



Third Session - Thirty-Fifth Legislature
of the
Legislative Assembly of Manitoba

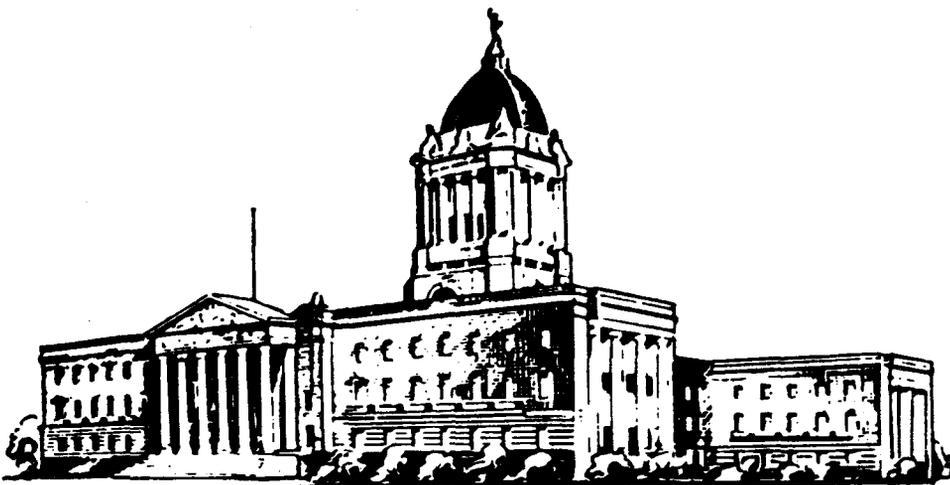
STANDING COMMITTEE

on

MUNICIPAL AFFAIRS

39-40 Elizabeth II

*Chairperson
Mrs. Louise Dacquay
Constituency of Seine River*



VOL. XLI No. 6 - 10 a.m., MONDAY, JUNE 22, 1992



MANITOBA LEGISLATIVE ASSEMBLY
Thirty-Fifth Legislature

Members, Constituencies and Political Affiliation

NAME	CONSTITUENCY	PARTY
ALCOCK, Reg	Osborne	Liberal
ASHTON, Steve	Thompson	NDP
BARRETT, Becky	Wellington	NDP
CARSTAIRS, Sharon	River Heights	Liberal
CERILLI, Marianne	Radisson	NDP
CHEEMA, Gulzar	The Maples	Liberal
CHOMIAK, Dave	Kildonan	NDP
CONNERY, Edward	Portage la Prairie	PC
CUMMINGS, Glen, Hon.	Ste. Rose	PC
DACQUAY, Louise	Seine River	PC
DERKACH, Leonard, Hon.	Roblin-Russell	PC
DEWAR, Gregory	Selkirk	NDP
DOER, Gary	Concordia	NDP
DOWNEY, James, Hon.	Arthur-Virden	PC
DRIEDGER, Albert, Hon.	Steinbach	PC
DUCHARME, Gerry, Hon.	Riel	PC
EDWARDS, Paul	St. James	Liberal
ENNS, Harry, Hon.	Lakeside	PC
ERNST, Jim, Hon.	Charleswood	PC
EVANS, Clif	Interlake	NDP
EVANS, Leonard S.	Brandon East	NDP
FILMON, Gary, Hon.	Tuxedo	PC
FINDLAY, Glen, Hon.	Springfield	PC
FRIESEN, Jean	Wolseley	NDP
GAUDRY, Neil	St. Boniface	Liberal
GILLESHAMMER, Harold, Hon.	Minnedosa	PC
HARPER, Elijah	Rupertsland	NDP
HELWER, Edward R.	Gimli	PC
HICKES, George	Point Douglas	NDP
LAMOUREUX, Kevin	Inkster	Liberal
LATHLIN, Oscar	The Pas	NDP
LAURENDEAU, Marcel	St. Norbert	PC
MALLOWAY, Jim	Elmwood	NDP
MANNES, Clayton, Hon.	Morris	PC
MARTINDALE, Doug	Burrows	NDP
McALPINE, Gerry	Sturgeon Creek	PC
McCRAE, James, Hon.	Brandon West	PC
McINTOSH, Linda, Hon.	Assiniboia	PC
MITCHELSON, Bonnie, Hon.	River East	PC
NEUFELD, Harold	Rossmere	PC
ORCHARD, Donald, Hon.	Pembina	PC
PENNER, Jack	Emerson	PC
PLOHMAN, John	Dauphin	NDP
PRAZNIK, Darren, Hon.	Lac du Bonnet	PC
REID, Daryl	Transcona	NDP
REIMER, Jack	Niakwa	PC
RENDER, Shirley	St. Vital	PC
ROCAN, Denis, Hon.	Gladstone	PC
ROSE, Bob	Turtle Mountain	PC
SANTOS, Conrad	Broadway	NDP
STEFANSON, Eric, Hon.	Kirkfield Park	PC
STORIE, Jerry	Flin Flon	NDP
SVEINSON, Ben	La Verendrye	PC
VODREY, Rosemary, Hon.	Fort Garry	PC
WASYLYCIA-LEIS, Judy	St. Johns	NDP
WOWCHUK, Rosann	Swan River	NDP

**LEGISLATIVE ASSEMBLY OF MANITOBA
THE STANDING COMMITTEE ON MUNICIPAL AFFAIRS**

Monday, June 22, 1992

TIME – 10 a.m.

LOCATION – Winnipeg, Manitoba

CHAIRPERSON – Mrs. Louise Dacquay (Seine River)

ATTENDANCE - 9 – Quorum - 6

Members of the Committee present:

Hon. Messrs. Cummings, Derkach, Driedger, Enns, Findlay

Mrs. Dacquay, Messrs. Gaudry, Sveinson, Ms. Wowchuk

APPEARING:

John Plohman - MLA for Dauphin

WITNESSES:

John Buhler - Private Citizen

William Klym - Chairperson, Western Chapter of the Canadian Property Tax Association

Bill Roth - Union of Manitoba Municipalities

Michael J. Mercury, Q.C. - Private Citizen

Written Presentations Submitted:

Earl Geddes - Keystone Agricultural Producers Inc.

Ed Scrapneck - Kildonan Tennis and Canoe Club

MATTERS UNDER CONSIDERATION:

Bill 20—The Municipal Assessment Amendment Act

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Madam Chairperson: Order, please. Will the Standing Committee on Municipal Affairs please come to order. This morning the committee will be considering five bills: Bill 20, The Municipal Assessment Amendment Act; Bill 34, The Surveys Amendment Act; Bill 49, The Environment Amendment Act; Bill 79, The Highways Protection and Consequential Amendments Act; and Bill 82, The Farm Practices Protection and Consequential Amendments Act.

It is our custom to hear briefs before consideration of the bills. What is the will of the committee? Agreed and so ordered.

Additionally, I have had a request from one of the presenters who is listed as No. 8, if he could be heard first. He has a very brief, oral, not exceeding three minute presentation. What is the will of the committee relative to hearing the numerical sequence? Shall we deal with the bills in numerical sequence? Bills 20, 49 and then 82 are the three bills that we have public representation for. Agreed?

Now, is it the will of the committee that Mr. John Buhler, private citizen, be heard first? Agreed? Just one moment, please. I will additionally read all of the names of the individuals wishing to speak to Bill 20, and if there is anyone else present who has not previously registered, if they would please indicate their intention to our Clerk.

Mr. Bill Roth, The Union of Manitoba Municipalities; Miss Monique Danaher, Manitoba Bar Association; Mr. Charles Chappell, Private Citizen; Mr. Earl Geddes, Keystone Agricultural Producers Inc.; Mr. Michael J. Mercury, Q.C., Private Citizen; Mr. William Klym, Chairperson, Western Chapter of the Canadian Property Tax Association; Mr. John Perrin, Private Citizen; Mr. John Buhler, Private Citizen; Mr. Larry Chornoboy, Tupperware.

Additionally, I would like to draw the attention of committee members to the fact that a written submission has been received for Bill 20 from Mr. Ed Scrapneck, on behalf of the Kildonan Tennis and Canoe Club, and members of the committee should already be in receipt of that presentation.

Additionally, I would like to know what the will of the committee is. I have been advised that we have an out-of-province presenter, namely Mr. William Klym of the Western Chapter, Canadian Property Tax Association, who flew in for this presentation this morning and, as I understand, has arrangements made to leave this afternoon. Is it the will of the committee that we hear Mr. William Klym then, second? Agreed? Agreed and so ordered.

Mr. John Buhler, would you please come forward. Good morning, Mr. Buhler, you may proceed.

* (1010)

Bill 20—The Municipal Assessment Amendment Act

Mr. John Buhler (Private Citizen): Good morning. I live in Winnipeg now. I have lived in Morden for 45 years, and I cannot sit here and watch a nice community that has been a model community for Manitoba sit by and crumble like a lot of the other rural communities in Manitoba.

I have a view that there are two major problems in Manitoba today. One is taxation and the other is cost of communication. The tax seems to be shifting from residential to business. An example, I purchased a \$100,000 building about three years ago. I cannot get enough rent revenue out of the building to pay the tax. I purchased it for \$100,000, it is assessed at \$160,000.

My factory in Morden has a book-value cost of \$600,000, yet it is assessed at over \$1.4 million. The Tupperware building has caused a great deal of concern. They cannot get an offer of a million dollars for the building, and yet it is assessed at over \$6 million, and the taxes exceed \$230,000 a year.

Taxes, generally, in southern Manitoba are almost double what they are just a few miles south of the border. My mum has a condo in Morden, and she pays \$178 or \$179 taxes for her condo. I own the unit just directly above her. It is an identical unit and the taxes on it about \$1,700.

Now, I am happy that my mum has this good rate on her taxes, but why should somebody else pay the price in order to give the senior citizens these special breaks? I sometimes wonder how this legislation has arrived. Maybe we should consider doubling the cabinet ministers' and civil servants' taxes, and then in 10 years time, tell them everything will be back to normal, because that is kind of what has happened with our taxation system.

We are told not to worry, in 10 years time everything will be equalized, but in the meantime, industry and business suffers. Seniors seem to get all of the breaks today. I am going to be one myself soon, so I should not complain, but I know a couple that left for Deadwood, South Dakota today for a three-day gambling trip and they live in subsidized housing. I wonder where they get this money.

Other senior citizens take their money and do other things with it, and the irony of it is that the seniors who save their money—my mum, for example, who just gave each of us \$10,000. I needed it; but my brother in Calgary, he did not need it; my brother in Edmonton, he did not need it; and my sister in Vancouver did not need it. So when we give the seniors all these breaks, the money somehow ends up flowing out of Manitoba.

This is duplicated over and over again. There are homes in Morden, Manitoba, dozens of them that there is absolutely not a nickel tax on them. This is due to some kind of crazy legislation that some civil servant dreamed up. Now how can that happen? The cost of the road for that home is just as high as the cost of the road from my condominium that I paid \$30,000 or \$40,000 taxes on.

That is all I am going to say. I wanted to speak to communication, but this is not the place to do it. Thank you for hearing me.

Madam Chairperson: Mr. Buhler, there may be questions of the committee. Would you be prepared to respond if there are?

Mr. Buhler: Yes.

Madam Chairperson: Are there any questions of Mr. Buhler?

Mr. John Plohman (Dauphin): Do you have any specific suggestions for Bill 20?

Mr. Buhler: You know, I wish I did have. I am just here to ask you to stop some of this crazy legislation that lets some people get away scot-free and businesses pay the full tab. When business gets tired of paying the full tab, they just walk with their feet. I do not enjoy coming up here and speaking to this group. Most business people just say, well, if that is the way it is, I will leave or I will go elsewhere.

I love Manitoba. I have lived here all my life, but I am just pleading with you. Try and come up with some logic that stops this kind of crazy legislation.

Mr. Plohman: Yes, Madam Chairperson, through you to Mr. Buhler, I just wondered whether the questions or concerns you had about the business—really what you are saying is that the market value is not realistic in terms of the assessment that is being placed on this property?

Mr. Buhler: The assessors cannot use market value. They say they have to use some kind of a different formula. There will be others that will speak to that, but I just think the assessors, their

hands are tied as to how market value is established.

Mr. Plohman: So you are not disagreeing with the principle of using market value as a base, but it is not realistic is what you are saying. It does not reflect the current values that you could get if you sold that property, in most cases. Is that what you are saying?

Mr. Buhler: Yes, it takes too long to reflect the current values.

Mr. Plohman: So in that regard, you would be against changing the reassessment year and backing it up to 1994 from 1993. If there was a way to make it more realistic, it is to have it as current as possible, is it not?

Mr. Buhler: Yes, absolutely.

Hon. Leonard Derkach (Minister of Rural Development): Mr. Buhler, first of all, thank you for your presentation. Much of what you dealt with in your presentation is really not dealt with in Bill 20, which is just an amendment to the broader bill.

You referenced several things in your presentation, and upon a question from Mr. Plohman you indicated that you thought reassessment took too long. You know that we have come a long way in terms of improving the reassessment of property over the years, and we are trying to narrow the window in terms of the reference year compared to the time of reassessment so that we can be much more current. The legislation, once we have worked through it after the next reassessment, will certainly narrow that even more where we can reflect much more current market values.

I guess my question to you is, do you see that then as the proper approach in terms of making sure that the value placed on property is no more than two years in advance of the reassessment?

Mr. Buhler: Yes. I think that is a good idea.

Mr. Derkach: Okay. Thank you very much.

Madam Chairperson: Thank you for your presentation, Mr. Buhler. Mr. William Klym, Chairperson, Western Chapter of the Canadian Property Tax Association. Do you have copies of your presentation for members of the committee?

Mr. William Klym (Chairperson, Western Chapter of the Canadian Property Tax Association): Madam Chairperson, I have a copy of our membership list. My presentation is going to

be an oral presentation, but if you could distribute copies of our membership list, I would appreciate it.

Madam Chairperson: The Clerk will do that. Thank you, Mr. Klym. Welcome, and you may proceed.

Mr. Klym: Madam Chairperson, members of the committee, I want to take this opportunity to thank you very much for inviting us to appear to speak on behalf of this legislation. I would like to tell you, very briefly, what the Canadian Property Tax Association is.

It is an organization comprised of Canadian property taxpayers and taxpayers' consultants. We have approximately 375 members across Canada. They represent, on the business side, some of the largest manufacturers, developers, representatives of the retail industry, representatives of the pipeline industry, oil and gas industry, mining, agriculture and transportation.

* (1020)

In other words, they represent, to a significant degree, the largest property taxpayers in Canada. Now naturally they are concerned about what transpires in legislation across the nation. I am chairman of the Western Chapter of the Canadian Property Tax Association which covers the regions of Manitoba, Saskatchewan, Alberta, the Northwest Territories and the Yukon.

Mr. Mercury, who is well known to the members of the committee, is a member of our association, and he brought to my attention Bill 20 and what impact we believed it would have on property assessment. The reason Canadian Property Tax Association is here is because of the problem that we perceive with the amendment.

As Mr. Mercury has pointed out in his previous correspondence with the committee, the concern is that changes in property values after 1985 for farmers and for business persons will not be recognized in assessment. The concern is that the specific example cited by Mr. Mercury and by Mr. Buhler and others results in the fact that these properties will not be sold to any willing purchasers because nobody will step in to take over the closed plants.

As I understand this legislation—and believe me I am no expert in your legislation, and if I make a mistake in this I am sure you will step in to correct me—what it does is allows residential home owners to have their assessments adjusted if there is a

change, but for farmers and businesspeople, they do not have a similar benefit. Of course, that causes us concern as an association, because to us it is saying that those who vote get the consideration, but those that do not do not get the equitable treatment. That is the appearance from the outside. If I am wrong in that perception, I would appreciate the committee correcting me, but that is the perception as we see it as an association.

Now, the solution from our perspective is a fairly simple one. You recognize depreciation or, as we call it in the trade, obsolescence. It is, from our perspective, not an unusual procedure. I know in Alberta for instance that it is not unusual to seek depreciation on a facility even though the base year might be, as in one case, 1985. We had a refinery, as a recent example, that closed and we were able to get a reduction in value because the refinery closed, even though it was operational for a portion of the year. The municipality was able to budget for its revenues because they anticipated this closure. It did not cause a great inconvenience, but the result was a fair one.

So in terms of practical administration we do not seem to have a problem in Alberta with it, and I would think that from my perception the administrative problems are not significant. Now, what is a solution from our perspective? You will hear in detail Mr. Mercury's submission which I have read, and he simply suggested that recognition be given to whatever loss in value there is after the base year. That, from our perspective, would solve the problem.

What we have done in the past in Alberta, that I would suggest might be of some benefit here, is a consultative process between persons in business and on the government side when you come out with legislation such as this. What we find is you end up with fixed positions when you come out with a bill such as this, and everybody digs in their heels and you end up with more or less adversarial positions. In Alberta what we have tried to do recently is to have a task force in which representatives from the assessment side as well as from the business side met to have input into the legislation before it came out with the result, we hope, that the positions are less adversarial and more co-operative.

In the long run is this procedure, if you follow it, going to lead to more jobs? I am not sure. I think that is where we all want to head on this thing. You want to have an industry and an economy that is

thriving. This might be a small step, but I would hope that you would be sensitive to the needs of the businesspeople and sensitive to the needs of the farmers because, as Mr. Buhler said, industry walks with its feet and they will simply locate elsewhere.

Those are my submissions. Thank you very much.

Madam Chairperson: There may be questions from the committee members, Mr. Klym. Are there questions of Mr. Klym?

Mr. Derkach: Yes, thank you for your presentation, Mr. Klym, and we certainly appreciate your coming a long distance to make this presentation.

Just a couple of questions. You referenced in your presentation the system that is used in Alberta with regard to buildings and land. In Alberta, as I understand it, their system is not on market value on buildings, rather on replacement value on buildings and market value on the land.

I am wondering whether this is something that you are advocating, that perhaps we should be moving to with reassessment in Manitoba on commercial buildings?

Mr. Klym: Madam Chairperson, in fact, what has happened in Alberta very recently is we do have a market-value system because, notwithstanding what the legislation says, there has been a recent Court of Appeal decision that has said that you must value according to market value.

If your replacement-cost system equals market value that is fine, but you cannot have a system that is divorced from market value. So what may appear to be true in the legislation and what has been true in the past has been changed as recently as two months ago because of this case that we refer to as an Eaton's Authority.

Now what you find in Alberta is—December 31 of the prior year is the date at which you determine the value of the property. Land and buildings are valued separately, so that you will have a base year for land—in the case of Calgary, it is 1985—but you value the property, the improvement, as of December 31 of the previous year.

So for 1992 assessment purposes, you have the value as of December 31, 1991. So you will take the value of the land, then you will determine the value of the improvement, but when you add them together, they still have to add up to market value.

It is a rather complicated process, but as it relates to the issue before the committee today, if there are

changes to the improvement, those are taken into account beyond the base year.

Mr. Plohman: Madam Chairperson, Mr. Klym, you said that you would like the act to recognize obsolescence or depreciation. Are you proposing that this would be a broad recognition as opposed to only upon closure, any changes that take place due to obsolescence would be reflected in the assessment, as opposed to waiting till a plant was closed and then reflect that in the assessment?

* (1030)

Mr. Klym: It would be our position that anything that affects value should show up on the assessment roll. You may have a plant that is not yet closed but whose value is diminished, and to the extent that that is not reflected on the roll, I think the practical effect of that is to simply hasten the plant's closure. If a taxpayer comes to the conclusion that he or she is going to save a significant amount of money by closing the plant, as opposed to keeping it operational, he will close the plant.

By way of example, what we found in Alberta, is with regards to what we call "stripper wells", where the wells are producing a very small amount of oil. They are still paying full value for tax. The consequence of that has been that they have closed a lot of the wells, shut them in, because they find it more economical to shut the well in than they do to keep it producing because of the high level of tax. So the government has had to address that problem.

We should be doing things in our submission that keep plants open, even though they are suffering a loss in value. One of the ways you do that is to reduce your assessment.

Mr. Plohman: So you would liken the obsolescence to an external factor that homeowners could now in Manitoba apply for changes in their—appeal their assessment based on external factors? You would liken this situation of obsolescence of equipment or of a plant to that?

Mr. Klym: There really are two factors in what we call obsolescence. There is one that you have identified called economic obsolescence, which is factors external to the property. In manufacturing, for example, you have what is called functional obsolescence, so it might be a plant that is outdated. It simply cannot compete with modern plants without changing equipment extensively, but it is struggling along. Now that is not external to the property, it is

part of the property. That is what would be called functional obsolescence.

So properly, by appraisal technique, an appraiser looks at the property and considers any loss in value. That loss in value can be attributable either to functional or to which you have identified as economic obsolescence. Both of them in our submission should be recognized.

Mr. Plohman: Is this a problem that has become more widespread because of the impact of free trade, in terms of its impact and dislocation and adjustment in the industry that it has taken place?

Mr. Klym: It is a number of facts—

Madam Chairperson: Mr. Klym—

Mr. Klym: I am sorry.

Madam Chairperson: Sorry. I would just remind all presenters to please go through the Chair, because all of your comments are being simultaneously recorded. It affords the Hansard people an opportunity to identify which mikes should be opened. Thank you.

Mr. Klym: Thank you, Madam Chairperson. I think you have a number of causes of obsolescence. The fact that Canada now has to compete in a worldwide economy, we suffer significantly. Free trade is an impact as well because of the location of plants. There is no question of that.

The fact is that we are a resource-based economy, so many of the plants we have are older and aging facilities. By way of example of that, the pulp mills in Ontario are very old and outdated facilities, and they are trying to compete in a modern market with very old and outdated facilities. So is that free trade? Is that a worldwide economy, or is it just a fact that so many of these plants are old? Right here in Winnipeg, you have two very large department stores that are real flagships, but do they service the modern retail industries? They do not. Shopping centres do.

You have aging facilities of one sort or another, and what is the reason? I think free trade is part of it but there is a lot more to it than that.

Mr. Plohman: You mentioned the issues of consultation prior to legislation being brought forward. I think that is the responsibility of government to do that, to ensure that there is widespread consultation on any major issue before it is brought to the Legislature. That is a practice that has been followed in this province for many

years to a greater or lesser extent. The government can speak for themselves as to whether they do it at the present time. It was something that we felt was very important in government. Do you feel that was not followed in this particular act?

Mr. Klym: I cannot say that. I just speak from the experience in Alberta where we have recently tried a task force which was done for the first time in terms of new legislation. The result was it was less reactive than it was consultative. I am just not that experienced with the Manitoba process to wade into the middle of that one.

Mr. Derkach: Mr. Klym, I have a couple of questions to ask you, and I guess some of them relate to where we are coming from in terms of the whole question of reassessment in the province. As you know, we have come from a system where there has been somewhat of a mixed bag of reassessments across the province. In the city of Winnipeg, it was vastly different than it was in rural Manitoba. When the last legislation was passed, it was with the vision that we would move to a reassessment cycle that would be far more regular than it has ever been, and indeed we are in a transitional period of time.

But I guess my question to you is, do you feel that a three-year reassessment cycle is unreasonable given the stable, if you like, market economy of this province or the property values in this province?

Mr. Klym: My response, I guess, is this, that Manitoba clearly is different from places like British Columbia and Alberta in that you have got a much more stable value for properties. They do not go up and down to the extent that Alberta and British Columbia do.

What we are trying to do in Alberta is move to a market value system where there will be annual reassessments. Their basis for that is that once they get the base property values and it is all computerized, they feel that they will be quite capable of handling an annual reassessment. I guess my question is, if they could do it in Alberta on an annual basis, is there any reason that it could not be done here?

Now there may be no need for it if property values do not change on an annual basis, but it seems to me that if they think they can do it in Alberta, why could it not be done here?

Mr. Derkach: Mr. Klym, Bill 20 speaks to the delay of reassessment by one year for reasons that I have

outlined on many occasions, and we have consulted with the various stakeholders, if you like, who would have something to say about the reassessment and the delay in it. Our ultimate goal, of course, is to ensure that reassessment takes place on a fairly regular basis so that we are not out of step with the market values.

I guess I come back to the question. You had indicated that Alberta is moving to a one-year reassessment. Given the stability in Manitoba of the real estate market, and given the fact that the reference year is two years ahead of the reassessment year, is that an unreasonable approach, do you feel, in terms of making sure that at least on a regular basis we reassess based on a property value two years ahead of that time?

Mr. Klym: Madam Chairperson, that is a difficult question to answer. So long as property values remain relatively stable, then you do not have a problem with a big differential between a base year and the reassessment. The longer period of time you have between a base year and a reassessment, the more vested interests grow up to protect their particular assessment. All you have to do is to look to Toronto which is trying to operate off a 1941 base year factored up. They have been struggling to get a reassessment there for the better part of 20 years, and there are so many vested interest groups that they have effectively prevented that.

So, I guess my answer is, the more often you have reassessments the more flexible the system is. You would know better than I whether three years is adequate as opposed to one, because I think our conditions are somewhat different in Alberta and British Columbia than they are here in terms of how property values fluctuate.

* (1040)

Mr. Derkach: One of the issues you had spoken to was the question of obsolescence and the two areas, the economic obsolescence and the functional obsolescence. When you do reassessments on a regular basis, and I understand that we are in a transitional period of time, but once we get into the regular reassessments, the functional obsolescence will largely be taken care of because really you are only waiting two years before reassessment really occurs.

In that way we would probably deal with most of the questions of obsolescence. Do you feel that the integrity of a system can be maintained if you allow

for appeals on reassessment at any time, given the depreciation value of property?

Mr. Klym: I do not believe that the interim period creates that much of a problem. Our experience is this: the problem relates to the tension between what the assessor has to raise in revenue and what the ratepayer feels he has to pay in tax. I think this is true not just in Manitoba, it is true in Alberta and every jurisdiction in Canada. You are trying to raise such a great amount of revenue off a system that was never designed to raise that amount of revenue. That is the fundamental difficulty with the process.

So what you have is an assessor looking at a particular piece of property, and we have it very commonly in the city of Calgary, where the assessed value of the property is \$7 million and the market value is \$2.5 million. But the assessor is under such enormous pressure to raise revenue, he is not being reasonable.

Now, I am not saying that occurs here, but that is certainly the experience in the city of Calgary. So you have an assessor trying to maintain as great an assessment as possible and the taxpayer, of course, at the other end. If it becomes too great, the taxpayer simply throws up his hands and says, I am going to abandon the property. That is occurring right now in the city of Calgary.

The whole reason is, they are trying to raise too much revenue off a base that was never intended to do that. I think what I am hearing from some of these stories is a similar situation here. The municipality needs the revenue; the city needs the revenue. That is the difficulty.

Mr. Derkach: Thank you very much, Mr. Klym, for your presentation.

Mr. Plohan: Just to clarify, first of all, you are saying that any delay in the assessment year is negative in terms of reflecting the current situation. You are actually urging the government to move to assessment every year as opposed to every two or three years, which the Manitoba legislation has at the present time, not delay it a year, which is what this bill does.

Mr. Klym: Well, any delay, we would agree, is negative. But you could by recognizing depreciation in the interim neutralize that delay.

Madam Chairperson: Thank you for your presentation, Mr. Klym.

Mr. Klym: Thank you very much.

Madam Chairperson: Mr. Bill Roth, the Union of Manitoba Municipalities. If I might ask your indulgence just for one moment, Mr. Roth, while the Clerks are distributing copies of your presentation to members of the committee. Thank you, you may proceed.

Mr. Bill Roth (The Union of Manitoba Municipalities): Thank you, Madam Chairperson, and good morning to the members of the committee.

First of all, I would like to say, I have with me today a fellow executive director, Barry Walker, and Michelle Scott, who is very capable assistant with the UMM. It is regrettable that our president, Mr. Jim Knight, is unavailable, and our vice-president, Jack Nichols, is unavailable, but they are in Gimli due to the fact that we have our June district meetings.

As a consequence, I, Bill Roth, the Reeve of the R.M. of Dufferin and Director for the Eastern District of the UMM, have been delegated and instructed to make a presentation to the committee of the Legislature considering Bill 20, The Municipal Assessment Amendment Act. I would like to say to you, the Union of Manitoba Municipalities is pleased to make a presentation before the committee of the Legislature considering Bill 20.

The Union of Manitoba Municipalities represents 162 of the 201 municipalities in Manitoba, including all of the 105 rural municipalities, 14 local government districts, 23 villages, 17 towns and three cities.

The mandate of our organization is to assist the member municipalities in their endeavour to achieve strong and effective local government. To accomplish this goal, our organization acts on behalf of all the members to bring about changes, whether through legislation or otherwise, that will enhance the strength and effectiveness of municipalities.

Assessment reform is, of course, a matter of central concern to our membership. The UMM has been an interested participant in the process of assessment reform which began with the Weir Commission report over a decade ago. In recent months, much attention has been focused on the range of issues related to the government's assessment reform policies. Our presentation, however, will only comment on those matters which are specifically dealt with in this bill.

The Union of Manitoba Municipalities supports the amendments which are outlined in Bill 20. After having reviewed the legislation, we are of the opinion that these changes will have little immediate impact, and in the long term may benefit Manitoba municipalities.

In Bill 20, the government proposes to delay the reassessment by one year by implementing the reassessment for the 1994 tax year. Concern has been expressed over this amendment because the 1985 land values will continue to be used for another year. The farm community in particular is concerned that the 1985 values will result in a higher assessment than of current market values for farmland used.

However, the government's implementation of portioning and the regulation of the amount of taxes paid by each property class, the choice of the reference year becomes irrelevant. Portioning ensures that the farm class of property will contribute the same amount of taxes as they have in the past, relative to the other property classes. Bill 20 will allow for a general assessment to be made every three years starting in 1994.

The UMM encourages the government to maintain a three-year time frame. Our membership feels strongly that the government should make a commitment to maintain this schedule. While we agree the special circumstances justify a delay for that upcoming assessment, we would not be in favour of any future delays.

The UMM also agrees that the change in the assessment year will allow the assessment branch an opportunity to do a more thorough reassessment than would otherwise be the case. Some of the problems that associated with the previous assessment occurred because the department did not have enough time to do a proper job. Therefore, we would rather not see the process hastened unnecessarily.

The UMM also strongly recommends that the reference year be only two years prior to the reassessment year. For example, the reference year of 1995 would be used for 1997 as reassessment. One of the purposes of property assessment reform was to make the process more understandable to the ratepayer. It is important that these time frames for reassessment be upheld in order to achieve this goal.

While the UMM supports Bill 20, we would like to emphasize that we have concerns about other

aspects of property assessment. For example, our membership is concerned that there are currently too few assessors to properly carry out reassessment. In addition, there remains a variety of opinions among our membership regarding such issues as appeal rights and an implementation of portioning. These are complex matters and we encourage the government to further explain and clarify the intent of these policies and the long-term goals of assessment reform in Manitoba.

In conclusion, the UMM urges the province to continue to review their property assessment reform policies and work toward making the process understandable, equitable, and as consistent as possible. Thank you.

* (1050)

Madam Chairperson: Thank you, Mr. Roth. There may be questions from the committee members.

Ms. Rosann Wowchuk (Swan River): As I look at this, I am surprised that there is such support when there are concerns within the community about the delay in the assessment, because many people have come to us with a concern that the delay in assessment will have impact on them.

One of the issues that I want to raise though is in regard to the rights of appeal. You have said in your presentation that you have a variety of opinions among our membership regarding the issue of the right to appeal. We have had concerns raised to us that with the legislation the way it is, farmers do not have the right to appeal their assessment the same as homeowners do. What are the areas of concern of appeal that the UMM is concerned about?

Mr. Roth: First of all, we have indicated that we support delay, but we only support it because of quality. We want quality. There were errors made last time regarding particularly elevators, and as a consequence at the court of revision many municipalities did not have an opportunity to address the assessment allocated to elevators.

Now, regarding the right to appeal. If we look at Section 13, there are many areas there, it describes various areas in which you have the right to appeal, the change of physical nature, error, damage, improvements and zoning. We have some concerns regarding appeal because basically if we look at the present legislation that is in place in Bill 79, which we have to look at, and if we look at Section (iv), Section (iv) indicates to you there that

besides error, omission and destruction it states, "a change in the physical characteristics of the property or in the physical characteristics of property that is in close proximity to the property."

Now that gives the property owner the right to appeal, and that means if we look at that carefully they have a right to appeal a physical change. Okay? So, in other words, if there is a change in a house they have the right to appeal. If there is a change to a building, let us say if there is an explosion, that is an internal matter, that is an internal change. In my opinion, it appears to me that there is a right to appeal here.

I think what has to happen here is there have to be some guidelines established and clarification of some circumstances under which the person would appeal, particularly the farm community and the business. Now, internally, if there are physical changes we presently have that right to appeal. Farmers have the right to appeal, like, physical changes result in the right to appeal here. I think what should happen here—there is reference made to external matters. We have to look at external—what we are talking about. Are we talking about localized external matters? Are we talking about external matters which may be the consequence of the PIK program in the United States, the export enhancement program, the trade wars between Europeans and the United States? All right?

So I think there has to be some definition if we are going to look at external, but if we do broaden the appeal process and we do make it current then the three-year term becomes irrelevant, and we have agreed that the three-year term should be irrelevant.

We have also agreed in the past that the means to assess, the most appropriate, is market value. Now, in the market value that we presently are pushing for, and we have paid a tremendous amount of money, municipalities, to establish the MACS system to make sure that it was possible to make assessments as current as possible, and it is indeed regrettable that the original intent was to reestablish reassessment in 1993 we have to delay it for one year, but we feel it is far more important to have accuracy.

Ms. Wowchuk: On the right to appeal for external factors, do you think that, for example, if there was rail line abandonment in a particular area, then the whole area would change because there was no service to that area? Do you think that would be a

legitimate external factor that would qualify farmers to appeal their land values?

Mr. Roth: I had not thought of rail abandonment. I am not really prepared to address that specifically, but I will say this, that we could have a dam, for instance, that may be constructed in very close proximity to a property that may have an impact upon that property. What the present legislation says is that it is a three-year time frame before that issue is addressed because that is an external factor, but it is a localized factor.

Also, we could have there a drainage system which may be implemented by some municipality or other governments which may have either a negative impact or a positive impact.

So, in this instance here, you do not reassess and force the property owner to pay additional taxes. Also, you do not reassess to give him some relief when it comes to assessment.

To look at these rail line abandonments, that is going to have a tremendous impact on all Manitoba. I would think that there has to be some tough decisions made here regarding that, but I do not have any data to really make comment on that.

Ms. Wowchuk: In the other area, you had indicated that, although you were not happy with the delay with reassessment, you could accept it because you felt that there would be a better quality of assessment. On what do you base that because you are concerned about the number of assessments? On what basis do you think that there would be a better reassessment if you delay it for one year?

Mr. Roth: There were obviously some problems when reassessment reform came in, particularly the one example I have in mind is the elevator situation. Most appeals of assessment go to a court of revision, and that court of revision is composed of members of, quite often, the council, or we may appoint ratepayers to that court of revision. But it is addressed locally; it is not addressed outside the municipality.

They have the right to appeal the municipal decision, but this instance here, I believe, its elevators, their assessments were lowered and the local municipal corporations had no input.

Ms. Wowchuk: But my question is, what will be the benefit? Why can you not address that if you do the reassessment in 1993 rather than 1994? I do not

quite understand why you are saying there will be a better quality if you delay it a year.

Mr. Roth: According to the information we have got, and we really do not have anything specific, we are under the impression that the MACS system is in place, but there are problems with the assessors being able to assess all the properties and bring them up to date. As a consequence, we feel that we want to avoid all errors. We want some uniformity, and we want it established in the future.

This system here that is being implemented is far superior to the old system that we had. We went a minimum of nine years and sometimes went to 17 years before there was reassessment. So all I can say to you is that we are looking for a system of reassessment where there are no errors and that we have quality.

Ms. Wowchuk: Do you have any concerns that if the government changes the legislation once to delay it by one year, if the system is not in place, they are going to again change the legislation and delay it another year? Is that a concern to you?

Mr. Roth: Let me assure you, the Union of Manitoba Municipalities will be very unhappy if that is attempted, and we would hope that we have the opportunity to come before members to make our opposition to any delays well known. We are looking at a three-year time frame here, and that is the minimum we would hope to achieve.

Ms. Wowchuk: Did the Union of Municipalities make any presentation in opposition to this bill when it was first presented? Were you opposed when you first heard about the legislation and have you changed your mind since?

When you first realized that there was going to be a delay in the reassessment, were you concerned about it then?

Mr. Roth: Well, we allocated a considerable amount of money towards establishing the MACS system. We felt that with the amount of monies that we contributed towards the computer system that there would not have to be a delay.

There was concern expressed. There, of course, is concern, because we want that to become a reality as soon as possible. However, I will say that there are members of our municipalities which also believe that we should delay it for one year because the delay would mean that reassessment does not take place and the court of revisions are not held in election year.

* (1100)

Ms. Wowchuk: Are you saying you are in favour of this because you want to move it away from municipal elections, that you do not have new councillors dealing with it? What is your concern with it coming during that time?

Mr. Roth: Well, we have had members that say that it would be a good development because the reassessment would not take place the same year as the municipal election. We have got one large corporation of our membership that has specifically indicated that.

But, basically, we support it because we want some quality. I do not think assessors are infallible either.

Mr. Plohma: Mr. Roth, you said in one paragraph: ". . . the choice of reference year becomes irrelevant." Then in the next paragraph you said that you want general assessment to be made every three years, and you encourage the government to maintain the three-year time frame. Membership feels strongly that the government should make a commitment to maintaining this schedule.

On the next page you strongly recommend that the reference year be only two years prior to the assessment year, and you go on to explain that. I find a real contradiction in this paper. On a number of occasions you are saying how important it is to have that reference year pegged there. Then in the other statement you are saying the choice of the reference year is irrelevant because of portioning.

Now, is it relevant or is it not relevant?

Mr. Roth: First of all, if we look at 1985 values, let us face it, the farmland was considerably higher, and many businesses, the market value of those properties was considerably higher.

If we take a look at 1990, we know that many businesses in the farmland had dropped considerably in market value and price. So, therefore, the assessment would be considerably lower. However, if you lower the assessment considerably, municipal corporations and local school districts still have to raise the same amount of monies for their budget.

As a consequence, what we must look at is that mill rate. If the assessment drops significantly, mill rates have to go up because we have to raise the amount of money then. We actually feel we have been very, very—fiscally, municipalities have been responsible. I dare say that municipalities will

challenge anyone when it comes to financial responsibility.

So what happens is here, in a sense, to make sure that we have got a system that is as current as possible, we want a reference year. But in a sense it is a little bit irrelevant because if you drop the assessment considerably, then your mill rate has to go up, and taxes are based upon mill rate.

Mr. Plohman: Mr. Roth, are you keeping in mind that you said that the choice of reference year becomes irrelevant, how can the delay of the reference year by a year make the system more understandable? You said it was important to make the process more understandable to the ratepayer. How is it that delaying this by a year is going to help make it more understandable? That is what the government is doing here, and that is one of the reasons the minister gives for delaying it. How does that make it more understandable, or do you think it is important to have that reference year as current as possible to make it understandable?

Mr. Roth: If it is as current as possible certainly the public and the ratepayer will understand it far better. Then, I think, the government has the responsibility to maybe hold public hearings to make presentations and make it understandable. I would just like to go back to the part where we say the choice of the reference year becomes irrelevant.

We know that within each class, because of portioning, you are required to collect a certain amount of monies. Because of portioning, the 27 percent for farmland, the 65 percent for business and the 48 percent for residential, there is a certain portion of the money that comes from each class.

Now, the portion of the money that comes from each class will not change significantly, let us say when the property values are assessed lower because of the decrease in market value. We still will have to pick up the same number of dollars in order for the municipal governments to function. In that sense there, it does in a sense become somewhat irrelevant, but at the same time, we want the public and the ratepayers to have a complete understanding on what basis they are taxed.

As a consequence, we want the market value as current as possible. In comparison to the old system we had—which was I do not know how many years old, but it is absolutely absurd. We also feel that if you want appeals broadened, and I am not going to be the one to determine whether appeals would be broadened or our union is not, but if you

broaden them that means that there could be considerable appeals at the Courts of Revision.

If you broaden the scope of appeals, there could be reductions then. That has an impact upon municipal budgets. Now the municipality—there could result a cancellation of taxes. Now, the municipality, when it collects the taxes, not only collects the taxes for the municipality, but it collects the special levy for the education system. It also collects the taxes from the businesspeople when it comes to the education support levy.

So, if you continually have a change of assessment, there are times—I would hate to say what would happen, but we could result in some times where the municipalities would incur a deficit because of someone else's activities or because they have collected taxes for the special levy or because we have collected taxes for the province of Manitoba. Because we do collect taxes and the business community pay a fair amount of tax towards the education system.

So at the Court of Revision, we would have our appeals, then they would also ask for cancellation of taxes. If the appeal was granted, then they would expect cancellation of taxes, and that would really have a negative impact on municipal budgets.

Mr. Plohman: Mr. Roth, I was not asking about appeals at that point, I was asking about the reference year, and we are going to deal with, perhaps, some questions about appeals and whether they should be the same for businesses and farmers as they should be for homeowners.

But I fail to understand how it can make the system more understandable if the reference year is more outdated and is kept that way by a change in legislation. You are arguing on the one hand that it is important to have it as close as possible to market value, and on the other hand you are saying you support this bill. That is what I am asking you, how you can support a delay when you are saying that that is contrary to an understanding by the taxpayer of their assessment?

Mr. Roth: We are supporting the delay because we want some equity here. We want the Assessment Branch to make sure they improve the system. We do not have the problems that we had in the past when Bill 79 was passed. That is basically why we are supporting the delay.

I also indicated that we will not support any future delays. We are only supporting this delay, one year, because of that fact.

Mr. Plohman: Mr. Roth, I wonder what problems you are specifically identifying. You mentioned elevators. The government has said that the previous government was slow in bringing in this new system. Now you are saying that they need more time, you did not want them to rush. The reason, of course, that there was a number of years for this to take place was to put in place an automated system. Right?

Mr. Roth: Right.

Mr. Plohman: Now we have that automated system. Why is it so difficult, and why is more time needed to prevent, in your mind, errors, if we have that system in place now?

Mr. Roth: We have the technology in place. We paid for the computer system. That is in place. I do not think that is a problem. I could be erroneous, but I do not think that is a problem. From the information that we have, that is not a problem. So on that basis there, we would not be in a position to support a delay.

We also know that assessors, like anyone else, can make errors. There could be omissions; they have been made in the past. We want it as current as possible. We want them to make sure that does not happen.

*(1110)

Mr. Plohman: You are categorizing this, maintaining the schedule that was put in place in 1990 when Bill 79 was passed, maintaining that schedule as hastening unnecessarily the reassessment, because you said you do not want to see the process hastened unnecessarily. Yet what we are simply asking is that they keep to the schedule that was agreed to and passed in law, in legislation in 1990, in Bill 79. Do you call that "hastening unnecessarily" the process, to maintain the schedule?

Mr. Roth: Where is that specific section?

Mr. Plohman: Madam Chairperson, at the bottom of page 2 and the top of page 3.

Mr. Roth: I guess once again, I can only rely on the fact that we do not want the situation there hastened because we do know that there have been errors made in assessment before. Unless I am

misinterpreting your question, I would like some clarification.

Mr. Plohman: No, I think I will leave that. If you feel that keeping on the time line that was established in the bill is unnecessarily hasty, then I will accept that is your opinion on that or the opinion of the UMM.

I wanted to ask you, just briefly, whether you feel that it is really not necessary for farmers to have the same—and businesses for that matter; there will be some more presentation on that aspect of it, I believe, later—rights to appeal as homeowners.

Do you feel it is really not necessary to include those external factors? You went into that a little bit. It may result in lost revenue for the municipalities, in deficit positions because of having to turn back money that was raised because of lowered assessments. It may be confusion, and therefore you feel it is just not practical to allow for appeals based on external factors. Is that correct?

Mr. Roth: From where my perspective is, we have to define external. If we are talking about localized situations—

Mr. Plohman: Let us assume we are.

Mr. Roth: Then I guess I would have no problem with reassessment taking place. However, we must remember that when we—particularly let us say in farmland or buildings or whatever, when these buildings were assessed at current market value of the land, the assessment is not based upon the productivity of the land and is not based upon the cost and the productivity of the buildings. We are talking about property which has a market value. If the farmland is idle due to the fact that the farmers maybe could not get financing, it does not change the value of the land. The market value is still there.

I guess we have to be very, very cautious if we are going to talk about—let us say, in some building a business goes out of business, he is in the same position as the farmer who did not get the money to finance the operation for that. He is no longer operating. So if we permit these factors to change, then we could result in significant problems. Now I do not visualize where we can possibly let external factors which are as a consequence of federal government decisions, international decisions, influence assessment as long as the property's assessment is compared to adjacent properties in close proximity, as long as they are comparable.

In Manitoba hopefully, farmland was assessed right across the province in a fair, equitable manner and that was market value. There may be times—we could even argue and say, well, cattle prices have gone, have been very high for several years, as a consequence maybe next year if they go up some more, then the value of the land would go up. But based upon economic activity on the farm or in the building, that, in my opinion, is not what market value is. Market value is the value of the building, and in this case in 1985 and now it is just going to be 1994, I presume, or 1993.

Mr. Plohman: Yes, you seem to be fixated on this problem maybe of not being able to get financing or something like that, but look at it from the example of a rail abandonment which affects a localized area, or a plant closure. Say potato producers who are supplying McCain or Carnation or even the Campbell Soup plant which closed, if they were to close, would that not impact on the value of the land in a certain radius? Therefore, that is an external factor.

When we have those kinds of dislocation taking place because of many factors in the current economy that we have, is there not a realistic reason at that point to say, well, maybe there should be a look at that assessment based on that external factor, a major plant closing, a rail line abandonment? Not the price of wheat or the price of a commodity as it relates to the world situation or financing, we are talking about an external factor that affects a number of farmers in an area. Yes, the neighbour will be still having the same relationship, but both of those will have gone down because of the impact of this external factor. That is what we are raising, whether that is a legitimate reason to be considered for a possible reassessment.

Mr. Roth: Well, as I indicated, if you want to establish a definition of external factors, and provide some direction and guidelines to municipal corporations and that becomes part of the assessment process, so be it. But I think we have some real difficulty here if you are going to just speak in terms of external factors when it is as a consequence of nonlocal decisions. If it is because of a local decision, a potato processor no longer processes potatoes, and the value of the land is affected. What you are doing now, it is a three-year period. Let us face the fact that if that potato processor closes and you lower assessment at the

end of the year, that businessperson or potato producer is going to ask for a refund in taxes. Now if you broaden and you are no longer recognizing your three-year term, it could have a negative impact on municipalities.

Now I can appreciate your concerns, and I understand them, but I want you to recognize the fact also, that it could have a real negative impact upon the municipalities.

We are collecting education taxes and we have no means, once we have paid those monies to the school divisions or paid them to the provincial government, we have no means of recapturing those taxes. Now we have to address that issue too, would we not? I mean, we want our money because we have been fiscally responsible. I think data will show you that municipalities have been fiscally responsible in relation to any other form of government.

* (1120)

Mr. Plohman: I guess that concern you have is one that has become increasingly important in terms of the impact of local levy on the municipal taxpayers because there has been a shift more and more of responsibility from the provincial levy to the local levy. As a matter of fact, I guess you would agree, Madam Chairperson, that last year the drop in the education support levy by 1 mill has impacted on several municipalities in terms of the impact of it on farmers and residences in the area in terms of the amount of money that you had to raise through local levy for education purposes. Is that correct?

Mr. Roth: I first of all want to go back a little bit to answer a question. First of all, let us face the fact that we did receive, when the NDP government was in power under the Premier, Howard Pawley, there was a 500 reduction in property taxes for education purposes, and that was well received. As a consequence to that, the NDP under Premier Howard Pawley initiated that.

We have been pushing for years and years to remove education from property taxes because we feel that property taxes do not reflect the ability to pay. They do not reflect the ability to pay. The businessperson who goes out of business, he no longer is in a position to raise revenues to pay those taxes. A tremendous downturn in the economy, in the agricultural community makes it extremely difficult for the farm community and the business community to pay those taxes for services which,

we often have argued, are the responsibilities of the federal and provincial governments. Okay?

So, as a consequence, we are also—we know that throughout Manitoba, the survival of our towns is extremely important, so we are not too receptive to the removal of money from our ratepayers, which should be spent on our business places. We are not too receptive to additional monies going to education or any other provincial responsibility because we feel that money should stay within the community and be spent on the businesses locally.

Now you asked me specifically about the 1 mill last year? I am sorry, but you would have to provide me with a little more detail than that.

Mr. Plohman: Yes, the government announced that they would reduce the education support levy by 1 mill and that consequently meant that more of the education funding had to be borne by the local levy, which applies to farmland. So my point was that this meant more—

Madam Chairperson: Order, please. I would like to remind all committee members that this is an opportunity to ask questions that are relevant to the matter on the table, which is Bill 20. It is not an opportunity for debate with members who are making public representation, nor is it appropriate to be asking members who are making representations to express an opinion.

Additionally, I would like to remind all committee members that we have a number of presentations this morning and there are certain time constraints and we have a number of people waiting to make representation on three bills. I would ask the co-operation of all committee members to please keep in mind that order be maintained at all time, and that indeed there is a process that is to be followed.

Point of Order

Mr. Plohman: Just asking presenters for their opinion on various sections of the bill and the aspects that relate to the sections of the bill is in order. I mean, everything that is presented here is opinion by presenters and that is certainly in order. I find that your admonishment in that area, in my opinion, is not correct.

Madam Chairperson: The honourable member does not have a point of order. They are indeed at liberty to question if it has been presented in the brief, express their opinion, but beyond the

expression in the written presentation is indeed out of order.

* * *

Mr. Derkach: Thank you very much, Madam Chairperson. First of all, I would like to thank Mr. Roth for his presentation. Indeed, I know that this is sort of an awkward time for UMM, since your president and your executive are out. Many of your executive members are out at the district meetings which are being held around the province. I appreciate the fact that the UMM was able to come and make presentation to this bill.

We have had several occasions to discuss the amendments to this bill with the UMM and have indeed accepted very positively their input into it. With regard to the delay in assessment for one year, we have discussed the reasons for it. Municipalities, of course, are the ones that have to deal with the impact of such things as education, a finance formula that is being implemented, and also the portioning aspect. Those have to be explained to taxpayers who pay the taxes to the municipalities.

This is one of the reasons that we had asked the co-operation of municipalities across the province in the delay of reassessment by one year. Also, I note that in the comments made by the member for Swan River (Ms. Wowchuk), she speaks about reassessment taking place in 1994, and I would just like to correct for the record, the process of reassessment will take place during 1993 and the implementation of reassessment will take place in 1994. It is not the process that will take place during 1994.

So with those comments, I would just simply like to thank UMM for their presentation.

Madam Chairperson: Thank you, Mr. Roth.

Mr. Roth: It is not the position of UMM to delay in any way the right for someone to complain, the right for review or the right for revision of any property. I guess I did not quite answer Mr. Plohman's question well enough before on this.

The thing is, from my perspective, our perspective, Bill 20 does not change the appeal process. It does not to any great concern. Thank you.

Madam Chairperson: Ms. Monique Danaher, Manitoba Bar Association? I will recall her name later. Mr. Charles Chappell, Private Citizen? Mr. Earl Geddes, Keystone Agricultural Producers Inc.?

It is my understanding that the Keystone Agricultural Producers, indeed, have a written brief that will be distributed now, and they wish this brief to be given consideration for this bill in the absence of Mr. Geddes being present this morning.

Mr. Michael J. Mercury, Q.C., Private Citizen?

Good morning, Mr. Mercury, you may proceed.

Mr. Michael J. Mercury, Q.C. (Private Citizen): Madam Chairperson and members of the committee, my name is Michael Mercury. I am a lawyer and a partner in the law firm of Aikins, MacAulay and Thorvaldson, whose offices are situated in the city of Winnipeg.

I was born in Winnipeg in 1933 and took all my schooling in this province. I graduated from the Faculty of Arts of the University of Manitoba in 1955 with a Bachelor of Arts degree. I later attended the Manitoba Law School and graduated with a law degree in 1959. I was called to the bar on June 5, 1959, at which time I took employment with Thorvaldson and Company which later amalgamated with Aikins, MacAulay, the law firm to which I was articled since 1955. I have been with that law firm since my call to the bar.

* (1130)

In recent years, I have concentrated my practice in the area of municipal assessments and taxation. I have appeared on numerous occasions before the administrative tribunals in Manitoba, the courts of Manitoba and the Supreme Court of Canada on matters relating to assessment law. I have taken courses on assessment in the United States and have been a guest speaker on assessments at a number of conferences held in Canada by the Canadian Property Tax Agents Association, the representative of whom you listened to this morning.

I appear before you today, however, as a private citizen carrying a brief for no particular client. Therefore, the views which I express are simply those of my own as one who has devoted a great deal of time on this subject, a subject which most people, including members of my profession, find it difficult to understand. I might say I spoke to the representative of the Bar Association. She said she was not going to appear. Simply, they did not have enough members in our association to understand assessment law. That is the sad part about this whole thing.

Let me now deal with Bill 20. Bill 20 is a proposal to amend Bill 79 which became effective on January

1, 1990, and became known as The Municipal Assessment Act of this province. Bill 79 is this government's response to the Weir Commission report which made a number of recommendations for change to the assessment system in Manitoba.

There are two major objections which I have with respect to Bill 20. The first objection is that there is no right of appeal in between the assessment years. Bill 20 confirms that with the exception of the homeowner, all other property owners, including farmers—I underline farmers—and businessmen, have no right to appeal an assessment and seek relief in between periods of general reassessment where property values have dropped as a result of functional or economic obsolescence. I am going to explain these concepts to you shortly.

The second objection I have with this bill is that it postpones the next general reassessment by one year and thereby perpetuates hardship and inequity for an extra year. I listened to the gentleman representing the reeves and municipalities. It may be good for the tax collector not to have appeals and to perpetuate inequities, but it does nothing for the taxpayer upon whom you rely.

Dealing with the first objection, namely the denial of the right of appeal. Bill 20, by proposing Clause 5 as an amendment to Section 17(1), and I am getting a little technical here, confirms that this government by Bill 79 took away the right of a taxpayer to obtain relief when the taxpayer's property value has fallen at a faster rate than other properties in the municipality in general. This was accomplished very cleverly and simply through the enactment of Section 17(1) which reads at present as follows: "Subject to the provisions of this Part, an assessor shall, for purposes of this Act, assess property at value in relation to the reference year."

Now, upon close examination of this section, one will see that appeal rights have been taken away. Let me explain. The word "value" in the act is defined as meaning market value. The words "reference year" in this section are defined by Section 17(9) as being the year 1985. Section 17(1) in effect says that the assessor shall assess property at its 1985 market value.

Now, this section has created very serious problems for many taxpayers. Let me explain. When the assessor in late 1989 valued properties for the 1990 assessment roll, he did not value properties as they stood when he made his valuation. Rather, he was obliged to try to figure out

what they were worth in 1985—when he went out in '89. For example, let us say, when he went out to do his work in late 1989 and found that parcels A, B and C were worth \$10,000, \$20,000 and \$30,000, respectively, but that in 1985 they were each worth \$10,000, the assessor was required by Section 17(1) to assess the parcels at \$10,000 each. That is inequitable, and you might say, so what? The owners of parcels B and C are getting a break in taxation, while the owner of parcel A is overassessed in relation to B and C, and that, I say, is inequitable.

Let me take the example further. Let us suppose that there were two plants which were operating in 1985 and were worth \$6 million, but by 1990 the doors had been shut and they were not worth more than \$1 million each. The assessor under our present laws nevertheless is required to assess them at \$6 million, as if these plants are fully operational. Now, this has caused hardship to the owner and to the towns and the municipalities in which the plants are located. The plants cannot be sold with these high assessments. What this government did by Bill 79, now being confirmed by Bill 20, was to introduce the concept of the reference year in order to fix all assessments at market value at the reference year, which, at present, is 1985, and to ignore all changes in circumstances which have taken place since 1985 except in the case of the homeowner.

Until the passage of Bill 79, the law of this province and elsewhere in Canada required the assessor to value property at its value at the time he made his assessment. Very important words, Mr. Minister: "at the time he made the assessment." For example, in Section 159(1) of The City of Winnipeg Act, which is now repealed, this was the law as you had it then, and it was good law, and it said and I quote: Land as distinguished from the buildings thereon shall be assessed at its value at the time of the assessment. At the time of the assessment—not at the reference year, Madam Chairperson.

This statement was a codification of the common law which had been stated by the Supreme Court of Canada in earlier years, and in particular in the leading case of Sun Life Assurance Company versus the City of Montreal, where the Chief Justice of Canada stated the principle as follows, and I quote: In the yearly valuation of a property for purposes of municipal assessment, there is no room

for hypothesis as regards the future of the property. The assessor should not look at past—and I underline the word "past"—or subsequent or potential values. His valuation must be based on conditions as he finds them at the date of the assessment.

That was the law. It was good law. However, you have changed it, and the change has caused hardship to Manitoba. It has created disincentives for investment and it has hurt business. It is patently unfair. What our present law has done was compel the assessor in mid- and late 1989, when he made his assessments for the 1990 assessment roll, not to value what he saw at the time he made his assessment, but to try to figure out what the value of the property was in 1985, and I ask, why?

When Bill 79 came before this law amendment committee, I appeared and complained that the Province of Manitoba was the only province in Canada, of which I was aware, that froze assessments at a reference year without the right of appeal. On December 19, 1989, on page 97 of Hansard, I said this, and you can quote this quote: "Thus, if the assessor fixes value which he does not define, which is not defined in the Act"—I stopped to say it was subsequently defined as being market value—"then if by 1990 or 1991 a taxpayer's property has decreased in value, he cannot be heard to complain. He must be content with a hope that during the next reassessment, the inequity will be cured. This legislation, I regret to say, is not honest in this respect. It is deceptive." That was my quote then, and I stand by my remarks today.

Now, the Honourable Mr. Penner, the minister at the time, strongly objected to my statements that the right of a taxpayer to appeal an assessment and to obtain relief was being taken away, and he referred to Section 13.1 of the act and stated at page 104 of Hansard, and I quote. After reciting section 13.1 which dealt with physical changes to property, he said: Now that clearly defines a person's right to ask for a reassessment of property in any given year.

I responded to the minister's statement by saying that Section 13 applied to physical changes only and did not address the issue of changes in value resulting from functional or economic obsolescence.

I gave him the illustration of someone storing PCBs in Transcona causing property values to fall. As a result of my objections, Bill 79 was amended

in part by adding section 13(1b)(vii) which gave the homeowner and only the homeowner, Mr. Minister, the right to obtain relief whereby his property value depreciated as a result of economic obsolescence.

This amendment which was introduced after I made my submission, now reads as follows: "Where, in a year for which a general assessment under subsection 9(1) is not required, by reason of, in the case of assessable property, that is residential property containing not more than four dwelling units, any significant factor that affects such property and that is external to the property, the value of the property is not the same as the value entered in the assessment roll, the assessor shall amend the assessment roll by making an amending entry in the roll that is being prepared by the assessor under subsection 9(3) or 9(4)."

* (1140)

Your legislation, Mr. Minister, has now been tested on three different occasions in which I was involved as counsel. On each occasion the former minister, Mr. Penner, was proven wrong, and I was proven right. That is, that the right of appeal has been taken away by your legislation insofar as farmers, and I underline farmers, and businessmen are concerned.

I will recite these cases in which I was involved. Before I do that, it was interesting that when I was involved in the Olha Farms case, there I was arguing the position of the honourable Mr. Penner, and there was Dianne Flood who is sitting in here as counsel to the government, arguing my position, and Mr. Justice Lyon was saying to me in the Court of Appeal: Mr. Mercury, I think you were arguing the opposite side before. I said: I guess I was, but I was told I had a right to appeal. Well you do not, and we lost the case.

This is the Olha Farms case. I found it rather funny that I was arguing Mr. Penner's position. I will tell you about the Olha Farms case.

In late 1989, Olha Farms purchased a quarter section of land in the Rural Municipality of McDonald for \$93,000. There are no buildings on the land. A couple of months later, two other quarter sections were purchased for \$94,000 and \$95,000. Farmland in late 1989 and in early 1990 was trading at about \$582 an acre.

In early 1990, Olha Farms received its 1990 assessment, and what an assessment! It stated that the assessed value of farm land was \$393,400,

or \$2,458.75 an acre. In other words, it was assessed at more than four times what it was worth. The owner appealed.

The board of revision reduced the assessment to \$168,600, or \$1,053.75 an acre. The taxpayer then appealed the decision to the Municipal Board. The board found that the value of the land in 1985 was \$168,600, and held that—that is what the board said. Now they have the decision appended here. You can read it, and I quote: This land has not been assessed at more than its value in 1985.

Is that not a fine how-do-you-do? Accordingly, the board said that the assessed value cannot be changed and dismissed, the appeal, and this decision was appealed to the Manitoba Court of Appeal.

Now the Manitoba Court of Appeal referred to the repealed section of The City of Winnipeg Act, which I just quoted earlier, which said that land had to be assessed at its value at the time of the assessment, not at a reference year, and the court stated—this is Justice Lyon, former Premier of Manitoba, writing for the province, and he said: "However, since those decisions were rendered, the Legislature of Manitoba has re-enacted The Municipal Assessment and Consequential Amendments Act . . . assented to January 12, 1990, in which the following definitions appear:"

Then he went on. The court then quoted the relevant section. At page 5 of his judgment, Mr. Justice Lyon, in writing for the court stated: "From a review of the foregoing sections, it seems clear that the Legislature has determined that assessed value for the purposes of the Act now means the value as at the date of the reference year. In the instant case, the Act establishes the reference year as 1985. This statutory change clearly alters the interpretation of "value" in Shapiro"—which was another case we had. "In effect, the Legislature has turned a new page in the mode of assessment in Manitoba and this Court and the Municipal Board are bound to interpret the new legislation according to its obvious intent."

All right, you have a judicial finding. Now what is the consequence of that finding? We will come to that. The appeal was dismissed, and a copy of the reasons of the Court of Appeal decision are attached to this submission. They are at pages 25 to 30, and you can read them at your leisure. You will note that the appeal was heard; this appeal was heard on the morning of December 17, 1991.

It is interesting to note that Bill 20 was introduced to the House on the afternoon of December 16, 1991. I was not aware of it at the time, but in effect, that Bill 20 was going to take away our possibility of ever succeeding in the Court of Appeal. So they were not prepared to see the court do justice. They were going to fix this law by Bill 20 and make absolutely certain that the taxpayer would not have a right to redress an inequity in between reassessment years.

I say at the bottom of page 10 in my brief, and I quote: "Before the Olha Farms case commenced in the Court of Appeal, counsel for the Provincial Assessor advised me that on the previous afternoon, the government introduced Bill 20 which, by section 5, states:—these are very innocuous little sections; if you read them carefully, you will see they are block-busters. It says: "Subsection 17(1) is amended by striking out 'in relation to the reference year'."—very innocuous words, but dynamite.

Section 17(1) will now read—take those words out, and they will say: Subject to the provisions of this part, an assessor shall, for the purposes of the act, assess property at value. The word "value" is defined in the Act as meaning market value. In short, had the appeal succeeded, it would have been a hollow victory, because it now became quite evident that assessment was to be frozen at 1985 market values, irrespective of changes in circumstances.

That is what you are proposing to do to the taxpayers of Manitoba, except the homeowner, because you are giving them relief. That is what you are proposing to do to the farmers. That is what you are proposing to do to the businessman.

Now I have attached to my submission pages 12, 13, and 14 of the written argument submitted to our Court of Appeal by the Deputy Minister of Justice in the Olha Farms case. It is absolutely clear that only the homeowner would have the right to appeal an inequity and not others such as farmers and businessmen. That is why I initially called Bill 79 as deceptive and dishonest.

At page 14 of the written argument submitted by the government, counsel for the government states—by the way, since we have got here, I have attached to my brief the actual copies of the pages which your Counsel submitted. Now if you go to page 31 at the back of the brief, this is what she says, and she signs it under the signature of Graeme Garson, Q.C., Deputy Minister of Justice.

This was a different sort of an argument I was getting from the Honourable Mr. Penner, when I was making my submission on Bill 79. This is what your counsel says, about five or six lines down on page 11: "Rather, once the assessed value is determined to be the market value in the reference year, that value applies until the next general reassessment."

Further down, paragraph 15, she says: "The Respondent submits that the Legislature intended to, and did, 'freeze' the assessment for three years, subject to a right of appeal to determine if the property is assessed at its reference year value and if other property was also so assessed. The Legislature is acting within its jurisdiction in imposing a freeze."

Now, if we go over to page 32, this is the block-buster statement that she made, which I found rather interesting in light of the previous statements of the Minister of Municipal Affairs. Paragraph 22, the underlined portion: "The respondent"—which is the government—"says that the Legislature did intend that only"—underline the word "only"—"owners of such residential units would have the right to have their assessments reduced to reflect unfavorable economic influences during the three year cycle."

Why, I say, only the homeowners? Because, what Mr. Klym said, they have a vote, and business people, cannot vote, except with their feet. I am back to page 12, and I say: What are the consequences of this inequitable legislation? There are two additional cases in which I was involved as counsellor, and you better know about them because they are very serious. They have serious repercussions for the Town of Portage la Prairie and the Town of Morden.

First is the Campbell Soup case. The decision is—I want to make a note—at pages 34 and 38, which I have appended. As you know, Campbell Soup, which commenced its operations in Portage la Prairie in 1960, decided to close its doors on August 24, 1989. The plant actually closed on December 21, 1990. In 1990 the Campbell Soup plant was assessed at \$7,472,900. That was the assessor's opinion of the 1985 market value.

* (1150)

The Campbell Soup Co. retained John Flanders Limited to offer their property for sale. The plant went on the market at \$3.5 million. It is assessed at \$7.5 million. After extensive advertising in both North America and around the world, no offers were

received until April 1991, when an offer of \$500,000 was received and rejected. Ultimately there was an agreement to sell at \$825,000, subject to financing. Apparently, the purchaser could not come up with the financing, and the deal fell through.

One of the problems in selling the plant was its high assessment. The Municipal Board, however, made a finding that the 1985 market value of the plant was \$5,143,000 and reduced the 1990 assessment of \$5,143,000, an amount more than five times than its highest offer. Equity could not be done. Assessments in Portage la Prairie, and this is key, in 1990 were approximately 110 percent of the 1990 market values, but that was of no help to Campbell Soup. The board was compelled to fix the assessment at its 1985 value so found, which was 600 percent of 1990 market values.

Everybody else's, in general, is 110 percent; they, because they had to be stuck with that '85 value, were 600 percent. As far as I am aware, that plant has not been sold. The mayor, the reeves, they were at the hearings. They wanted that plant sold desperately. Portage la Prairie wants action in that plant. They want people to work. They cannot work if you cannot sell the plant, and you cannot sell the plant because no one is going to pay you six or eight times more for the plant than what it is actually worth. That is one other case that I was involved in.

Second case—one perhaps a little more recent and closer to home—the Tupperware plant in Morden, Manitoba. Tupperware closed its doors in late 1991. It put its plant up for sale at \$1.4 million. Its assessment, based on 1985 values, was approximately \$6.5 million. Tupperware has not been able to sell the plant for the simple reason that no one would come forward to buy the plant with such a high assessment. The only offer which was received was one for \$485,000.

An appeal against this assessment was heard by the Board of Revision of the Rural Municipality of Stanley on June 5, 1992. I was there. At that hearing, the Provincial Assessor's representative indicated that his hands were tied and that he could not change the assessment from its 1985 value. As a result, the plant remains unsold and is closed. No one in his right mind will buy a plant that is assessed five or six times more than what it is actually worth. There is no relief.

The mayor of Morden was there. He was absolutely furious at the fact that this assessment was so high. He did not know what to do about it.

He said there used to be 200 people employed in the Morden plant, in that plant, giving lots of spin-off benefits to the town of Morden. They want to see the plant sold. Who in his right mind—you would not pay \$6.5 million for that plant. It went on the market for \$1.4 million. Are you going to pay taxes at \$6.5 million?

You say, well, we have a reference year, and we are going to delay it for another year—too bad, tough. You expect to get people to come and invest in this province? We are all Manitobans. I was born, raised and educated here. Is that what we want? Is this the message we are sending to the outside world? Is that what Mr. Klym, who represents all these property owners—they are reading this message: Come to Manitoba, and once you get you here, we will not let you go.

Now, I say: Why discriminate in favour of the homeowner? The question which baffles me is: Why does the government discriminate against the farmer and the businessman? Why should the homeowner have the right to appeal an inequity which develops in between reassessment years and not the farmer and the businessman? Both Campbell Soup and Tupperware would like to see their plants sold. Both the Town of Morden and the City of Portage la Prairie would like to see activity in those plants. What is inhibiting activity is this inequitable law which prevents the assessor from doing equity in between periods of general reassessment. Why can the businessman and the farmer not obtain relief?

Why have the rights of taxpayers, which they had previously, now been taken away? This denial of rights makes mockery of our whole system of justice. It causes undue hardship to all. Why have the common law and the former statute law been changed? Why the magic of the reference year? We can have reference years for the purposes of equalizing assessments in Manitoba.

I do not object to having the concept of the reference year, Mr. Minister. It makes sense to have a reference year simply because of the fact that almost every municipality, including the City of Winnipeg, had different reference years, and this caused problems for the municipal assessor who had to equalize assessments for the purposes of provincial school grants and other reasons. There is no magic in the reference year, except it is good for equalizing assessments.

Now, I have a heading here, and I call it: The Purpose of Assessment. The fundamental aim and purpose of municipal taxation and assessment is to distribute the fiscal tax load—underline “fiscal tax load”—equitably among the fiscal property owners in accordance with their fiscal values—not historical values, but present-day values. The existing legislation runs contrary to this purpose.

Now, I have heard it said, well, is this not going to be cured because we have triennial reassessments? Now, that is the red herring, which I call it. It has been stated that the problems will be cured by the assessor when he gets around to doing his next general reassessment. It is stated that the law requires him to do a general reassessment every three years, but I hasten to add, who is going to guarantee that he is going to conduct a general reassessment every three years even though the law says so? The present legislation requires the first general reassessment to take place in 1993, and yet, Bill 20 proposes to delay it for one year. We no sooner get the system in place—let us delay it.

I say, what does that do for Olha Farms? What does that do for Tupperware? What does that do for Campbell Soup? What does that do for the property owners on the south side of Portage Avenue? Think about this for a moment: Who in 1985 had thriving businesses but, since the opening of North Portage in late 1987, have seen their property values decline? What does it do for them? They cannot go and appeal, and say: Look, our property value has gone down; there was a change in circumstance in 1987. The city is picking up the added value from the north side of Portage. These property values have dropped. All you have to do is just walk down Portage Avenue and ask yourself: Are you proud of downtown Portage Avenue when you look at all these vacancies; this is the jewel of Manitoba? I am not.

What do you do for them? What does it do for the owners of the Wescott Fashions plant in Winnipeg? It has been closed. They cannot sell it because they have a high assessment. The assessor dare not reduce the assessment because he might go to jail. He cannot do it; he has to assess it at 1985 values.

What does it do for the Canada Packers plant, which is closed, and it is assessed as if it were operating in 1985? What does it do for that plant? What employment is being conducted in Wescott Fashions? What employment is being conducted in

Canada Packers? There are other such examples in Winnipeg and elsewhere in Manitoba.

How do we know, Mr. Minister, that the general reassessments will not be delayed and delayed, as they have in the past, in spite of the fact the legislation requires triennial reassessments? I was talking to your advisor, Ms. Marie Elliott, who is sitting to your left, and she says: You have made so much havoc in the assessment system; no assessor would dare not conduct a triennial reassessment.

Oh? Well, maybe the existing assessor, but what about future assessors? I may not be here; you may not be here. Your advisers may not be here. The answer I get from the bureaucracy is, trust us. They tell me that I have created so much havoc that no assessor would dare not obey the order mandated by the statute to conduct a triennial reassessment. Well, let me tell you something. Taxpayers in Winnipeg do not trust bureaucrats and do not trust politicians for many reasons, and for good reason, and I can give you a lot of examples.

Here is a good example, Mr. Minister. We always had in The City of Winnipeg Act a requirement that the assessor was to conduct a triennial reassessment. It was always in the act. The last one that had been done was in 1962 and it was based on 1950 values. Annual reassessments were required to have been done in 1965, 1968, 1971, 1974 and 1977. By 1978, things got so out of control, with the result that an action was brought by two corporations in the Manitoba Court of Queen's Bench to have the 1978 assessment roll of the City of Winnipeg declared invalid because the city assessor had not conducted the triennial reassessment as required by law.

* (1200)

What did this Legislature do? Let me tell you what it did. It amended The City of Winnipeg Act. It re-enacted Section 158.1, and I will read you the re-enactment. This is what happens, and this is why you say, trust us? Who can trust the Legislature? It said this: At least once in each three consecutive years the assessor shall, after inquiry and aided by such information as may be furnished to him, make evaluation of every parcel of ratable property in the city according to his best judgment and enter such evaluations in an assessment role to be prepared by him annually in an appropriate form approved by Council.

Well, look at these underlined words: but any failure by the assessor—any failure by the assessor—in making evaluations and entries at least once in each three consecutive years does not invalidate and shall be deemed never to have invalidated the assessment rolls of the city or any tax rolls based thereon.

So there you are. You have the law, but who is to stop the Legislature from passing laws and acts? That brings me to the next point. Have your reassessment every three years, delay it if you want, but you have to restore to the taxpayer, any taxpayer, the right to appeal an inequity for any special reason. We always had that right.

Even though the assessor had failed to conduct a general reassessment in the past, there always were appeal provisions whereby a taxpayer on a case-by-case basis could go before the administrative tribunal and seek specific relief, and they did so. They did so in 1984, and the City of Winnipeg was required to refund those Portage Avenue taxpayers \$10 million. Had the appeal rights been denied, most of those properties that you see on Portage Avenue would have been a tax sale.

Let me just pause there for a moment. If you had in place in 1984 the legislation that you now have in place, it would have been a disaster. If you had in place that the reference year would have been 1962, or whatever reference year you had, and you enshrined it—which meant that next time there is a reassessment we will correct it, and we are going to do it; but you have changed the legislation—all these property owners on Portage Avenue would have lost their properties.

When we appealed the land assessments and we got a \$10-million reduction for the taxpayers just for the land alone, that lets you know how things got out-of-date. For example, the land under the Westin Hotel in downtown Winnipeg was assessed at \$2.60 a square foot; the land under the Clarendon Hotel was \$30. Fair. Wonderful. The land under Woolworth store in downtown Winnipeg was assessed \$59,000 more than all the land in the St. Vital shopping centre. At least they had a right to appeal. They got some relief.

No one is going to have a tag day for Woolco or the banks, but these are people who develop properties in this province. There are other serious consequences when appeal rights are taken away,

and a good example is that of the Hotel Fort Garry right down the street.

I note in the audience there is John Perrin, one of the former owners of the Hotel Fort Garry. His and every other taxpayer's right to appeal his assessment was taken away by Bill 100, which was an enacted in July of 1980, and Bill 30, which was to supposedly freeze assessments for two years. When the two years were coming up, this province passed Bill 33, which was going to extend the freeze indefinitely.

At least we thought, and the courts of Manitoba thought, that there was a freeze at 1980 values, because our courts had interpreted the legislation as a freeze. Perhaps that legislation was poorly drafted, and perhaps we should ask our draftsmen to be a little clearer.

Consequently, and I will tell you what happens when you do not have a right of appeal as a safety mechanism, the Board of Revision was not hearing appeals in 1981, 1982 and '83. As a result, the Hotel Fort Garry could not appeal its assessments. The hotel property was sold for taxes in 1983 because the taxes had not been paid for 1980, 1981 and '82. I say, why could they not have appealed those taxes in '81, '82 and '83?

Because the courts had ruled on the province's legislation as being a freeze at the 1980 value. Consequently, I say, the property was sold in tax sale. Now, in 1990, or that should be 1991, it was last year about this time, the Municipal Board found that the Hotel Fort Garry was over assessed by 9,700 percent over assessment. The owners had since lost their property, and no one is holding a tag day for the Perrin family. Does that give you that comfort feeling you should invest in historical buildings? You cannot appeal an assessment because that is how the legislation was interpreted.

I say, is this the type of legislation we want in Manitoba? Is this the type of legislation which creates confidence and promotes investment in our province? The present legislation does not. It discourages investment and is creating harm. All right. Those are my criticisms. Now what do I propose?

I suggest and propose that Bill 20 be amended to restore an owners right to appeal an inequity in between reassessment years, a right which will apply not only to the home owner, but to the farmer and to the businessman as well.

My suggestion is as follows: First, delete Section 13(1)(b)(vii) of The Municipal Assessment Act in its entirety, which singles out the homeowner; and secondly, I say, amend Section 18, which is the equitable section, by adding the underlined words as follows, and I quote: Notwithstanding any other provision of this act, an assessment is presumed to be properly made and the assessed value to be fixed at a fair and just amount where the assessed value bears a fair and just relation to the assessed values of other assessable property in the municipality in each year of assessment and taxation.

You can keep your reference year wherever you want it, as long as the taxpayer has a right to appeal each year his assessment and obtain equity each year.

All of which is respectfully submitted, Mr. Minister. Thank you.

Madam Chairperson: Mr. Mercury, are you prepared to answer questions from committee members?

Mr. Mercury: Yes, I am.

Mr. Derkach: Thank you very much for your presentation, Mr. Mercury. Indeed, I know by the content of the material that you presented, you have given a great deal of thought to this and made representations at other committees where the Bill 79 was considered, and I must say that many of your suggestions have certainly been considered very seriously.

I do not make light of any of the comments that you make and the suggestions that you make either, but I do have some concerns with regard to your position in several instances in your presentation.

You would agree that in 1989, when you made presentation before the committee on Bill 79, indeed you did object to the fact that there needed to be a definition of market value in legislation?

Mr. Mercury: Yes, that was done. Thank you.

Mr. Derkach: I quote from something you said, in short, if the value is the assessed value or the market value of the property in the reference year, then the legislation should be amended to say it. Indeed that was accommodated, I think, in Bill 79.

Mr. Mercury: That is correct.

Mr. Derkach: There was, however, one aspect that was not dealt with in Bill 79 and that was the deletion of the term "reference year," which you later took to

court and the Court of Appeal upheld the legislation. Now, in order to prevent further challenges to the legislation, we deemed it practical to delete the term "reference year," because it is redundant.

I guess I would ask you at this point: Would you agree that if we now have a definition of value, indeed the term "reference year" is redundant and should not be in the legislation?

Mr. Mercury: I am not following your question. Just repeat it again.

Mr. Derkach: Well, the term "reference year" is used in the legislation. Bill 20 is proposing to delete it. We are proposing to delete that term, because there is now a definition of value, as you had argued for in your presentation to Bill 79.

* (1210)

Mr. Mercury: Mr. Minister, where is it proposing to delete "reference year" in Bill 20? Not in my copy.

Mr. Derkach: I am sorry, the complete term is in relation to the reference year.

Mr. Mercury: Mr. Minister, that again is very deceptive legislation. Let us take a look at what you are doing now. Let us look at Section 17(1). Let us strike out the words "in relation to the reference year." You are now going to have a section that says: "Subject to the provisions of this Part, an assessor shall, for the purposes of this Act, assess property at value." Right? Full stop.

Now let us go to the word "value." That is on page 12 of the legislation. It says: "value" means, in respect of property being assessed under this Act, the amount that the property might reasonably be expected to realize if sold in the open market in the applicable reference year by a willing seller to a willing buyer;"

So by dropping these words, you still incorporated them because it says, subject to the provisions of this Part, an assessor shall, for the purposes of this Act, assess property at its market value in the reference year. It is in terms. You have disguised it.

What you are doing is the same thing, but you are not trying to disguise it. So now that you are disguising, you say, property at its market value in the reference year and the first reference year—if you go to Section 17(9), it says, "The reference year for assessments for the year 1990 is 1985." So if you put the sections together and you look at it very carefully, as a lawyer would, you would see that

what you are telling the assessor is, sorry, you have to assess property at its market value as of 1985, and it is now 1990, it is now 1991, it is now 1992.

The Tupperware plant cannot sell for a million dollars, but I am sorry, as the assessor said to the board two weeks ago when I was in Morden, my hands are tied, it has to be at 1985 value. You know what? He is right. That assessor is right. So what you have done in effect is you are underlining the fact by this amendment that you are in fact taking away the right of a taxpayer to appeal his assessment in between reassessment years.

Mr. Derkach: Well, Mr. Mercury, I guess I have difficulty with your reasoning, because in fact you argued for this particular section to be included in the legislation, and I quote back to you: In short, if the value is the assessed value or the market value of the property in the reference year, then the legislation should be amended to say it.

I guess I am asking for clarification.

Mr. Mercury: Mr. Minister, what I intended to say—it did not come out clear. Let me put my position. I do not care what reference year you have. It can be '85, '86, 1970, 1982 or whatever reference year you have, because you have to relate properties to a base. Okay?

For example, in 1989 or 1990, 1991, if somebody goes and puts a house on a piece of property, that house is there new, but it has to be assessed as if it were built in 1985. That house may cost you \$100,000 today in 1992, but it is not going to be assessed at \$100,000. Your assessors with their manuals are going to take a look at these cost factors. They are going to relate everything back and factor it back to 1985 and say that house cost new in 1985, \$80,000. It is going to go on the assessment roll at \$80,000. That is why you have to have a reference year, because you have to tie something back because things are being built all the time.

Now, having done that, once the assessor has done that, I then ask myself, are the assessments equitable? Here you are getting into a subject which is in my field. Now, let me explain how you determine equity in assessments.

I am going to give you an example. You go home tonight and look at your property tax bills—and you have to pay them by the end of the month—and take a look at your assessed values on all your properties. Your assessed value in my opinion

would be equitable if it is about 75 percent of today's market value, because since 1985, through inflation, you will see that property values, in the city anyway, have escalated. So if you phone the city assessor, ask him these pertinent questions: What is the level of assessment in Winnipeg today? What is the assessment to sales ratio? Mrs. Elliott will tell you what it is for the province. She can tell you for every municipality.

What is it in Winnipeg today? All assessments are expressed in 1985 values. They will tell you it is about 75 percent or 80 percent. What does that tell you? That tells you this—they record through the Land Titles Office every real estate transaction that goes through. Some properties may sell for substantially less than their assessed value. Some, at the other extreme, may be much higher, but there is an average and the assessors know it.

That is what we call the assessment to sales ratio, the ASR which exists in every municipality. So if you have a house that, for example, today you think it is worth \$100,000, and you look at your assessment notice and you say, my god. You know, it is assessed at \$100,000. You do not realize it, but you may be overassessed. It may be inequitable because everybody else is trading at 120 percent of their assessed value, on average. Now, that is what I call equity in assessments.

I lost your question, but go home and phone your assessor in your municipality, Mr. Minister. Ask him what the ASR is in your municipality. In Portage la Prairie last year, it was 110 percent; in the R.M. of Macdonald, it was 110 percent.

Property values had dropped in those municipalities over the years, but for Campbell Soup it was 600 percent, Olha Farms, 400 percent. That is when we say it is out of line, it should be adjusted. That is what we call the equity and adjusting it to make it equitable for everybody else.

Mr. Derkach: This is not the place that, I guess, we should get into debate about matters, and therefore I am not going to debate any situation with you. But I would like to pose some questions, and your answers, indeed, are acceptable.

I have a question with regard to reassessment in your reference year that you referred to. You are, I guess, saying that we should have the reference year as the year of reassessment.

Mr. Mercury: Yes. I have no problem with that.

Mr. Derkach: You know that by legislation in Manitoba all assessment notices have to be in the hands of the owner by December of the previous year, which means that the year of reassessment cannot be the reference year because of the legislation that is before us today.

Mr. Mercury: Understandable.

Mr. Derkach: So we have to pick a reference year. I would ask whether you are in support of the vision of government whereby we want to have the reference year as two years previous to reassessment.

* (1220)

Mr. Mercury: I support that, Mr. Minister, with one important caveat. You must always allow any taxpayer, not the homeowner, the right to seek extraordinary relief or extraordinary special circumstances, and I will tell you why.

When you have an assessment which is somewhat out of line, in your opinion—I have had situations where assessments were out of line—what happens is, if you have a mortgage and you see that the taxes are going to be pretty high, and you cannot pay this high tax based on the assessment, the mortgage company will pay the taxes, add them to the mortgage, make an immediate demand for payment. If you do not pay within 30 days of so-called default, you are in a foreclosure proceeding. Those foreclosure proceedings will expand over a period of five to six months, and that is going to cause you a lot of heartache.

When notices of foreclosure go out to the business community, the bankers who finance these corporations watch them very carefully. They call them in and they do a review of credit, and maybe they are going to start pulling in their reins. They say, well, I am going to appeal my assessment, it is out of line. I have hired Mike Mercury or Ross Nugent or Chuck Chappel. When is the case going to come on? Well, it may be a year down the line, but you tell the client, I am sorry, you cannot get any relief for economic or functional obsolescence because the government says you are not going to have a reassessment in 1993, but unfortunately, it is not going to be in 1994, and who knows, it might be 1995. Sorry. You are still pegged at your 1985 value as we determined it.

So that is extraordinary. I do not know where that exists anywhere in Canada. Have your reference year two years behind. That does not bother me. It

does not bother any taxpayer. But for goodness sake, when you do that, also give him the right, in very marginal situations, to appeal.

If you are two years behind in your assessments, chances are you are going to have very few assessment appeals, not like you had before because they will be almost correct, but there are changes in circumstances. Let me tell you about a farmer's for example. You put countervailing duties on pigs as the Americans have done and suddenly you drop the value of a pig farm, and he has problems meeting his banker. There is a change in circumstance. Portioning does not help that. You pick up a branch line which affected the value of property in a farm area that affects value, something happens, he should be able to appeal a change in circumstance.

You have storage of PCBs. Look at this—Transcona. You have PCBs stored. You have a homeowner who can get a reduction, but the grocer who has the corner grocery store right next to him cannot get the reduction. Give that person the right to appeal extraordinary circumstances, just as the homeowner has. I say, why discriminate?

I say, have your reference year at two years, three years, it does not bother me, but for goodness sakes, at the same time, always give the taxpayer the right to appeal an assessment, for any reason. He may get justice; he may not get justice. He may find that he is out of line or maybe correctly assessed, but do not take that right away.

Mr. Derkach: Mr. Mercury, you are agreeing with the reference year and that there should be a reference year. We are limiting the reference year. We are moving from what was a system which had a reference year of 15 years previous. We picked 1985 as a reference year because of some extenuating circumstances that existed in the taxation system before, that required that we pick a reference year because of the values on buildings as opposed to land and that sort of thing, so 1985 was chosen.

Now we are moving from that point in time to a system where we are going to have a two-year period of time which lags behind the assessment year in terms of the value of property, a reference year. If we go away from that and we allow for appeals indiscriminately, do you not agree that this would erode the concepts that we are trying to build into the reassessment process and the integrity of the system, whereby if you allowed reassessment

for anyone based on market value—now, you are talking about the Free Trade Agreement, you are talking about the possibility of the fluctuation of the marketplace because of the impacts of other levels of government. That means that everybody's property would go up and down on that basis.

Does that mean then that you would agree that all of these people should have the right to appeal?

Mr. Mercury: I do not think that it is an either-or situation. Why not both? You have always had both. You always had reference years. It was not legislated but you did have reference years. Why not both? Why not have the reference year concept, which you have to have to equalize assessments, to equalize grants, and why not have the right to appeal?

Now, the typical bureaucratic answer to this, and I keep getting it, is, it is going to open up the floodgates, and that is a scare tactic. It is not going to open up the floodgates. To bureaucrats, it is administratively convenient not to have to fight assessment appeals to see equity done.

What is wrong with having a reference year, as you had? It was an unwritten law before, but you had it. In 1987 when there was a reassessment in Winnipeg, they had a '75 reference year, but you could still go to the Municipal Board and the courts and get equity.

What is wrong with having the right of appeal restored to the business man and the farmer, the way you have given it to the homeowner? Why are those mutually exclusive? Why cannot they work in tandem? I cannot follow that logic, Mr. Minister.

Mr. Derkach: Mr. Mercury, would you agree that corporations, such as have been identified in your presentation have not—some have closed and some have made business decisions to locate elsewhere for a variety of reasons. Those are choices made by that particular business to either locate in a particular municipality or to locate elsewhere.

Do you feel that it is fair to the municipality then and to the people in that community to have a large business located in a particular situation, make a business decision, close a plant and then get a break on the taxes that are paid between the reassessment years?

Mr. Mercury: Yes, but I do not agree with your nomenclature—get a tax break. No one is asking for a tax break.

Mr. Derkach: Well, a reassessment.

Mr. Mercury: No one is asking for a tax break. [interjection] No one is asking for a break. Someone says if my property value drops, then I should get an assessment which reflects my property value. If I happen to close my plant or maybe I am running it slow just to keep some employment in the plant, but the plant is not worth what it is assessed at, why should the owner of that plant be assessed at an amount higher than what it is worth? When everybody else is being assessed fairly and equitably, why are you picking on him—because he cannot vote?

No one is asking for any breaks. All they want is fair treatment, and you are not going to get people coming to this province, I dare say, Mr. Minister, with the idea that once we get you in here, we lock you in here, we are not going to let you go, and you are not going to get a fair tax break.

Let me tell you something. From my study of this law, right across Canada, this is the only jurisdiction I know of which, if it is allowed to persist, amounts to confiscation. It is confiscatory. No one holds tag days for business people, but you have got to be in tune to the fact or be alert to the fact that the business community watches what you are doing and the way you treat them. No one is asking for breaks. They just want fair treatment. You give that treatment to the homeowner. Give it to the farmer; give it to the businessman.

Madam Chairperson: Excuse me, it is my understanding—this is a procedure point; please excuse the interjection, Mr. Mercury. I have to determine the will of the committee.

It is my understanding there was an agreement that committee would rise at 12:30 p.m. At this point, I must make a determination as to the will of the committee.

Mr. Plohman: Yes, I would suggest that we complete the questioning and discussion with this particular presenter and then adjourn at that point, hopefully well before one, because we have to have caucus meetings. I would hope by quarter to one, we should be able to complete it.

Mr. Derkach: Madam Chairperson, I still have several questions to ask Mr. Mercury, and I am not sure that we could complete by quarter to one. I know that there are others who may have questions as well, and I do not want to limit the opportunity for questions. If Mr. Mercury would be agreeable to return—

Mr. Mercury: Absolutely, Mr. Minister, it is one of my favorite subjects.

Mr. Derkach: . . . very important topic that we would like to complete properly.

Mr. Mercury: I will oblige.

Madam Chairperson: What is the will of the committee?

Just for the benefit of those waiting to make representation, at this point in time, no further Standing Committee on Municipal Affairs has been scheduled, but as soon as confirmation of date and time has been outlined, you will indeed be notified by the Clerk's Office.

Mr. Plohman: Just on that, for the people who are here, the reason is, there are two committees scheduled this afternoon, two committees scheduled tonight, and that is the rule of the House that only two can sit at one time. So the earliest possible time would be tomorrow morning.

Madam Chairperson: No, I would like to correct the honourable member. There are also two committees scheduled for tomorrow morning.

Mr. Plohman: Okay, so that is important.

Madam Chairperson: They will indeed be notified, but we have a number of committees previously scheduled.

The hour being 12:30 p.m., committee rise.

COMMITTEE ROSE AT: 12:30 p.m.

WRITTEN SUBMISSIONS PRESENTED BUT NOT READ

Dear Mr. Derkach:

It has been brought to my attention that you are soon to be having hearings regarding possible changes in The Municipal Assessment Act. This is of utmost importance to us as well as a few other sporting bodies or clubs as, under the existing act, some of us are being taxed out of existence due to our classification, which is highly unjust to our type of operation. Because we are neither a golf course, nor agricultural or residential, we are placed in the "other" category, which consists of all else, including industrial and commercial operations. Golf courses are recreational, and we are not any less recreational or of any less benefit to the public at large, as we contribute just as much to fitness and health, yet we are in the highest taxed category and golf courses are in the lowest.

Please give your highest consideration to the attached "proposed change," and give me a chance to present arguments in person, if necessary, to explain and defend our position. Without carefully thought out changes, many tennis, canoeing, boating and curling organizations, which all contribute significantly to fitness programs and a better way of life for all the citizens of our community, may be put out of existence. The quality of life would disappear, and you could have some very unhappy people around. Many of these people are the ones who helped place your party in power. They are certainly worthy of some consideration to place them at the same (not worse) advantage as golf courses enjoy.

Ed Scrapneck,
Past Commodore
Kildonan Tennis And Canoe Club

To: Municipal Assessment and Consequential
Amendments Act

c/o Ms. Bonnie Greschuk

Before all final decisions are made and legislation is passed, we would plead that very serious consideration be given to the following.

Present classification or categorization of properties or operations, for purposes of taxation, create serious financial problems threatening the very existence of operations such as the Kildonan Tennis and Canoe Club and other similar operations. Being a not-for-profit sporting, recreational and social club providing countless hours of relaxation and enjoyment as well as skillful activities designed for improvement of body and mind at affordable prices, should we be placed in the highest taxable category?

Clubs such as ours cannot afford to be lumped into a category consisting of profitable commercial and industrial enterprises for taxation purposes while golf clubs providing similar types of sporting and recreational activities get preferential treatment by being placed in the lowest taxation category.

The present classifications, for tax purposes, of golf course, agricultural, residential and other properties require some very essential modification or changes. Because we are not a golf course and do not qualify as residential or agricultural, we have been placed in this "other" category, which is the highest tax rate. This category consists of large and small profit-making, commercial and industrial operations.

Golf is a sport and a recreation. Is it any more so than tennis? Does it provide any service or need that differs from what we provide? There is no way that golf is any different or better as a recreation or sport than tennis, yet it is taxed in the lowest category while tennis is in the highest.

While both golf and tennis provide hours of enjoyable and useful sporting and recreational enjoyment to countless people to help offset the frustrations of the business world and some of the boredom and physical natures of other jobs or occupations, they should be treated in a similar manner. Some people enjoy one more than the other or simply cannot afford the time or higher cost of golf, so choose tennis. All these people pay taxes on their homes, businesses, income and purchases. Should some of these people be hit so hard with taxes on their recreation, they can no longer be able to participate?

We talk about "Participation." Well, let us not make this an affordable luxury for only those who can afford to play golf. With the fast pace and stress factors of today's world, people need some sport, recreational and social activities to benefit mind, body and soul.

Please seriously consider altering the golf course category by creating instead a recreation category to encompass all sporting activities of a similar nature. Something done for profit may be taxed appropriately, but something done on a nonprofit basis to benefit our taxpayers should not be placed beyond their reach.

We could ill afford the excessive taxation we face on our present fee structure. We cannot afford to raise our fees, else we deprive a majority of our members of the benefit of affordable recreation. We have neither the space nor the facilities to significantly increase our numbers. Most of our members belong because they cannot afford to travel elsewhere. Our club is their summer activity. We are also one of very few remaining green spots on the banks of the Red River, which is otherwise becoming somewhat of a concrete jungle. Governments are spending countless tax dollars to recoup some of this land and re-establish park-like settings along the banks of our rivers. If we get taxed out of existence, another place of serene beauty disappears.

We wish to survive. We have been around for 55 years. Do not end it all. Create an affordable tax

category that we and other similar clubs can live with.

Respectfully submitted,
Ed Scrapneck
for the Kildonan Tennis and Canoe Club

* * *

Submission to:
The Municipal Affairs Committee
of the
Legislative Assembly of Manitoba
regarding:
Bill 20 -

Proposed Amendments to Chapter 24,
The Municipal Assessment and
Consequential Amendments Act
Winnipeg, Manitoba, June 22, 1992

Chairperson and Members of the Committee:

1. Keystone Agricultural Producers Inc. (KAP) has two concerns about Bill 20. These concerns were identified to the Minister of Rural Development in mid-March of this year, and we have had some considerable exchange with Mr. Derkach and members of his departmental staff regarding these concerns since that time.

2. The transcripts of committee hearings on Bill 79, which took place December 19, 1989, indicate that the Minister of Rural Development of that time was of the belief that the proposed legislation did not alter the right of appeal relating to external factors for farm property owners. However, since that time, decisions of the Municipal Board and the Manitoba Court of Appeal have confirmed that only home owners have such a right of appeal.

3. The Municipal Board, in a recent case, has held that since the legislation required all assessments to be done at 1985 market values, an appellant could not seek a reduction in the 1990 reassessed value even though the value of his property had declined dramatically by 1990. The Manitoba Court of Appeal confirmed this decision, with a provincial solicitor arguing this case, in contradiction to the assurances given by the minister in December 1989.

4. Despite the fact of the decisions taken by the Municipal Board and the Court of Appeal, the current Minister of Rural Development continues to contend that the appeal rights of farmers were not altered with the passage of the new Municipal Act

on January 1992, although he acknowledges that the use of the term "external factors" in Section 13(1)(b)(vii) could create confusion regarding what constitutes an appealable condition. In this light, we would recommend that Bill 20 be adjusted to clearly provide that farm property assessments may be appealed because of external factors.

5. Our contention or our question is: Why do we leave the matter open to debate? Why does the government not rewrite Section 13 so that the matter is clear? This would save property owners some considerable costs in lawyers' fees and, in the process, clearly re-establish the right of farm property owners to appeal assessments on an annual basis in circumstances where external factors have altered the value of a property. We continue to be at a loss in attempting to understand why farm property owners, and other business property owners, for that matter, should not enjoy the same rights of appeal as residential property owners.

6. KAP's second concern with respect to Bill 20 relates to the proposed delay in the next general reassessment, from 1993 to 1994. At the time of the introduction of Bill 79 in November, 1989, representatives of the government proudly declared that never again would delays in the stated frequency of assessments be permitted. Bill 20 already proposes to violate that principle.

7. We contend that some property owners will be significantly disadvantaged because of this delay. While it is technically correct that "portioning" prevents significant shifts between property classes, property owners within classes that have had greater than average reductions in their property value will be losers. In our opinion, it is unfortunate the one-year delay was initiated. However, we acknowledge that it may not be practical at this late date to revert to the original schedule.

Respectfully submitted on behalf of Keystone Agricultural Producers Inc.