



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

STANDING COMMITTEE

on

PRIVILEGES AND ELECTIONS

42 Elizabeth II

*Chairperson
Mr. Jack Penner
Constituency of Emerson*



VOL. XLII No. 4 - 2:30 p.m., TUESDAY, JUNE 29, 1993



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
CHOMIAK, Dave	Kildonan	NDP
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, Cliff	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
GRAY, Avis	Crescentwood	Liberal
HELWER, Edward R.	Gimli	PC
HICKES, George	Point Douglas	NDP
LAMOUREUX, Kevin	Inkster	Liberal
LATHLIN, Oscar	The Pas	NDP
LAURENDEAU, Marcel	St. Norbert	PC
MALOWAY, 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
ORCHARD, Donald, Hon.	Pembina	PC
PALLISTER, Brian	Portage la Prairie	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
<i>Vacant</i>	Rossmere	
<i>Vacant</i>	Rupertsland	
<i>Vacant</i>	The Maples	

LEGISLATIVE ASSEMBLY OF MANITOBA
THE STANDING COMMITTEE ON PRIVILEGES AND ELECTIONS

Tuesday, June 29, 1993

TIME — 2:30 p.m.

LOCATION — Winnipeg, Manitoba

CHAIRPERSON — Mr. Jack Penner (Emerson)

ATTENDANCE - 9 — QUORUM - 6

Members of the Committee present:

Hon. Mrs. Mitchelson

Ms. Barrett, Messrs. Helwer, Lamoureux,
Martindale, Pallister, Penner, Sveinson, Ms.
Wowchuk

WITNESS:

Mr. Michael Nickerson, Private Citizen

MATTERS UNDER DISCUSSION:

Public hearings on The Freedom of
Information Act

* * *

Clerk of Committees (Ms. Bonnie Greschuk): Will the Committee on Privileges and Elections please come to order. I have before me the resignation of Shirley Render as Chairperson for this standing committee effective yesterday, June 28, 1993.

Are there any nominations?

Mr. Ben Sveinson (La Verendrye): I nominate the honourable member for Emerson.

Madam Clerk: Mr. Penner has been nominated as Chairperson. Any other nominations? Since there are no other nominations, will Mr. Penner please take the Chair?

Mr. Chairperson: Will the committee on Privileges and Elections please come to order. This committee will continue to proceed with the public presentations to undertake a comprehensive review of the operations of the Manitoba Freedom of Information Act.

This afternoon, I understand there is one final presenter wishing to appear before the committee, Mr. Michael Nickerson. As a reminder to all members, the time limit for presentation is 20 minutes, and there will be an additional 10 minutes allowed for questions after the 20-minute limit.

Would you proceed, Mr. Nickerson, with your presentation.

* (1440)

Mr. Michael Nickerson (Private Citizen): I am appearing here today as a concerned Manitoban who has found the current Freedom of Information Act to be a cruel hoax.

I have used the act on numerous occasions to try and obtain information from the Workers Compensation Board to prepare for appeal hearings. The importance of being thoroughly prepared for an appeal hearing has been made very clear to me given my past experience with a board hearing that took place on April 14, 1988.

The commissioners did not undertake any investigation into the points I brought to their attention; therefore, as you only get one kick at the cat, you must do all the investigating yourself and have all your evidence present at your one and only hearing.

To illustrate this point I will quote from a letter that Praznik sent to my MLA, Mr. Paul Edwards, on January 2, 1992.

To my knowledge, several different investigations have been undertaken, none have shown that Mr. Nickerson has been denied any benefits to which he was entitled. Given the queries have been investigated by a variety of sources, not only the Workers Compensation Board, I have no means to further address this situation.

There was a time in the history of the workers compensation system when the board provided unlimited rights of reconsideration. This encouraged people who felt that a wrong decision had been made in their case to make repeated attempts to have their case reheard. Bill 56, proclaimed in 1990, set out a limited but appropriate means of determining whether there was any entitlement to a reconsideration or a rehearing of an appeal once a decision had been determined at the final level of appeal. These constraints are legislative in nature and not subject to political interference nor policy

consideration by the board of directors of the WCB.

According to the role of the Workers Compensation Board, one mission statement is: "To deliver these services in an open, courteous, impartial, effective and fiscally-responsible manner in conformity with the principles of natural justice."

According to the WCB policy on appeals: "The WCB will ensure timely and equitable hearings of appeals originated by claimants or employers on a basis which is reasonably economical of the resources of the WCB, the appellant, and other interested parties. The rules and procedures for handling appeals will be formalized and based upon the tenets of natural justice."

According to The Freedom of Information user fees policy: A reasonable charge may—key word there, "may"—be made to those individuals who request information under The Freedom of Information Act, and charges shall be in accordance to those recommended under Schedule B of The Freedom of Information Act.

I was notified by the board that arrangements had been made for a hearing into two of my claims to be held on April 24, 1991.

Prior to being notified of the date of the hearing, I had requested copies of documentation accessible by the board's access officer, specifically the board's Memoranda of Instruction, Precedent Book, and GR683, The Workers Compensation Act Legislative Review Committee files. All of the sources of information were required to prepare for the upcoming hearing.

I requested copies of the Memoranda of Instruction and they requested \$8.55. I requested the Precedent Book, because you are dealing with natural justice and there is precedent. They want \$173.40. Only to gain access to the files which are sitting in the archives, which I had to find because no one knew they existed, they want \$752.00 just for the access officer to go through the 27 boxes of material to let me know what I can and cannot access. At the time, I was on social assistance and I certainly did not have that kind of money.

My appeal has been held up to date as the board refuses to charge the user fee to the claim, rather than the claimant. The minister refuses to grant me access to file GR683 without charge, which he can do. He can simply waive that fee, and he refuses to because he does not have a clue about the act.

So much for Praznik's statement on October 7, 1991: I appreciate your effort to ensure you are well prepared for the appeal of your claim.

Remember, the board policy states a reasonable charge "may" be made, it does not state "shall."

The board has on numerous occasions omitted to supply me with all available documentation, which inevitably, after the provincial Ombudsman's intervention, the missing documentation suddenly is supplied.

I believe Mr. Brian King's memo to Carla Loewen dated December 8, '89 sums it up best: Attached please find all material in my file related to Michael Nickerson. I have no objection to this material being released, even though some of my personal comments, handwritten, were intended for myself only and may be somewhat embarrassing if made public. I leave the decision on release of this material in your capable hands.

This memo was not sent to me and was only supplied after the intervention of the Ombudsman.

The board did start off supplying me with some documentation free of charge until it suddenly realized it could charge for providing copies of documentation, and I believe they are using this ploy to deny me access. So much for their mission statement to deliver services in an open manner.

As an example as to the need for free access to information, I will illustrate how one of Praznik's so-called investigations—

Mr. Chairperson: Excuse me, sir, are you referring to the honourable Minister of Labour (Mr. Praznik)?

Mr. Nickerson: Oh, excuse me, the honourable Minister of Labour.

Mr. Chairperson: I just want to clarify for the record that "Praznik" is referred to as the honourable Minister of Labour.

Mr. Nickerson: —and I will relate how the Premier (Mr. Filmon) was duped and failed to come out fighting for the rights of workers or individual Manitobans.

On April 4, 1988, according to the Manitoba Progressive Conservative campaign headquarters news release: Filmon meets the campaign challenge. Manitoba Progressive Conservative Leader came out fighting for Manitoba workers and their employers today when he announced major changes to the Workers Compensation Board.

Our proposed action is to intend to solve this and other problems, he continued, so that Manitoba employees and employers will once again be able to feel confident that the compensation system is working in their best interests.

Filmon's three-pronged approach to compensation reform includes: (1) remove political interference, make board operations and policy directions more open and accountable; (2) initiate quality control, promote early intervention in the claims and rehabilitation process; and (3) control abuse, adhere to guidelines and claims criteria established by the board.

Our reforms will ensure protection and security for injured workers in the future.

On September 23, 1988, I was advised by Mr. Brian King that my WCB claims were denied.

On October 4, 1988, I sent Mr. Filmon a letter which stated in part: Mr. Filmon, my rights have been shoved aside for long enough, it is now time for you to fulfill your campaign theatrics and come out fighting for Manitoba workers.

On October 17, 1988, Greg Lyle sent to Charlene Van Engel a memo: Please prepare a response for the Premier's signature and return for my review.

On October 20, 1988, Charlene van Engel, special assistant to Ed Connery, sent the following fax to Brian King: Subject: re Michael Nickerson. Attached is the letter which we discussed this morning. I appreciate your assistance in this matter.

On October 21, 1988, at 1536 hours, Brian King faxed the following cover sheet to Charlene Van Engel: Re: Nickerson. Suggest response from Premier to Mr. Nickerson. Please call if you have any questions.

The draft response stated in part: The board members based their decision upon two main points, the medical evidence and their finding of your lack of credibility. It seems obvious, in giving these reasons, the board did not take the easy way out. Therefore, our campaign promises to improve workers compensation are being met. Although this letter may not solve your problems with your compensation claim, something you will have to continue taking up with the board—and that is from Brian King—I trust it confirms our commitment to an equitable and well-run program. Yours truly, Gary Filmon, Premier.

On October 25, Charlene Van Engel sent the King response to Greg Lyle along with an action-route slip which stated: Comments re Nickerson, Michael. Attached is a draft response to Mr. Nickerson's letter as you requested. If you need anything further, please give me a call.

Greg Lyle scratched out four words on the King response and added five.

Therefore, the letter that Premier Filmon signed was in fact the King letter—some fighting, some credibility, and some way of making the board operations and policy directions more open and accountable.

* (1450)

As for Mr. Filmon's commitment to ensuring protection and security for the injured workers in the future, on March 14, '89, Linda McIntosh sent the following to Greg Lyle: What can we say to this man? Charlene advises he is ready to go to the press saying we will not meet with him to deal with his problem.

A handwritten response is as follows: Linda, we have dealt with similar cases before. The WCB is an arm's-length body. It would be an encroachment on their autonomy to intervene. Simply ensure the process has been followed.

There does not exist any record of Linda McIntosh's undertaking any investigation to ensure the process had been followed.

During the 1990 campaign, I received a nice form letter from Janice Filmon. It stated in part the following: "This is the Gary Filmon I know—a man with a strong, strong commitment to family and community.

But there's more to my husband than this. Gary is also a man committed to the individual rights and dignity of every Manitoban . . ."

Sorry, Janice, but as the above events reveal, your husband could care less for the rights and dignity of this one individual Manitoban, otherwise a thorough investigation would have been undertaken to ensure that the compensation system was working in my best interests.

The board continued to refuse to reconsider my case, so much for the King response advising me to continue taking up my compensation problem with the board.

In fact, board counsel sat on my August 26, 1991 request to have my case reheard pursuant to

Section 60.9 of The Workers Compensation Act, thereby forcing me to file a motion in Court of Queen's Bench, Suit No. C1 91-01 59583 on December 15, 1991.

As it is very clear that this Filmon team and government is not prepared to protect the rights and dignity of every Manitoban, then permit us to protect ourselves by changing The Freedom of Information Act to ensure free access and free duplication of records that Manitobans request access to.

The extra administrative cost of free access and duplication is the cost of good government and is the right of every Manitoban to ensure that every government is open and accountable. Give us the tools to protect ourselves from an uncaring, untouchable and unchecked bureaucracy that misleads and has not a clue, or do ministers enjoy playing the fool. Thank you.

Mr. Chairperson: Thank you, Mr. Nickerson. Are there any questions? If not, thank you very much for—

Mr. Nickerson: I have had problems with dealing with the board when, or under the act, they say they cannot give you some documents. So I say, well, give me a list of the documents I cannot have access to, and they say no, that is creating a record. So how do you ensure as an individual when you pay your hard-earned money for what is supposed to be the records that you have in fact received them all?

My first incident with that was that Brian King memo. I had to go to the Ombudsman's Office, the investigator then had to go down there, then make a copy of the file, and what is the first piece of paper I did not get? How are we actually sure that we get what we ask for. Then they come out with other things, well, if you reduce your requests for information, it will be cheaper.

I do not know what is in that file, just like you do not know what is in my briefcase. There could be in that briefcase a piece of paper that is important to you, so without being allowed access to that binder in there you would not know, so I am going to charge you \$800 to see what is in that file. That is not "access," that is not "accountability"—just buzzwords.

I believe the Workers Compensation Board, if they want to help people out, could have a resource centre where we can access documents, make our

own copies and disappear. Any fees for access under the act should be dinged to the claim. I mean, that is our insurance policy. It should not be the individual. I was kept out of work for 61 months, and it was only through the intervention of the Human Rights Commission, the federal one, that my employer was forced to take me back to work.

Mr. Filmon stood outside the Compensation Board fighting for Manitobans. When push comes to shove, you get the kiss-off letters. You know, we will just send that on to the minister responsible. They do not want to deal with it because it is embarrassing.

Do workers have to shoot themselves outside the board? Do they have to go inside and start shooting employees? That is what you do when you deny a person in a situation like this to be reheard. You are only given one shot, and that is it? I am not a lawyer. Anyone who deals with the board, they come in different levels of education and experience, different levels of dealing with the bureaucracy, and you only get one shot.

I have been in there and I have seen people crying, talking to people at the front counter. They are having difficulty with their claim, and all the people at the counter have to do is say, well, here is a card to the Worker Advisor Office, that is perhaps where you should go and they can help you out. But no. It is too easy to treat people like decent people. There are under a siege mentality that everyone is out there trying to get something.

That was an insurance policy. What has happened, they said based on medical evidence—it is like having your house insured. They have a photograph of your house, your house burns down, and you have a photograph of the smoldering ruins. They say no, no, no, here, it is your house, and you are left with the smoldering ruins. How much wage did I lose in 61 months?—\$150,000. That was \$150,000 out of the Manitoba economy.

In that time, I was forced onto social assistance so I became a drag on the tax system. That is what happens when people do not do their jobs and do not ensure proper funding for their Worker Advisor Office; that is what you do, by trying to save a buck you waste five.

How many times has the Ombudsman's Office had to go down to the board, what did that cost? It

certainly cost more than \$5.80. I bet you it cost more than \$174.20, and I bet it cost more than \$752.00. As a matter of fact, I think one of my complaints will be published in his review, and they ask why people have no faith in government. You ask us to believe you once a year or once every four years, depending on what is going on, and once you are in, you forget.

I have never asked the Premier (Mr. Filmon) or any of the ministers to tell the board to accept my claim. I asked him to investigate. I asked him to contact the board to let me have another hearing,

but I never once told them to accept this man's claim. I wanted a fair shake, and I did not get it.

I would read to you what those comments were that would be embarrassing, but I would not want to deny Mr. King his fair day in court, because it would and it is very embarrassing for two parties involved. Thank you very much.

Mr. Chairperson: Thank you very much, Mr. Nickerson. If there are no further questions, committee rise.

COMMITTEE ROSE AT: 2:57 p.m.