeals to the council would only be acceptable appeals if it had to do with boards passing regulations or by-laws beyond their jurisdiction; that is where they have gone beyond the limitation of the regulations that have empowered them in the first place. That is the nature of our amendment and we will hopefully get the support of all members of the committee on that one.

Mr. Chairman, just before I finish I might add that we support everything else in the bill if it is amended according to the amendment that we have prepared.

MR. CHAIRMAN: If that's all the questions of Mr. Hall, thank you, Mr. Hall, and we'll progress with the bill clause by clause, or page by page, whatever —(Interjection)— Page by page? The Honourable Minister.

MR. DOWNEY: Mr. Chairman, well I think if we could go clause by clause and then when we get to 10.(4)(b), we have an amendment that we'd like to introduce at that particular time. We can pick it up there, clause by clause.

MR. CHAIRMAN: Section 1, Clause 1 (2)(d) —pass; Section 2—pass; Section 3—pass; Section 4—pass; Section 5—pass; Section 6—pass — the Member for Gladstone.

MR. FERGUSON: Yes, we have an amendment to Section 6. The amendment would be to Section 10(4), Clause (b). Would you like me to read the amendment?

MR. CHAIRMAN: Yes.

MR. FERGUSON: All right, we'll strike out the old clause and the new clause would read that the proposed new clause 10(4)(b) of The Natural Products Marketing Act as set out in Section 6 of Bill 18 be struck out and the following clause be substituted therefor. "Strike out the decision, director or order of the Producer Board or Marketing Commission, as the case may be, in whole or in part to the extent necessary to grant the whole or part of the appeal"

MR. CHAIRMAN: Any comment? Pass.
The Member for Lac du Bonnet.

MR. USKIW: Well, I think I'm in order now to proceed with the next amendment, am I not? It follows . . . I think we have to deal with 10(5). Yes, on 10(5) is where I want to make my motion.

MR. CHAIRMAN: 10(5).

MR. USKIW: Mr. Chairman, before we can move an amendment I think we have to pass 10(5), or do we move it before we pass 10(5)? All right, I'll propose the amendment. We can pass it as amended if it is concurred in, because we have 10(6) as well. What we're doing is adding to 10(5), 10(6). Mr. Chairman, if it's in order, I will then move, seconded by the Honourable Member for Rupertsland that Bill 18 be amended by adding thereto immediately after proposed new subsection 10(5) to The Natural Products Marketing Act as set out in Section 6 of Bill 18 the following subsection: "Appeals to council limited.

10(6) notwithstanding anything contained in this section the Manitoba Council shall herein consider appeals only with respect to any regulation, order or directive of a Producer Board or Commission that was made by the Board or Commission as the case may be, without jurisdiction or in excess of jurisdiction." Mr. Chairman, —(Interjection)— I want to now speak to the Motion. —(Interjection)—

Now, Mr. Chairman, the purpose of this amendment, is to restrict the appeals to situations only where a marketing board has acted beyond its authority, that is, where it has made a decision that it was not capable of making in accordance with the regulations under which it was functioning. So that if they indeed are trying to stretch the regulations in order to give them more power in the marketing field, this section would then come into force and a person could appeal any decision of a marketing board that was not clearly defined as having the authority to make such by-law regulation or order. So in other words it's to make certain that the limitations of the regulations governing the marketing boards are, in fact, the limitations beyond which a marketing board could not go.

To leave the Act as it is now, Mr. Chairman, well, it's ridiculous to say the least, Mr. Chairman, because the minister delegates powers to a marketing board. It's within the power of the Minister of Agriculture to delegate powers. If the minister feels that certain marketing boards ought to have less power, then of course all the minister has to do, is change the regulation which empower that board — and that's in keeping with the submission that we just heard a few moments ago — that if we can't exercise the powers that are delegated to us, then they have said, don't give us those powers in the first place, and that's really what this does. It puts the onus on the minister to look at each marketing board and determine how much power they should have — power of regulation, power of by-law, or what authority they should have within their agency. You know, I think a case in point as an example would be the Beef Producers' Association, the Cattlemens' Association or whatever, where their powers are constrained by legislation, could have been by regulation, and that they are limited to those powers. Now the minister can do that with every board, or every commission.

So what we are doing here, if we pass this amendmen., is putting the onus on the minister, if he feels that the boards have too much power then he should amend the regulations reducing that power, but once he has given them power he should not have another government agency taking that power away from them. As long as they have made a decision, an order, a directive, a regulation, or by-law, under their authority they should not be subject to any further scrutiny or harassment by any agency, Mr. Chairman.

MR. CHAIRMAN: The Honourable Minister of Agriculture.

MR. DOWNEY: Well, Mr. Chairman, this is the first opportunity we've had to look at the amendment or suggested amendment, which did not come out of the speaking on the bill in the Second Reading. I would have to say that in getting the support from the producers boards as we have prepared our amendments to The Natural Products Marketing Act, that my feeling is that there's no concern hhat producer boards, in fact, are going to reach beyond their authoritative power or the regulations which enables them to operate at this particular time.

I do think that as The Manitoba Marketing Board, as it's been named in the past — and the proposed name change to make it The Manitoba Marketing Council — that it is an opportunity for people who are affected by a decision of the board that, in fact, they are able to have an appeal

process to appeal to, and that is basically what we are proposing at this particular time. It isn't questioning the over-use of powers that boards have, or the reduction of powers. I think that the producer boards have acted in the majority of cases, very responsibly, and haven't requested or tried to overstep the authoritative power that they have, but it is an appeal system that they themselves have not argued with or disagreed with, that they should have a system for they as individuals or people affected by decisions that they can, in fact, be heard before and action taken.

So, I cannot support this amendment. However, it is the first time we've seen it. I have indicated to the members of the committee and the public that we will be discussing with the producer boards in the next few months, if it's possible that we will look at this amendment at that time and if felt that it was necessary to give it consideration I would do so. But at this particular time I would have to recommend that we vote against the amendment as proposed by the Member for Lac du Bonnet.

MR. USKIW: Well, Mr. Chairman, perhaps the minister isn't fully cognizant of the impact of his legislation. The minister should clearly appreciate that there is a logic to an appeal, where something has been violated — someone has to have recourse if there's a violation of regulation or by-law or whatever — but if an agency is operating within its legal jurisdiction, then what is the need for appeal?

Now, if the minister is serious about a need for appeal there, then what he is telling us is that we must have the right to appeal a policy decision of a board, even though it has the right to make that decision. What he's doing is wanting to run the Marketing Board to the Marketing Council. That's really the impact of his legislation. Now, if that isn't his intent, he should agree with the amendment. If he's not ready to agree with the amendment today, then I would suggest that this committee not report until he has an opportunity to peruse at some later time today or tomorrow, the suggestion that we put before this committee and to reconvene the committee to finalize its report one day hence, Mr. Chairman. That's a suggestion.

Now, surely the minister doesn't want to make the argument that he does want to have a role in controlling the policy decisions of marketing boards. You know, if that's what he's saying then this amendment of course isn't acceptable to him. I just don't believe that the government should go that far, once it has delegated jurisdiction to a marketing board, to carry out certain functions, that anyone should other than the minister if he wants to intercede in a given situation he can do so by change in regulation, but I don't believe a judge in a court should decide how the milk producers handle their milk industry. I don't believe a judge in a court should have to worry about and decide on how the hog producers sell their hogs, whether they should have a direct contract with a packer or whether they should operate the dutch auction system, that is a policy decision. And surely we don't want to relegate policy decisions in the marketing of agricultural products to a judge in the courts, Mr. Chairman. That's an absurd proposal. It's certainly destructive to the whole concept of marketing boards. And if the minister insists that he's serious, that he wants that kind of intervention, then at least I know where this minister sits vis-a-vis marketing boards.

This is a stroke of death, if it's implemented, Mr. Chairman, as far as marketing boards are concerned. It means that they have to act in conformity with the wishes of the then-government, whoever it is, who appoint the marketing council, that's really what it means.

So, Mr. Chairman, whatever the minister wishes to do with our proposal that is up to him. We register our opposition to his bill; we have offered a solution to get him out of an impasse. Our solution is very much conforming with the submission that he has just received from the producer marketing boards, and I leave it there, Mr. Chairman, I have nothing further to say.

MR. DOWNEY: Mr. Chairman, I find it most interesting to have the Member for Lac du Bonnet to come out and say now that it is his concern that we're proposing to direct as a government, how producer boards should operate or how they shouldn't. It couldn't be further from what is actually taking place. I'm sure we've had eight years of that type of governing of our Producer Boards and manipulation by the Member for Lac du Bonnet to arrive at what he wanted as a Minister, not, Mr. Chairman . . .

MR. CHAIRMAN: The Member for Lac du Bonnet on a point of privilege.

MR. USKIW: I would like the Minister to cite one example where the government has reversed a decision of a Marketing Board who have been delegated to make those decisions in those eight years that he's referring to. If he's talking about governments drafting regulations that empower certain Boards to do certain things, that is the role of government, Mr. Chairman, but once those regulations are there and the Boards are exercising their powers under those regulations, I say,

Agriculture
Monday, June 11, 1979

Mr. Chairman, that there is no role to be played by any other jurisdiction, and if they don't like what is happening, Mr. Chairman, they have the right to change the regulation, but that is the extent of any government role. So the Minister cannot cite one example, and I ask him to reconsider his statement, Mr. Chairman.

MR. CHAIRMAN: The Honourable Minister of Agriculture.

MR. DOWNEY: Well, Mr. Chairman, I again go back and say that I think that we are making the system so that it's responsive to the needs of the Producer Boards, that it in fact carries the support of the Producer Boards. And we have proposed an amendment which will I'm sure treat all people who are appealing a directive or an order of the Board equally, that in fact, as the member has proposed an amendment, we cannot support it and I call for the question on his amendment.

MR. CHAIRMAN: The question . . . all those in favour of the amendment?

MR. CLERK: One, two, three.

MR. CHAIRMAN: Those against the amendment.

MR. CLERK: One, two, three, four, five. t defeated.

MR. CHAIRMAN: I declare the amendmen

10(5)—pass; Section 7—pass; Section 8—pass; Section 9—pass; Section 10—pass; Section 11—pass; —pass; Section 13—pass; Section 14—pass; Section 12 Preamble—pass; Title—pass; Bill be reported—pass. Committee rise.