

Third Session - Fortieth Legislature
of the
Legislative Assembly of Manitoba
Standing Committee
on
Justice

Chairperson
Mr. Bidhu Jha
Constituency of Radisson

Vol. LXVI No. 1 - 6 p.m., Thursday, May 22, 2014

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MANITOBA LEGISLATIVE ASSEMBLY
Fortieth Legislature

Member	Constituency	Political Affiliation
ALLAN, Nancy	St. Vital	NDP
ALLUM, James, Hon.	Fort Garry-Riverview	NDP
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<i>Vacant</i>	The Pas	

**LEGISLATIVE ASSEMBLY OF MANITOBA
THE STANDING COMMITTEE ON JUSTICE**

Thursday, May 22, 2014

TIME – 6 p.m.

LOCATION – Winnipeg, Manitoba

CHAIRPERSON – Mr. Bidhu Jha (Radisson)

**VICE-CHAIRPERSON – Mr. Mohinder Saran
(The Maples)**

ATTENDANCE – 11 QUORUM – 6

Members of the Committee present:

*Hon. Ms. Braun, Hon. Messrs. Chomiak,
Kostyshyn, Swan*

*Messrs. Caldwell, Goertzen, Graydon, Jha,
Pedersen, Saran, Smook*

WRITTEN SUBMISSIONS:

*Bill 31–The Police Services Amendment Act
(Community Safety Officers)*

*Doug Dobrowolski, Association of Manitoba
Municipalities*

*Bill 50–The Protection for Temporary Help
Workers Act (Worker Recruitment and
Protection Act and Employment Standards Code
Amended)*

*Yvonne Thompson, Human Resource
Management Association of Manitoba*

MATTERS UNDER CONSIDERATION:

Bill 3–The Witness Security Amendment Act

*Bill 31–The Police Services Amendment Act
(Community Safety Officers)*

*Bill 50–The Protection for Temporary Help
Workers Act (Worker Recruitment and
Protection Act and Employment Standards Code
Amended)*

*Bill 51–The Legislative Assembly Amendment
Act*

* * *

Clerk Assistant (Ms. Monique Grenier): Good evening. Will the Standing Committee on Justice please come to order.

Before the committee can proceed with the business before it, it must elect a new Chairperson. Are there any nominations?

Hon. Andrew Swan (Minister of Justice and Attorney General): I nominate Mr. Jha.

Clerk Assistant: Mr. Jha has been nominated. Are there any other nominations?

Mr. Kelvin Goertzen (Steinbach): I nominate the member for Emerson (Mr. Graydon).

Clerk Assistant: Okay, I have Mr. Emerson—pardon me. Mr. Graydon has been nominated. You just caught me by surprise. *[interjection]*

We currently have Mr. Jha and Mr. Graydon nominated as Chairperson. Are there—okay, there's no other nominations, obviously.

Okay, do we—all those in favour for Mr. Jha as Chair. One, two, three, four, five, six, seven.

All those in favour of Mr. Graydon as Chair.

Okay, the vote is seven for Mr. Jha and four for Mr. Graydon.

I, therefore—Mr. Jha, will you please come take the Chair.

Mr. Chairperson: Good evening. Our next item of business is the election of a Vice-Chairperson. Are there any nominations?

Mr. Swan: I nominate Mr. Saran.

Mr. Chairperson: Mr. Saran has been—Mr. Goertzen?

Mr. Goertzen: I nominate Mr. Pedersen.

Mr. Chairperson: Mr. Pedersen has been nominated.

So all those in favour of Mr. Saran, please raise your hands.

All those in favour of Mr. Pedersen, please raise your hands.

The result is six to four, and Mr. Saran is now nominated as the Vice-Chair.

The meeting has been called to consider the following bills: Bill 3, The Witness Security Amendment Act; Bill 31, The Police Services Amendment Act; Bill 50, The Protection of Temporary Help Workers Act; and Bill 51, The Legislative Assembly Amendment Act.

How does the committee wish to go along this evening?

Mr. Swan: Mr. Chair, I'd suggest we begin with Bill 50 that Ms. Braun will be dealing with and then we can proceed with bills 3, 31 and 51.

Mr. Chairperson: We had requested—how long are we going to sit in this committee?

Mr. Goertzen: Until midnight and then review, Mr. Chairperson.

Mr. Chairperson: Until midnight and then review.

Is that the will of the committee to adopt this? *[Agreed]*

The following written submissions have been received and distributed to committee members: Doug Dobrowolski, Association of Manitoba Municipalities, on Bill 31; Ron Gauthier, Human Resource Management Association of Manitoba, on Bill 50.

Does the committee agree to have these submissions appear in the Hansard transcript of this meeting? *[Agreed]*

Apparently there are no registered presenters for tonight's meeting. If there is anyone in the audience who wish to like to present or be presenter this evening please come forward and state your name clearly for the record. Seeing none, we will proceed immediately to clause-by-clause considerations of these bills.

In what order does the committee wish to proceed?

Mr. Swan: I'd suggest we begin with Bill 50 and then proceed with bills 3, 31 and 51.

Mr. Chairperson: All agreed? *[Agreed]*

During the consideration of a bill, the table of contents, the preamble, the enacting clause and the title are postponed until other clauses have been considered in their proper order. Also, if there is agreement from the committee, the Chair will call clauses in blocks that confirm to pages with the understanding that we will stop at any particular

clause or clauses where the members may have comments, questions and amendments to propose.

Is that agreed? *[Agreed]*

Bill 50—The Protection for Temporary Help Workers Act (Worker Recruitment and Protection Act and Employment Standards Code Amended)

Mr. Chairperson: We will now proceed to clause-by-clause considerations of Bill 50.

Does the minister responsible for Bill 50 have an opening statement?

Hon. Erna Braun (Minister of Labour and Immigration): I'm pleased that Bill 50, The Protection for Temporary Help Workers Act, has come to committee this evening.

Bill 50 will help ensure temporary help workers are able to take full advantage of opportunities to obtain direct employment with a single employer and it will provide them with access to the same termination notice provisions as other employees. We want to ensure that there are no barriers to workers gaining permanent employment and that appropriate protections are in place.

I wish to thank the Labour Management Review Committee for considering amendments to The Worker Recruitment and Protection Act and The Employment Standards Code and providing a consensus report. Their recommendations were important in the development of this bill. Thank you.

* (18:10)

Mr. Chairperson: We thank the minister.

Now we go clause by clause.

Shall clause—*[interjection]* Any questions?

Yes, Mr. Smook.

Mr. Dennis Smook (La Verendrye): I'd like an opening statement.

Mr. Chairperson: Yes, I'm sorry. I should have requested if the official opposition has any opening statement.

An Honourable Member: Yes, I do.

Mr. Chairperson: Kindly go ahead, sir.

Mr. Smook: Thank you.

Protection of temporary workers is an important topic. We see the use of temporary workers and temporary help agencies increasing. We see the increased use of not just labour jobs but in professional fields, information technology, accounting, engineering, medical services and other professional services.

Temporary help agencies help a lot of employees find work that they may not be able to find on their own. With this they incur significant costs in advertising, recruitment, background screening and overhead costs, which they cover with fees they charge their clients but not the workers.

A bill as important as this one, we have to make sure that we get input from all people involved, whether it be from the worker's side, from the employer's side, to make sure that when we bring in a bill like this it is the right bill. Thank you.

Mr. Chairperson: We thank the member.

Now, looking at the bill, clauses 1 and 2—pass; clauses 3 through 5—pass.

Shall clause 6 pass?

An Honourable Member: Pass.

An Honourable Member: No.

Mr. Smook: I move

THAT Clause 6 of the Bill be amended in the proposed subsection 15.1(2) by adding "or" at the end of clause (c), striking out clause (d) and renumbering clause (e) as clause (d).

Mr. Chairperson: It has been moved by Mr. Smook

THAT Clause 6 of the Bill be amended in the proposed subsection 15.1(2) by adding "or" at the end of the clause (c), striking out clause (d) and renumbering clause (e) as clause (d).

The amendment is in order. The floor is open for questions.

Mr. Smook: Well, what I'd like to do here is just explain a little bit about what's in there right now is subject to the regulations on section (d) that I'd like to have removed: charges to a client a fee, a result if one or more of its temporary help employees becomes employees of the client.

I would like to have that removed because I don't believe that bills should be getting involved in agreements between existing businesses. Like, there's a contract involved between the client and the

temporary help agency, and I don't think it's our position to be getting involved in that and telling them what they should be doing.

Mr. Chairperson: Any other questions?

Ms. Braun: Speaking in opposition to this amendment, clause (d) is actually something that is at the heart of this particular act in that one of the things that often deters someone from offering a temporary worker a permanent contract is the agency will charge a large fee to the client which makes the client then not wish to hire this person because it becomes such a large amount that it's not feasible for the client to then offer this person a contract.

So this is essential to the act in preventing agencies from putting barriers in the way of a temporary worker becoming a permanent employee of that client.

Mr. Chairperson: Any other questions?

The question before the committee is as follows:

THAT Clause 6 as-proposed amendment. Will the amendment pass?

Some Honourable Members: Yes.

Some Honourable Members: No.

Mr. Chairperson: The amendment is not passed. *[interjection]*

Voice Vote

Mr. Chairperson: All those in favour of the amendment, please say aye.

Some Honourable Members: Aye.

Mr. Chairperson: All those opposed, say nay.

Some Honourable Members: Nay.

Mr. Chairperson: In my opinion, Nays have it.

Recorded Vote

Mr. Kelvin Goertzen (Steinbach): A recorded vote, Mr. Chairperson.

Mr. Chairperson: Recorded vote has been requested.

A COUNT-OUT VOTE was taken, the result being as follows: Yeas 4, Nays 5.

Mr. Chairperson: The amendment is accordingly defeated.

Mr. Smook: Yes, I have another amendment, but I believe that this amendment needs to be in combination with the other amendment in order for it to work, but I will bring it up.

THAT Clause 6 of the Bill be amended in the proposed section of 15.1

(a) in subsection (4), by striking out "or a client"; and

(b) in subsection (5), by striking out "client or".

Motion presented.

Mr. Chairperson: The amendment is in order.

Now the floor is open for questions and concerns and comments.

* (18:20)

Ms. Braun: Thank you very much. Again, this is an issue that goes to the heart of this legislation and by removing the term client from these particular sections it prevents contracts from being—or it removes the protections that should be there and it prevents contracts from being—what is in here currently prevents contracts from being inconsistent with the provisions of the law.

Mr. Smook: I just hope that this legislation doesn't hurt an industry that's doing quite well. As we look at the way things are happening in the system these days, more and more people are using temporary agencies, and I just hope that a lot of these agencies don't just close up and move out of the province.

Ms. Braun: Well, just to assure you that was one of the reasons that this measure was put before the Labour Management Review Committee because the management folks would have drawn on members of their employers' council to make sure that they were part and parcel of it and that certainly the recommendations that came forward from MLMRC were suggested some amendments at that time which we did take into consideration. So this was something that came to us with the consensus of both labour and management and that there was some very good discussion that to my understanding that took place.

Mr. Smook: Has the association that looks after all the temporary agencies, I believe it's ACSESS, did they make some comments for you to look at as well?

Ms. Braun: Yes, my understanding is that they were—had a meeting and discussed this issue and I will be meeting with them again because this was—ACSESS—that they have been in discussion with—in the process of developing this and some of their concerns were taken into consideration.

The indication is that with the development of the regulations, we will be meeting with ACSESS again in the formulation of those regulations.

Mr. Chairperson: Seeing no further questions, the question before the committee is as follows: Shall the amendment pass?

Some Honourable Members: Yes.

Some Honourable Members: No.

Voice Vote

Mr. Chairperson: All those in favour of the amendment, please say aye.

Some Honourable Members: Aye.

Mr. Chairperson: All those opposed to the amendment, please say nay.

Some Honourable Members: Nay.

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

Recorded Vote

Mr. Goertzen: Mr. Chairperson, we request a recorded vote.

Mr. Chairperson: A recorded vote has been asked.

A COUNT-OUT VOTE was taken, the result being as follows: Yeas 4, Nays 6.

Mr. Chairperson: Accordingly, the amendment is defeated.

Mr. Chairperson: Clause 6—pass; clauses 7 through 9—pass; clause 10—pass; clauses 11 through 13—pass; clauses 14 through 16—pass; enacting clause—pass; title—pass.

Shall the bill be reported?

An Honourable Member: Agreed.

An Honourable Member: No.

Mr. Chairperson: Agreed.

An Honourable Member: No.

Mr. Chairperson: [*interjection*] I hear a no.

Voice Vote

Mr. Chairperson: So all those in favour of, say yea–aye.

Some Honourable Members: Aye.

Mr. Chairperson: All those in–opposed, say nay.

Some Honourable Members: Nay.

Mr. Chairperson: In my opinion, the Ayes have it.

Recorded Vote

Mr. Goertzen: Mr. Chairperson, a recorded vote, please.

Mr. Chairperson: A recorded vote has been asked.

A COUNT-OUT VOTE was taken, the result being as follows: Yeas 6, Nays 4.

Mr. Chairperson: Accordingly, the bill shall be reported.

Bill 3–The Witness Security Amendment Act

Mr. Chairperson: Does the minister responsible for Bill 3 have an opening statement?

Hon. Andrew Swan (Minister of Justice and Attorney General): Yes, thank you, Mr. Chair. One of our priorities has been continuing to make Manitoba a hostile environment for organized crime. Manitoba has pushed the envelope of the number of different pieces of innovative legislation to assist law enforcement and assist provincial agencies in taking on organized crime.

* (18:30)

We know that people who come forward as witnesses testifying against organized crime and gangs may face particular challenges and particular dangers. That's why, several years ago, Manitoba was the first province to introduce a Witness Security Act to provide for the protection of those who were prepared to come forward.

It is a fact that many people who are prepared to give evidence may themselves not have led the most upstanding life, and there have been occasions where there are concerns that individuals who have entered into the witness security program may not be

following all the expectations of that program. One of the things this bill will do is to ensure that those witnesses receiving provincial protection assistance must follow the rules of the program or face certain consequences.

Although the current act allows individuals to be expelled from the program, we believe that some additional tools are necessary to allow support payments, other benefits to be suspended in order to give witnesses an opportunity to correct their behaviour, but to also make it very clear that they may be expelled from the program.

This bill would also create the role of witness security officer and would more clearly set out what that individual can do to investigate program applicants and manage the protective services offered to witnesses.

So this is really an enhancement of Manitoba's Witness Security Act, which has been copied by a number of jurisdictions now across the country and allow us to continue to fight against organized crime.

Mr. Chairperson: We thank the minister.

Does the official opposition have an opening statement?

Mr. Kelvin Goertzen (Steinbach): Mr. Chairperson, we are entering spring, which is the annual warning of increased gang violence that we've had under this government, and I know we've heard different pronouncements from different ministers, the current minister and former minister, some of who join us at committee tonight, who vowed to crack down to stop this annual warning of gang violence in the summer from occurring, and yet it continues on.

So we know, despite the minister's comments, there are many challenges and problems that still exist. On this bill in particular, however, I certainly do recognize and appreciate the fact that there are those who provide testimony, and after their testimony they require some level of protection and support, and also recognize that when they're in protection, they might do things that would cause them to fall out of the graces of that protection. So we understand that. We understand that this is something that's important to have in terms of ensuring that there's security for individuals who are giving testimony and also for those who are charged with working with them as they are under secured witness protection.

So there are some good points to this bill, and we have a suggestion or two along the way, I suppose, but, overall, the intention of the bill is something that is laudable.

Mr. Chairperson: We thank the member.

Clauses 1 through 4—pass; clauses 5 and 6—pass.

Shall clauses 7 through 11 pass?

Some Honourable Members: Pass.

An Honourable Member: No.

Mr. Chairperson: I hear a no.

Mr. Goertzen: Mr. Chairperson, I move

THAT Clause 7 of the Bill be amended in the proposed subsection 12.1(1) by striking out "and" at the end of clause (a), adding "and" at the end of clause (b) and adding the following after clause (b):

(c) the director has taken reasonable steps to notify the person of the suspension.

Motion presented.

Mr. Chairperson: The amendment is in order. The floor is open for questions and comments.

Mr. Goertzen: Mr. Chairperson, I would consider this to be a friendly amendment.

I recognize, and I'm not—I'm cognizant of the fact that there would be notice provided to individuals, both through the application process and perhaps through other pieces of jurisdictional legislation. I simply think it's good to have within this particular section an assurance that the individual who is being suspended is notified of that suspension, recognizing that they're in the protection program for a reason.

And I think for greater assurance, it's good to have this amendment in there to ensure that those who have been relying on the protection program for whatever reason they've been relying on it, and they're being removed from that protection program, are assured to be advised of that.

Mr. Swan: I thank the member from Steinbach for his comments. And we carefully considered the provision.

It's important to note that the new provisions, which would allow the suspension of financial

support, can only happen if the director has already made an application for expulsion from the program under section 12 of the existing act. And if the director makes such an application, section 12(2) currently provides already the director must take reasonable steps to (a) notify the person that an application for expulsion has been made and provide particulars the grounds for expulsion and (b) allow the person to make a written submission to the assessment panel about the application.

So, Mr. Chairperson, because the application to suspend financial support would only happen after the initial application's been made, and that application contains notice provisions, we think that's going to be sufficient to give somebody notice that they are in default of the requirements and will then encourage them to deal with the officer to make sure that they're meeting their requirements.

Mr. Goertzen: I thank the staff for the response. The notification that is that the application's been made, not that the suspension is happening, though. Is that not correct?

Mr. Swan: Yes. The notification must be that an application for expulsion has been made and to provide particulars of the reasons that that's being sought. It would only be subsequent to that that there would be any application to suspend any payment.

So, when that notice of application is made to a person, the onus is on that person to make contact with the witness security officer and to make sure that they are doing what they need to do. And if we've already given that notice, we don't want to be in a position where they then make themselves unavailable because they know that if they have contact again, they might wind up getting their payments reduced.

The purpose, if somebody is receiving protection under the witness security program, and they've now been notified there is a problem, we need them to remain in contact with the officer, we need them to comply.

* (18:40)

Mr. Goertzen: The point of the amendment, though, is to provide notification of the suspension—I take the minister's point to heart that somebody might try to then avoid contact if they've been notified that an action's been taken—but the amendment talks about

reasonable steps—would essentially be notifying them at the same location that they were originally notified at.

But I won't argue the point further because it's probably not—it landed me in a better place than I'm in now, but I do think it's a reasonable amendment and we can proceed to the vote so—

Mr. Chairperson: Now is the committee ready for the question? The question before the committee is that the amendment, as read earlier,

Clause 7 of the Bill be amended in the proposed subsection 12.1(1) by striking out "and" at the end of the clause (a), adding "and" at the end of the clause (b) and adding the following after clause (b):

(c) the director has taken responsible steps to notify the person of the suspension.

Shall the amendment pass?

Some Honourable Members: Pass.

Some Honourable Members: No.

Voice Vote

Mr. Chairperson: All those in favour of the amendment, please say aye.

Some Honourable Members: Aye.

Mr. Chairperson: All those opposed, please say nay.

Some Honourable Members: Nay.

Mr. Chairperson: In my opinion, Nays have it.

Recorded Vote

Mr. Goertzen: A recorded vote, Mr. Chairperson.

Mr. Chairperson: A recorded vote.

A COUNT-OUT VOTE was taken, the result being as follows: Yeas 4, Nays 6.

Mr. Chairperson: Accordingly, the amendment is defeated.

* * *

Mr. Chairperson: Clause 7 through 11—pass; clause 12 and 13—pass; enacting clause—pass; title—pass. Bill be reported.

Bill 31—The Police Services Amendment Act (Community Safety Officers)

Mr. Chairperson: Now we are considering Bill 31.

Does the minister responsible for Bill 31 have any opening statement?

Hon. Andrew Swan (Minister of Justice and Attorney General): Mr. Chairperson, this bill will amend The Police Services Act, and it will enable municipalities to establish community safety officer programs. It's the intention of the bill that it will enable communities to have community safety officers who can deliver crime prevention programs. They can connect persons in need with appropriate social services and also maintain a public safety presence in the community beyond what police officers do provide. If authorized to do so by agreement between the municipality and the Province, community safety officers may assist local police officers in non-criminal matters to exercise prescribed powers and also enforce specific enactments.

It is the intention that these agreements may allow community safety officers to enforce certain provincial acts. Some examples of that may be the liquor control act and The Intoxicated Persons Detention Act, as well as some other legislation, as the municipality may wish.

We think this bill is an innovative resource to address the unique public safety needs and priorities of various communities outside of the Perimeter. Enhancing public safety is a key component of our commitment to supporting strong, healthy and inclusive communities.

I do want to thank the assistance of the RCMP, the City of Thompson and, indeed, the Winnipeg Police Service who have been prepared to share some of the successes of their cadet program. We've also held meetings with MKO, with MMF in Thompson, with the Northern Association of Community Councils and also Nelson House Cree Nation. We also have been in contact with AMM. I'm pleased to see that AMM have submitted a letter in support of this bill, and we have announced that it's our intention that the first community to receive community safety officers will be the city of Thompson.

We know the city of Thompson is a great community and a thriving community. We know there are some particular challenges, and we believe that community safety officers will provide another

tool to help to reduce some of the disorder which, unfortunately, happens in that community. It's our hope it will also be a model for other communities that may step up and seek to have community safety officers assisting them as well. So I certainly look forward to passing this bill.

Mr. Chairperson: We thank the minister.

Does the critic from the official opposition have an opening statement?

Mr. Kelvin Goertzen (Steinbach): Mr. Chairperson, I think we indicated support on this bill at second reading. Certainly, we've had discussions with the Association of Manitoba Municipalities, some of the individual municipalities impacted, and representatives of rural law enforcement, both the RCMP and on the municipal level, and certainly we appreciate the rural cadet—or the Winnipeg cadet program being moved into rural Manitoba under a different name but under the same general intention. So we are prepared to see this bill move forward, again, perhaps with what I think might be a friendly suggestion, but some of my friendly suggestions have appeared to be taken less amiably than I might have hoped. So we'll see how this one goes.

Mr. Chairperson: We thank the member.

Shall clauses 1 and 2 pass?

Some Honourable Members: Pass.

An Honourable Member: No.

Mr. Chairperson: I hear a no.

Order, please. If the amendment is for clause 2, clause 1—pass.

Now we deal with clause 2, and there is an amendment proposed—Mr. Goertzen.

Mr. Goertzen: I move

THAT Clause 2 of the Bill be amended in the proposed subsection 74.4(3) by adding ", victim and social services" after "public safety".

Mr. Chairperson: It has been moved by Mr. Goertzen

THAT Clause 2 of the Bill be amended in the proposed subsection 77.4(3) by adding ", victim and social services" after "public safety".

The amendment is in order. The floor is open for questions and comments.

Mr. Goertzen: This, I believe, would better reflect what we're all hoping the rural cadet program will be. This is under the required training section, and, obviously, it's examples of training that will happen, not a prescribed list. But I do think it's important not to have the list simply as a public safety or crime prevention; those are, obviously, things that the community safety officers will engage in and will do. But there's recognition in the act and, I think, hopefully, recognition in the community that they'll do more than that and that they'll be asked to help provide direction to social services for those who need it and perhaps also some direction for those who are victims of crime because I believe that different communities will react differently to these officers, but I do think that in many ways they'll become not the face of law enforcement but certainly another aspect of law enforcement. And people will approach them; people will ask them questions about certain things because they'll be seen as law enforcement officials within their community.

* (18:50)

In many cases, particularly in rural communities, you know, they might be there longer than the RCMP officers, and I suspect some of them will have long careers as community safety officers and might very well be seen as a resource to go to by people in the community. And I think it's—while I suspect that some of the training would involve social services or victims' services anyway, just like it would involve public safety and crime prevention, I think it's important to delineate it in the act so that it's made clear that these community safety officers are going to be doing these kinds of services as well, Mr. Chairperson.

So I consider this a friendly amendment and I hope it's taken in that light.

Mr. Swan: I appreciate the member for Steinbach bringing this forward. I mean, I think, it's agreed by everybody around the table that we want these community safety officers to be able to perform, really, a new and we hope exciting role to enhance public safety. And section 77.2 does provide that one of the things we want these officers to do is to connect social service providers with persons in need.

What the member is putting forward, I think, is consistent with what we want these officers to do, so this is certainly an amendment that I can support.

Mr. Chairperson: The question before the committee is: Shall the amendment pass?

Some Honourable Members: Pass.

Mr. Chairperson: Accordingly, the amendment is passed.

Clause 2 as amended—pass; clauses 3 and 4—pass; enacting clause—pass; title—pass. Bill as amended be reported.

Bill 51—The Legislative Assembly Amendment Act

Mr. Chairperson: Now we are considering Bill 51.

Does the minister responsible for Bill 51 have an opening statement?

Hon. Andrew Swan (Minister of Justice and Attorney General): Yes, thank you, Mr. Chairperson.

This bill arises out of some additional work that was done by Commissioner Michael Werier. The question had been directed to him as whether it would be appropriate to amend The Legislative Assembly Amendment Act to assist members of this Legislative Assembly to get their mailings and franks out to their constituents.

I know there has been some concern, especially in urban areas, that the way that Canada Post has divided up their postal walks, it's been difficult, if not impossible, to guarantee the delivery of material from a member of the Legislature to people who actually live in this area.

And I respect the work that Commissioner Werier has done, and he has proposed that, subject to certain conditions, members of our Assembly should be allowed to have addressed and unaddressed letters to their constituents delivered by delivery companies or as inserts to local newspapers or in an ad bag as many people would consider it.

I think these are good amendments because they will provide, we think, better delivery of items.

And Commissioner Werier has also made it clear, and it's reflected in the act, that there should be no greater cost to the Assembly than using Canada Post. And we, in fact, do believe that, in many cases, this can be done at a lower cost to the Legislative Assembly.

So, for those reasons, we think that this is an appropriate thing to do.

And, again, I want to thank Commissioner Werier who's given us—who's given the Legislative Assembly good advice on a number of occasions.

Mr. Chairperson: Does the official opposition have an opening statement?

Mr. Kelvin Goertzen (Steinbach): Yes, thank you, Mr. Chairperson.

This bill comes out of suggestions from the member for River Heights (Mr. Gerrard). I don't think I could refer to the absence or non-absence or attendance, but I'm sure if he is here, he'll speak to it. But I would say that he brought forward the suggestion, Mr. Chairperson, and I think it was something that was worth considering.

I'm of the belief that there are other things that we could do to ensure, given the high cost of mailing, that we're able to use our mailing budgets more appropriately, the public would expect, but those are discussions that would happen in a different form and not at this committee.

But I do want to say we appreciate the work of Mr. Werier as well. Our party's been consistent in saying that we support the process of an independent officer to determine the salary and benefits of members of the Legislature. We don't believe we should be voting on our own salaries or voting on our own benefits. Sometimes the decisions are some we like, and sometimes we don't like everything about them. But we like the process, and we think it's important that how salaries and benefits for MLAs are determined is independent, seen to be independent and is truly independent.

So, with that in mind, we will not be making any amendments or suggestions to this bill, because it is a reflection of the suggestions of Mr. Werier, who's an independent officer and gave independent recommendation on this.

Mr. Chairperson: We thank the member.

Clause 1 and 2—pass; clause 3—pass; enacting clause—pass; title—pass. Bill be reported.

Order, please. The business of the committee has been concluded.

What is the will of the committee?

An Honourable Member: Committee rise.

Mr. Chairperson: We will rise. Thank you.

Hour being 6:58, the committee rises.

COMMITTEE ROSE AT: 6:58 p.m.

WRITTEN SUBMISSIONS

Re: Bill 31

Dear Committee Members:

On behalf of the Association of Manitoba Municipalities (AMM), I would like to provide comments about Bill 31: The Police Services Amendment Act (Community Safety Officers).

At the annual AMM Convention in November 2013, AMM members passed a resolution requesting the AMM to lobby the Province of Manitoba to expedite the establishment of a police cadet program for rural and northern Manitoba in order to fulfill a 2011 election commitment. We also discussed it at a recent meeting between Minister Swan and the AMM Cities Caucus.

The AMM supports additional tools for communities to improve public safety and build positive relationships. As a result, we are pleased that the Province of Manitoba is already working with the RCMP and the City of Thompson to launch a local community safety officer program.

The AMM is pleased this legislation will allow municipalities to take measures to support the work that police officers do. The AMM believes community safety officers could make an important difference by providing assistance in the areas identified: implementing crime prevention strategies and initiatives; providing a link between social service providers and people in need; and maintaining a visible presence in the community. They will also be able to assist police by enforcing selected provincial laws.

Nevertheless, the AMM is concerned about the potential costs of a community safety officer program. The AMM recommends that the Province of Manitoba establish a consistent approach to contribute long-term, cost-shared funding in order to assist communities with program set-up and delivery.

The AMM appreciates the opportunity to provide these comments. Thank you for your consideration.

Sincerely,

Doug Dobrowolski
President
Association of Manitoba Municipalities

Re: Bill 50

The following is a submission of the Human Resource Management Association of Manitoba ("HRMAM") in connection with proposed amendments to the foreign worker recruitment sections of The Worker Recruitment and Protection Act ("WRAPA").

The Human Resource Management Association of Manitoba

The HRMAM is the largest and the most vibrant Human Resources community in the province of Manitoba representing 1,300 members in both private and public sectors. Established in 1942, the HRMAM oversees the administration of the Canadian Human Resource Professional ("CHRP") designation in Manitoba and is the force of Human Resource professionals in our province. As such, we are pleased to provide you with our submission in connection with the proposed amendments to the WRAPA.

Our Recommendations

While there are a number of proposed changes to the WRAPA, our submission will focus specifically on the foreign worker recruitment provisions in the WRAPA. In this connection our recommendations are as follows:

1. That section 5 of Bill 50 be amended by deleting the word "two" in the proposed paragraph 13.1(1)(b) and replacing it with the words "one and one-half (1 1/2)".
2. That section 17 of the WRAPA be amended to allow for reasonable justifications for non-compliance of that section;
3. That section 6 of WRAPA regulations, which currently restricts eligible "foreign worker recruiters" to lawyers and licensed immigration consultants, be eliminated; and

4. That the legislature instruct the department to provide clear, written rules on how sections 15(4) and 16(1) are interpreted.

Recommendation #1: That section 5 of Bill 50, be amended by deleting the word "two" in the proposed paragraph 13.1(1)(b) and replacing it with the words "one and one-half (1 1/2)"

Bill 50 proposes to enact a wage cut-off beyond which an employer may engage an individual who is not licensed as a "foreign worker recruiter" to act in such a capacity. The HRMAM proposes that the wage cut-off be set at 1.5 times (not 2 times) Manitoba's industrial average wage. For the current year, this would set the cut-off wage at \$64,701.

Reasons for the recommendation

The HRMAM is making this recommendation on the basis of the following:

1. A wage cut-off at 1.5 times the industrial average wage would mean that the most vulnerable foreign workers, employees in National Occupational Code (NOC) C¹ or D² occupations, would still be protected under the WRAPA;
2. The occupations for which the median wage is \$64,701 or over are limited to occupations where temporary foreign workers would likely not be vulnerable; and
3. Even without the WRAPA, protections for foreign workers to which the WRAPA does not apply exist under The Immigration and Refugee Protection Regulations.

A wage cut-off at 1.5 times the industrial average wage would mean that the most vulnerable foreign workers, employees in NOC C or D occupations, would still be protected under the WRAPA

One of the concerns about setting a wage cut-off for the WRAPA applications is that certain foreign workers would lose the protection of the WRAPA. By suggesting a wage cut-off, the government has recognized that foreign workers employed at a wage over a certain amount would likely not be vulnerable.

The HRMAM's suggestion is that this can be accomplished at a slightly lower wage threshold.

The most vulnerable foreign workers are those that fall within NOC C or D. NOC C and D occupations are considered "low-skilled" by the government of Canada and their vulnerability stems from a number of factors including the following:

1. Workers in NOC C and D have limited options for permanent residency in Canada. While the Manitoba Provincial Nominee Program accepts NOC C or D applicants, Government of Canada immigration programs (which also can be accessed by temporary foreign workers in Manitoba) provide a permanent residency option for NOC O, A and B³ employees only. As a result, NOC C and D applicants are more vulnerable by virtue of the fact that their immigration options are more limited.
2. Applicants in NOC C and D classifications have less labour mobility. While it is true that foreign workers of all skill levels do not have the same workforce mobility as Canadian citizens or permanent residents, the mobility of NOC C and D foreign workers is more restricted. The NOC C and D Labour Market Opinion process is more stringent than the ones for NOC O, A and B applicants. As a result, the ability of foreign workers in NOC C and D occupations to move from job to job would be more difficult than one for NOC O, A and B applicants.

As the Service Canada wage report for Winnipeg shows, virtually no NOC C or D occupations are paid a wage approaching \$64,701/year. In fact, there are no NOC C or D occupations where the median wage is even close to \$64,701/year.

This is significant in that, in order for an employer to be authorized to hire a foreign worker to which the WRAPA currently applies, the foreign worker must be paid the median wage for the occupation. If an employer offers above well above the median wage, the chances of a Canadian or Canadian permanent resident applying for the job increases.

¹ NOC C occupations are described as occupations that "usually require secondary school and/or occupation-specific training"

² NOC D occupations are described as occupations for which "on-the-job training is usually provided"

³ These NOC codes are considered "higher skilled" by Service Canada. They consist of NOC 0 (management occupations), A (occupations that usually require a university education – and include most professions) and B (occupations that usually require college education or apprenticeship training – and include most trades).

The only NOC C or D occupations where Service Canada has recorded that some individuals receive a salary in excess of \$64,701/year are:

1. Storekeepers and parts clerks (where the median wage is \$21.00 and high end of the wage scale is \$33.65/hour);
2. Wholesale trade sales representatives (where the median wage is \$24.45 and the high end of the wage scale is \$37.00/hour)
3. Correctional Service Officers (where the median wage is \$27.00 and the high end of the wage scale is \$35.90/hour)
4. Certain armed forces occupations (where the median wage is \$26.35 and the high end of the wage scale is \$34.62/hour)
5. Other protective service occupations (where the median wage is \$16.25 and the high end of the wage scale is \$36.45/hour)
6. Oil and Gas Well Drilling Workers and Service Operations (where the median wage is \$30.89 and the high end of the wage scale is \$37.71/hour)
7. Inspectors and Testers, Fabric, Fur and Leather Products Manufacturing (NOC 9454-C) (where the median wage is \$10.45 and the high end of the wage scale is \$41.93/hour)

As the median wage and high wage comparison indicates, employees paid at the high end of these occupations are likely senior employees in their fields. As a result, it would be unlikely that foreign workers in these occupations would be vulnerable.

The occupations for which the median wage is \$64,701 or over is limited to occupations where temporary foreign workers would likely not be vulnerable

As indicated above, for a temporary foreign worker to be approved under the WRAPA, employers must offer at least the median wage for occupations in the area where the job will be located. With the exception of NOC O applications, the only occupations for which the median wage is in excess of \$64,701 are as follows:

- Meteorologists
- Biologists and related scientists
- Civil Engineers
- Urban and Land Use Planners
- Electrical and Electronics Engineering Technologists and Technicians

- Air Traffic Controllers
- Physicians
- Pharmacists
- Physiotherapists
- Nurses
- Medical Radiation Technologists
- Dental Hygienists
- Judges
- Lawyers
- University Professors
- Secondary and Elementary School Teachers
- Education Policy Research, Consultants and Program Officers
- Contractor and Supervisors, Electrical Trades and Telecommunications Occupations
- Pipefitting Trades

It can hardly be said foreign workers in these occupations would generally be vulnerable.

By changing the wage cut-off to 1.5 times that of Manitoba's industrial average wage, higher paid skilled tradespeople, managers and professionals at higher levels would be exempt. At a salary of over \$64,701/year, we would submit that the potential for exploitation would be low.

By setting a salary cut off at 1.5 times that of Manitoba's industrial average wage, most NOC O, A, and B foreign workers would have to be paid in excess of the prevailing wage required by Service Canada.

Even without the WRAPA, protections for foreign workers to which the WRAPA does not apply exist under the Immigration and Refugee Protection Regulations.

Not all temporary foreign workers who work in Manitoba are protected under the WRAPA. Since WRAPA came into force, section 4 of the WRAPA Regulations has exempted numerous occupations from the reach of the WRAPA. These include professionals entering Canada under free trade agreements and intra-company transfers.

While a number of temporary foreign workers in Manitoba are not covered by the WRAPA, since 2011, these temporary foreign workers are protected by sections 203 and 209 of the Immigration and Refugee Protection Regulations.

These sections require employers to provide all foreign workers with "substantially the same" wages, working conditions and occupations as the employer represented in the immigration process. Since

January, the Immigration and Refugee Protection Regulations now indicate that these wages and working conditions cannot be less favourable than what was originally presented.

As a result, even without the WRAPA, protections will exist for foreign workers for whom the WRAPA does not apply.

Recommendation #2: That section 17 of the WRAPA be amended to allow for reasonable justifications of that section for non-compliance

While not as amendment proposed by the government, the HRMAM would like to take this opportunity to suggest further amendments to the WRAPA. The HRMAM recommends that a "reasonable justification" defense be inserted into section 17 of the WRAPA similar to the one found in the section 203(1.1) of the Immigration and Refugee Protection Regulations.

In particular, the HRMAM recommends that section 17 of the WRAPA be amended by adding a section 17(2) that would read:

"A reduction in the wages of a foreign worker or the reduction or elimination of any other benefit or term or condition of a foreign worker's employment that the employer undertook to provide as a result of participating in the recruitment of a foreign worker is justified if it results from

- a. A change in federal and provincial law;
- b. A change to the provisions of a collective agreement;
- c. The implementation of measures by the employer in response to a dramatic change in economic condition that directly affected the business of the employer, provided that the measures were not directed disproportionately at foreign workers employed by the employer;
- d. An error in interpretation made in good faith by the employer with respect to its obligations to foreign worker, if the employer subsequently provided compensation – or, if it was not possible to provide compensation, made sufficient efforts to do so – to all foreign workers who suffered a disadvantage as a result of the error;
- e. An unintentional accounting or administrative error made by the employer, if the employer subsequently provided compensation – or, if it was not possible to provide compensation, made

sufficient efforts to do so – to all foreign workers who suffered a disadvantage as a result of the error;

- f. Circumstances similar to those set out in paragraphs (a) to (e) above; or
- g. Force majeure."

Reasons for the recommendation

The HRMAM is making this recommendation on the basis of the following:

1. In most other jurisdictions (including the jurisdictions with the largest number of temporary foreign workers), the only enforcement regime that must be complied with is the Immigration and Refugee Protection Regulations.
2. The changes that we recommend are sensible; they would not negatively affect the ability of Manitoba to ensure that employers in this province are not exploiting temporary foreign workers, and would better ensure that Manitoba businesses are not put at a competitive disadvantage with businesses in other jurisdictions.

In most other jurisdictions (including the jurisdictions with the largest number of temporary foreign workers), the only enforcement regime that must be complied with is the Immigration and Refugee Protection Regulations.

As indicated above, the Immigration and Refugee Protection Regulations require employers to provide all foreign workers with "substantially the same" and "not less favourable" wages, working conditions and occupations as the employer represented in the immigration process.

In most jurisdictions, the Immigration and Refugee Protection Regulations are the only regulations that have to be complied with. The addition of an extra layer of regulations for Manitoba businesses can put Manitoba businesses at a disadvantage.

Currently, section 17 of the WRAPA provides that:

"An employer must not reduce the wages of a former worker, or reduce or eliminate any other benefit or term or condition of the foreign worker's employment that the employer undertook to provide as a result of participating in the recruitment of a foreign worker, and any agreements by the foreign worker to such a reduction or elimination is void."

By adding a reasonable justification provision to the WRAPA, Manitoba businesses would be put on a level playing field with businesses in other jurisdictions.

The changes that we recommend are sensible; they would not negatively affect the ability of Manitoba to ensure that employers in this province are not exploiting temporary foreign workers, and would better ensure that Manitoba businesses are not put at a disadvantage with businesses in other jurisdictions.

While it is important to ensure that businesses live up to their commitments to foreign workers, the government of Canada, in 2011, saw fit to include circumstances by which an employer could justify not providing a temporary foreign worker with wages, working conditions and an occupation as what was represented in the immigration process. These justifications, which were amended in January, are reasonable.

Employers of temporary foreign workers in many other jurisdictions are allowed to change wages, working conditions and employment under Immigration and Refugee Protection Regulation 203 for the following reasons:

- a. A change in federal and provincial law;
- b. A change to the provisions of a collective agreement;
- c. The implementation of measures by the employer in response to a dramatic change in economic condition that directly affected the business of the employer, provided that the measures were not directed disproportionately at foreign nationals employed by the employer;
- d. An error in interpretation made in good faith by the employer with respect to its obligations to a foreign national, if the employer subsequently provided compensation – or, if it was not possible to provide compensation, made sufficient efforts to do so – to all foreign nationals who suffered a disadvantage as a result of the error;
- e. An unintentional accounting or administrative error made by the employer, if the employer subsequently provided compensation – or, if it was not possible to provide compensation, made sufficient efforts to do so – to all foreign nationals who suffered a disadvantage as a result of the error;

- f. Circumstances similar to those set out in paragraphs (a) to (e) above; or
- g. Force majeure.

We believe that changing the WRAPA to accommodate these justifications is both reasonable and necessary.

Recommendation #3: That section 6 of WRAPA regulations, which currently restricts eligible "foreign worker recruiters" to lawyers and licensed immigration consultants, be eliminated.

While we recognize that this issue is a regulatory one and not a legislative one, we believe that it is important for the legislature to address this issue in the context of the proposed amendments to the WRAPA.

Under section 2(4) of the WRAPA, a "foreign worker recruiter" must be licensed. While the WRAPA does not indicate who can be a "foreign workers recruiter", under WRAPA Regulation 6, only a lawyer or licensed immigration consultants can become a "foreign worker recruiter". We submit that this section of the regulations should be eliminated.

Reasons for the recommendation

The HRMAM is making this recommendation on the basis of the following:

1. The limited number of recruiters creates a problem for businesses looking for qualified foreign worker recruiters;
2. A model exists in Saskatchewan to license and oversee foreign worker recruiters who are neither lawyers nor consultants;
3. There is no additional protection to businesses, foreign workers or the public by limiting foreign worker recruiters to lawyers or consultants; and
4. Lawyers and consultants are not, by profession, trained as recruiters. Meanwhile, trained recruiters are not permitted to practice their profession.

The limited number of recruiters creates a problem for businesses looking for qualified foreign worker recruiters

One of the difficulties businesses face when recruiting foreign workers is the lack of qualified foreign worker recruiters. While there are currently 21 foreign worker recruiters under the WRAPA,

most foreign worker recruiters are not employed by the large national and international recruiting firms.

The HRMAM notes that some of the companies who are prohibited from doing foreign worker recruitment in Manitoba are actively recruiting foreign workers for businesses and other jurisdictions. It is unfair to Manitoba businesses to not have this source of talented recruiters available to them while competitors in other provinces are able to engage these firms. To level the playing field, it is important for the government of Manitoba to open up the qualifications of who can be a foreign worker recruiter but, at the same time, ensure a strict licensing process to make sure that the companies comply with the law.

A model exists in Saskatchewan to license and oversee foreign worker recruiters who are neither lawyers nor consultants

The HRMAM recommends that "foreign worker recruiters" not be limited to lawyers and consultants. In this connection, the HRMAM recommends that Manitoba adopt Saskatchewan's model that requires foreign worker recruiters to comply with a Code of Conduct, certain terms and conditions, post a surety bond, and complete ethical disclosure forms.

There is no additional protection to businesses, foreign workers or the public by limiting foreign worker recruiters to lawyers or consultants

If a lawyer is found to be negligent in foreign worker recruitment, that lawyer would likely not be disciplined by the Law Society of Manitoba nor would he or she be eligible for insurance coverage as a lawyer because his or her duties as a recruiter would be outside of his or her capacity as a lawyer. Unless the lawyer's conduct is so egregious as to attract a finding of conduct unbecoming, there would be no protection that the Law Societies would provide for negligent foreign worker recruitment.

As a result, there are really no additional protections afforded to anyone by restricting who can and cannot be foreign worker recruiters.

Lawyers and consultants are not, by profession, trained as recruiters. Meanwhile, trained recruiters are not permitted to practice their profession

Lawyers and immigration consultations are not, by profession, trained to be recruiters in the same way as recruiters from reputable and long-standing recruitment firms. While the HRMAM has no objection to lawyer and consultants being foreign

worker recruiters, we believe other individuals – especially those trained to be recruiters – should be allowed to be foreign worker recruiters.

In this connection, we note that Manitoba recognizes, under the WRAPA, a list of recruiters for domestic employees. Surely these organizations, if qualified to find Canadian candidates, could also be qualified to find foreign candidates for positions in Manitoba.

CHRP's, as part of their training, are experts in human resources. At the very least, CHRP's who hold this nationally recognized designation should be permitted to become foreign worker recruiters. As well, there may be other professionals equally qualified to become foreign worker recruiters.

Recommendation #4: That the legislature instruct the department to provide clear, written rules on how sections 15(4) and 16(1) are interpreted

Section 15(4) of the WRAPA provides that a foreign worker recruiter "must not directly or indirectly charge or collect a fee from a foreign worker for finding or attempting to find employment for him or her." Section 16(1) of the WRAPA provides that "no employer shall, directly or indirectly, recover from a foreign worker ... any cost incurred by the employer in recruiting the worker".

Since the WRAPA came into force, the department has interpreted these sections in a manner that prohibits employers from referring foreign worker employees to specific immigration lawyers or consultants, even though these immigration lawyers and consultants may work for unrelated businesses. The reasons members of our association have been told that this policy exists is that the department is worried that there may be an arrangement between an employer and the immigration consultant or lawyer regarding the fees that may constitute indirect charges for recruitment.

In the case of lawyers, paying referral fees to a non-lawyer for referrals is prohibited by section 3.6-7 of the Code of Professional Conduct. As a result, we see this concern as a non-issue regarding lawyers.

The inability of Manitoba businesses to provide a referral to service providers creates practical difficulties in recruiting. One HRMAM HR Director (who works at a company that employs over 1000 individuals in Manitoba), indicates that the inability to provide a referral reflects badly on them when they try to recruit foreign workers.

When competing for foreign workers with companies in other provinces, they have found that the ability of competitors provide referrals to independent lawyers and consultants makes their competitors look more willing to provide services to the foreign worker coming to Canada. As the department only allows for employers to refer a foreign worker to the Yellow Pages or the governing

bodies, employers have found that this makes them look somewhat unprofessional when trying to convince foreign workers to come to Manitoba.

Yours truly,
Human Resource Management Association of
Manitoba

Yvonne Thompson

The Legislative Assembly of Manitoba Debates and Proceedings
are also available on the Internet at the following address:

<http://www.gov.mb.ca/legislature/hansard/index.html>