Second Session - Thirty-Seventh Legislature

of the

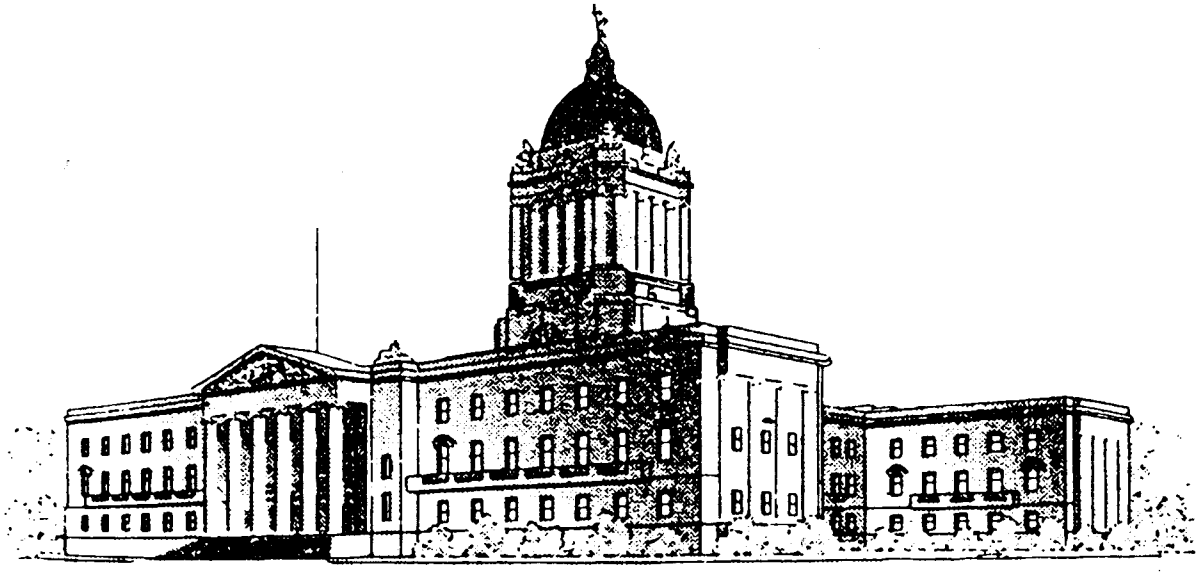
Legislative Assembly of Manitoba

Standing Committee

on

Municipal Affairs

Chairperson
Mr. Tom Nevakshonoff
Constituency of Interlake



Vol. LI No. 2 - 10 a.m., Thursday, June 28, 2001

MANITOBA LEGISLATIVE ASSEMBLY
Thirty-Seventh Legislature

Member	Constituency	Political Affiliation
AGLUGUB, Cris	The Maples	N.D.P.
ALLAN, Nancy	St. Vital	N.D.P.
ASHTON, Steve, Hon.	Thompson	N.D.P.
ASPER, Linda	Riel	N.D.P.
BARRETT, Becky, Hon.	Inkster	N.D.P.
CALDWELL, Drew, Hon.	Brandon East	N.D.P.
CERILLI, Marianne	Radisson	N.D.P.
CHOMIAK, Dave, Hon.	Kildonan	N.D.P.
CUMMINGS, Glen	Ste. Rose	P.C.
DACQUAY, Louise	Seine River	P.C.
DERKACH, Leonard	Russell	P.C.
DEWAR, Gregory	Selkirk	N.D.P.
DOER, Gary, Hon.	Concordia	N.D.P.
DRIEDGER, Myrna	Charleswood	P.C.
DYCK, Peter	Pembina	P.C.
ENNS, Harry	Lakeside	P.C.
FAURSCHOU, David	Portage la Prairie	P.C.
FRIESEN, Jean, Hon.	Wolseley	N.D.P.
GERRARD, Jon, Hon.	River Heights	Lib.
GILLESHAMMER, Harold	Minnedosa	P.C.
HELWER, Edward	Gimli	P.C.
HICKES, George	Point Douglas	N.D.P.
JENNISSEN, Gerard	Flin Flon	N.D.P.
KORZENIOWSKI, Bonnie	St. James	N.D.P.
LATHLIN, Oscar, Hon.	The Pas	N.D.P.
LAURENDEAU, Marcel	St. Norbert	P.C.
LEMIEUX, Ron, Hon.	La Verendrye	N.D.P.
LOEWEN, John	Fort Whyte	P.C.
MACKINTOSH, Gord, Hon.	St. Johns	N.D.P.
MAGUIRE, Larry	Arthur-Virden	P.C.
MALOWAY, Jim	Elmwood	N.D.P.
MARTINDALE, Doug	Burrows	N.D.P.
McGIFFORD, Diane, Hon.	Lord Roberts	N.D.P.
MIHYCHUK, MaryAnn, Hon.	Minto	N.D.P.
MITCHELSON, Bonnie	River East	P.C.
MURRAY, Stuart	Kirkfield Park	P.C.
NEVAKSHONOFF, Tom	Interlake	N.D.P.
PENNER, Jack	Emerson	P.C.
PENNER, Jim	Steinbach	P.C.
PITURA, Frank	Morris	P.C.
PRAZNIK, Darren	Lac du Bonnet	P.C.
REID, Daryl	Transcona	N.D.P.
REIMER, Jack	Southdale	P.C.
ROBINSON, Eric, Hon.	Rupertsland	N.D.P.
ROCAN, Denis	Carman	P.C.
RONDEAU, Jim	Assiniboia	N.D.P.
SALE, Tim, Hon.	Fort Rouge	N.D.P.
SANTOS, Conrad	Wellington	N.D.P.
SCHELLENBERG, Harry	Rossmere	N.D.P.
SCHULER, Ron	Springfield	P.C.
SELINGER, Greg, Hon.	St. Boniface	N.D.P.
SMITH, Joy	Fort Garry	P.C.
SMITH, Scott, Hon.	Brandon West	N.D.P.
STEFANSON, Heather	Tuxedo	P.C.
STRUTHERS, Stan	Dauphin-Roblin	N.D.P.
TWEED, Mervin	Turtle Mountain	P.C.
WOWCHUK, Rosann, Hon.	Swan River	N.D.P.

LEGISLATIVE ASSEMBLY OF MANITOBA

THE STANDING COMMITTEE ON MUNICIPAL AFFAIRS

Thursday, June 28, 2001

TIME – 10 a.m.

LOCATION – Winnipeg, Manitoba

CHAIRPERSON – Mr. Tom Nevakshonoff (Interlake)

VICE-CHAIRPERSON – Mr. Harry Schellenberg (Rossmere)

ATTENDANCE – 11 - QUORUM – 6

Members of the Committee present:

Hon. Ms. Friesen, Hon. Mr. Selinger

Mr. Aglugub, Ms. Cerilli, Messrs. Derkach, Laurendeau, Maguire, Nevakshonoff, Schellenberg, Struthers

Substitutions:

Mr. Tweed for Mr. Loewen

APPEARING:

Hon. Jon Gerrard, MLA for River Heights

WITNESSES:

Bill 38–The Local Authorities Election Amendment Act

Mr. Jae Eadie, Councillor, St. James Ward, City of Winnipeg
Mr. Roger Goethals, Reeve, Rural Municipality of Winchester
Mr. Neil Hathaway, Private Citizen
Mr. Richard Sexton, Private Citizen
Mr. Bob McCallum, Reeve, Rural Municipality of Morton

Bill 31–The Municipal Assessment Amendment Act

Mr. David Sanders, Director, Real Estate Advisory Services, Colliers Pratt McGarry

WRITTEN SUBMISSIONS:

Bill 31–The Municipal Assessment Amendment Act

Mr. Joe Masi, Director of Policy and Research, Association of Manitoba Municipalities

Mr. David Sanders, Director, Real Estate Advisory Services, Colliers Pratt McGarry

Bill 38–The Local Authorities Election Amendment Act

Mr. Brad Kirbyson, Policy and Research Analyst, Association of Manitoba Municipalities

MATTERS UNDER DISCUSSION:

Bill 31–The Municipal Assessment Amendment Act

Bill 38–The Local Authorities Election Amendment Act

* * *

Mr. Chairperson: Good morning. Will the Standing Committee on Municipal Affairs please come to order. Our first order of business is the election of a Vice-Chairperson. Are there any nominations?

Mr. Stan Struthers (Dauphin-Roblin): Mr. Chairperson, I would like to nominate the MLA for Rossmere, Mr. Harry Schellenberg, as Vice-Chair.

Mr. Chairperson: Mr. Schellenberg has been nominated. Are there any further nominations? Seeing none, Mr. Schellenberg is appointed Vice-Chairperson.

This morning, the committee will be considering the following bills: Bill 31, The Municipal Assessment Amendment Act; Bill 32, The City of Winnipeg Amendment Act; Bill 34, The Municipal Amendment Act; Bill 38, The Local Authorities Election Amendment Act; Bill 43, The Auditor General Act; and Bill 48, The City of Winnipeg Amendment (Pensions) Act.

We have presenters registered to speak to bills 31, 32 and 38. Is it the will of the committee to hear public presentations on these bills first? *[Agreed]* I will then read the names of the persons who have registered to make presentations this morning.

Committee Substitution

Mr. Marcel Laurendeau (St. Norbert): Mr. Chair, with leave of the committee, I would like to make the following membership substitutions effective immediately for the Standing Committee on Municipal Affairs: Turtle Mountain (Mr. Tweed) for Fort Whyte (Mr. Loewen).

Mr. Chairperson: Is it the will of the committee that the Member for Turtle Mountain (Mr. Tweed) substitute in for the Member for Fort Whyte (Mr. Loewen)? *[Agreed]*

* * *

Mr. Chairperson: Persons who have registered to make presentations this morning on Bill 31: David Sanders of Colliers Pratt McGarry; Rick Weind or Paul Moist, CUPE Local 500; Councillor Jae Eadie for City of Winnipeg; Henri Dupont for KPMG; Jim Baker for the Manitoba Hotel Association; Antoine Hacault as a private citizen; and John Stefaniuk as a private citizen.

Bill 32: Councillor Jae Eadie, City of Winnipeg; David Sanders of Colliers Pratt McGarry.

Bill 38: Councillor Jae Eadie, City of Winnipeg; Neil Hathaway as a private citizen; Richard Sexton or Teresa Dillabough, private citizen; Roger Goethals, Reeve of the R.M. of Winchester; Wayne Motheral, President, Association of Manitoba Municipalities; Bob McCallum, Reeve of the R.M. of Morton, who was just added to the list.

I would like to inform the committee that written submissions on bills 31, 32 and 34 have been received from the Association of Manitoba Municipalities. Also, the AMM had planned on appearing before the committee this morning on Bill 38, but we have been informed that they will be unable to attend and have therefore sent along a written submission on this bill as well. Copies of these briefs have been prepared and distributed to committee members. Is it the will of the committee for these written submissions to appear in the committee transcript for this meeting? *[Agreed]*

We have several out-of-town presenters in attendance this morning. Is it the will of the committee to hear from out-of-town presenters first? *[Agreed]* Mr. Maguire and then Mr. Tweed.

Mr. Larry Maguire (Arthur-Virden): Mr. Chairman, it would appear from looking at the lists that the out-of-town presenters are here to deal with Bill 38. I wondered if we could deal with Bill 38 first or hear the presenters on Bill 38. That would be essentially the same thing as what we are doing by hearing the out-of-towners first.

Mr. Chairperson: Is it the will of the committee to hear presentations on Bill 38 first? *[Agreed]* Is there anybody else in the audience that would like to make a presentation and has not yet registered? You may do so with the staff at the back of the room.

For the information of presenters, please be advised that 20 copies of any written versions of presentations would be appreciated. If you require assistance with photocopying please see our staff at the back of the room.

Just for clarification then, we will hear presentations on Bill 38 first, then 31, then 32. *[Agreed]*

How does the committee propose to deal with presenters who are not in attendance today but have their names called? Shall these names be dropped to the bottom of the list and then dropped from the list after being called twice? *[Agreed]*

Is it the will of the committee to set time limits on presentations?

Mr. Struthers: To be consistent with other committees we have undertaken, I would suggest a 15-minute time limit on presentations with 5 minutes for questions and answers.

Mr. Chairperson: It has been proposed that we have 15 minutes for presentation and 5 for questions. Is that the will of the committee? *[Agreed]*

Finally, as a courtesy to the individuals on our list waiting to present, and bearing in mind that we cannot sit past 1:30 when the House resumes sitting, are there any suggestions as to how late the committee should sit this morning?

Mr. Mervin Tweed (Turtle Mountain): I suggest we leave the time open, and as we get closer to 12 o'clock we can review it. I do not think we want to have people come and not present today, if we can at all accommodate them.

Mr. Chairperson: It has been proposed that we sit until roughly 12 o'clock and then revisit this issue. Is that the will of the committee? *[Agreed]*

* (10:10)

Bill 38–The Local Authorities Election Amendment Act

Mr. Chairperson: I will now call on Councillor Jae Eadie, Councillor for the City of Winnipeg, to present on Bill 38. Mr. Eadie, do you have written copies of your brief for distribution to the committee?

Mr. Jae Eadie (Councillor, St. James Ward, City of Winnipeg): I do not on Bill 38, Mr. Chairman. I do have on Bill 31, but I will deal with that when that particular bill is called. I just have some brief comments for your committee regarding Bill 38.

Mr. Chairperson: Please proceed, sir.

Mr. Eadie: Thanks. Mr. Chairman and committee members. Just for the information of your committee, it is the official position of the City of Winnipeg that The Local Authorities Election Act should be entirely rewritten and modernized, and we are supported in this by our colleagues in the Association of Manitoba Municipalities. We hope before too long that we are going to be providing some further advice and guidance to the Government and impress upon Government the need for some early action on that matter.

In the meantime, specifically regarding Bill 38, there are some amendments proposed in this bill that the city of Winnipeg's municipal government has long been in favour of. The primary amendment that is contained in this bill is the provision that voters whose names are not on the voters list must produce sufficient identification at the polls in order to be given a ballot and be entitled to vote. The absence of that requirement in this outdated act has been certainly the subject of some conversation and some, I guess, media staging after the last municipal elections in Winnipeg. Actually putting this provision in the bill is going to make The Local Authorities Election Act much more in line with both the Manitoba and Canada elections acts where voters must identify themselves at a poll if their names are not shown on the voters list. So from the City's perspective we are very pleased that this change is now being included in this bill, and we very much support that taking place.

There is another amendment being proposed which would delete the prescribed forms from the act and have those forms specified in regulation. Generally, I think the City believes this is a good thing. I have spoken with our own election officials about that, who have indicated to me that in the past they have had some problems in trying to manage the process of a municipal election because the forms that were prescribed in the present act were far too prescriptive, and they were not flexible.

We are suggesting that if these forms are now to be dealt with though regulation, then the regulations should first of all be written in consultation with municipal government officials, because it is the municipal officials who have to carry on the conduct of municipal elections within the municipal jurisdictions. I think they should be involved in the drafting or the redrafting, as the case may be, of any forms that are prescribed under the act. As well, we

should get a commitment that should these amendments be passed by the Legislature, that the consultative process with municipal government officials, as well as the publishing of the regulation, should come into effect well in advance of the 2002 municipal elections so that the officials who are charged with the responsibility of organizing election processes can be as organized as they can possibly be for the conduct of elections within those jurisdictions.

The other changes that are proposed in this bill are not of great concern to the City. I understand that we have colleagues from Winchester who will be here to speak about what has been known as "the Winchester amendment," and I have also spoken with the reeve of Winchester and others. I am not going to make any further comment on that particular one. The City has no particular argument with the change. If further amendments can be made to make that section more effective, we would not have any difficulty in supporting it.

So those are the only comments I have to offer you on Bill 38, Mr. Chairman. If there are any questions, I will try to do my best to answer them.

Mr. Chairperson: Thank you for your presentation, sir. Do members of the committee have any questions?

Mr. Larry Maguire (Arthur-Virden): Thank you for your presentation, Mr. Eadie. The only question I have is just in regard to your last few comments there in regard to the amendments that might be brought forward in regard to the issue of who can vote in a municipal election. Were you suggesting then–I am only trying to read into what you are saying and correct me if I am wrong–that you have spoken with the people in Winchester and you believe that they have some recommendations and the recommendations that they have you concur with, or would not have any difficulty with? I think was your comment.

Mr. Eadie: Well, I think there has been some comment. I am not going to–

Mr. Chairperson: Mr. Eadie.

Mr. Eadie: I am sorry, I forget your process here. I am not going to put words in the mouth of our colleagues from Winchester or from the AMM. I think there is a concern that the amendment that is contained in here might not have the effect that was intended. The City of Winnipeg, I think, would support any amendment that actually would resolve the issue that arose in Winchester and could arise anywhere else with non-resident voters and their ability to vote.

I have some personal comments about non-resident voters, but I am not here to make my personal comments today. I could chat about that with folks afterwards if you like.

So, if our colleagues from Winchester or the Association of Manitoba Municipalities have some suggestions for further revision of that particular section of the act, I do not think from our point of view that is going to be a difficulty. Our staff tell me that the amendments are there, and that particular problem has not been a big problem within the City of Winnipeg, but who knows? There could always be a first time.

Hon. Jean Friesen (Minister of Intergovernmental Affairs): Mr. Chairman, I wanted to thank Councillor Eadie for presenting on behalf of the City on this. We are aware that not only the City, but the AMM is very anxious to have the full review that he has spoken of, and we anticipate that we can be proceeding with that.

The comments on the forms and regulations, I think both the City and the AMM are looking for input into those changes. Obviously, we are committed to that as well, so that should be understood.

I think we will probably have time to talk more about the other proposals for changes to the franchise, but I did want to say, perhaps at the outset I should say this, I have said publicly at all the AMM meetings we are well aware that what is being presented in this bill is not entirely going to solve Winchester issues. I believe I said that in the House as well, and that the changes, the options that are there are ones that affect voters all across the province. So my concern is to take that step by step and to be as consultative as we can be on that. I understand your concerns and perhaps the limits on your ability to speak

for the City on an issue which you agree has no effect, or less effect, but I wanted to make sure that people were aware from the beginning that we know there are other issues in Winchester that need to be dealt with or need to have been dealt with. We also are aware of the need for a much larger scale review of the local Elections Act, plain English in the local Elections Act, that would be a very good start, that there is a pent-up demand for that, and to assure you of that input on the regulations. Thank you.

Mr. Chairperson: Comment, Mr. Eadie, on that?

Mr. Eadie: I will just simply say to the minister that I think the Association of Manitoba Municipalities, which includes the City of Winnipeg, would be very pleased to provide some advice and guidance to the Department of Intergovernmental Affairs on the major rewrite of The Local Authorities Election Act. We will be glad to help.

Mr. Chairperson: Further questions? Thank you for your presentation, sir.

For the information of the committee the next three presenters have met amongst themselves and decided that Mr. Roger Goethals will present first. Is it the will of the committee that this be the case? *[Agreed]*

I then call on Mr. Roger Goethals, Reeve of the R.M. of Winchester. Good morning, sir.

* (10:20)

Mr. Roger Goethals (Reeve, Rural Municipality of Winchester): Thank you, Mr. Chairman.

Mr. Chairperson: Please proceed.

Mr. Goethals: Ministers, panel, I am kind of a little nervous. I have never done this before, but I will try and get through it the best way I can. One thing I did, I brought all the titles, I think some of you have seen them, of all the land transactions that were done in our last election. In 1998, there were 33 names added in our municipality, and we still have the ward system. It is a very small ward. I think there were 98 before, now with the 33 added, had quite a bearing on it. It really never started in 1998.

In 1988, Mr. Holden himself added nine names plus himself on a parcel of land that is 20 feet wide on a half-mile long. It has no buildings, no nothing on there. These people could all vote, but at that time you had to go and vote. You had no mail-in ballots. So those people were all from the City of Brandon, most of them, and only one person came to vote, I think, out of that election. But now with the mail-in ballots they can all vote.

In September of 1998, Mr. Holden added another 10 names on his one-tenth of this piece of property. So it is undivided interest. He does not own just a foot square. There is a hundredth there on this share, on these 10 names. All these people voted. We are a little upset about this, and I think maybe we should be.

Then he also got Jim's brother, Murray, and his wife, Mary, who owned just a farm site and added another 11 names, all these transactions for the consideration of a dollar. Then, in 1998, Jim sold 79 acres. This seems to be a fair chunk of property, but it is part of Whitewater Lake. It is bulrushes and what might have you. And he added 13 names to it.

So it came out in the election, then, when the election came, Mr. Sexton and Mr. Holden naturally ran against each other. So Mr. Holden beat Sexton by, I think it was, 14 votes, 13 or 14. We feel that The Elections Act has to be rectified. The act now states that you cannot add names for election purposes, but it happens. Elections Manitoba should proceed to take action against persons violating the act rather than an individual having to take this on, as Mr. Sexton had at great personal expense. It should not be up to an individual. It should be laid out whether you can do this or whether you cannot.

Now, in your Bill 38, I have talked to Ms. Friesen about this, if you buy the property six months before, you can vote. So, if you do this transaction seven months before the election and you put 400 or 500 names on a piece of property, to me it looks like you can all vote, the way The Elections Act is today. We are talking about a small community, but this can happen right here

in this city, or Brandon, or anywhere in Manitoba today, and I do not think it is right.

My other colleagues will be speaking on the court case, but we were advised at one time to go to the no-ward system. The no-ward system does not cure this because, in the last previous years, we had the reeve, that is the whole municipality, and one decision was four votes difference, another was seven. Those names were not there, then, at that time, but if they would have been, it could have made an altogether different outcome of the election.

We had our by-election. We did have to have a by-election because the judge did take Mr. Holden off council, but we were 13 months short of a council because then they appealed it, so there we were. So then, finally, they decided that they got nowhere with the appeal, so he was fine. But, anyway, on May 2, we had a by-election with a total vote count of 92 out of a possible 124, which is a 74.19% turnout, which is very good. The election was won by Murray Temple from Jim Holden's camp it says, or whatever you want to call it, but 48 votes, opposed to Neil Hathaway 44.

But, at our election, 18 persons of the additional names that voted, oh, I have got to back up here. The walk-in vote was counted first, and the number at that point was Hathaway 36 and Temple 25. So then, when the mail-in ballots were counted, 18 persons of 33, of 25 I think, anyway, I am lost here a little. Okay, he had a lead of 11. Then, when the mail-in ballots come in, there were 18 of those that voted for Temple, so it showed there again the mail-in ballot put the councillor in.

Now, you do not know exactly where everybody votes, but I pretty well guessed it before the election, before the by-election was read. So I guess what I am saying is here this Bill 38 is not curing our situation. I really would like to see something done before our next election because we are hearing rumours out there. It could happen anywhere. It might not happen in ours, but I would not be surprised. It could happen in ours. If they put another 40 or 50 names on a piece of property, what are we going to do? There is nothing saying that 400 or 500 names cannot put undivided interest on the size of a property on this building.

I urge this panel really to consider this to get fixed up. I guess we did mention maybe possible two votes, ownerships or possible maybe assessments or a number of tax dollars, or has the Government got the power to take those names off? Maybe you do not have to change. If the Government has the power to take those names off, The Elections Act maybe is all right. So I guess that is my presentation. I am sorry I kind of stumbled through this, but–

Mr. Chairperson: Thank you for your presentation, sir. Do members of the committee have any questions?

Mr. Mervin Tweed (Turtle Mountain): You mentioned in your presentation of the possible ways to fix it, and you talked about limiting the number of votes to two. Are you talking strictly the limited number of two on non-residents?

Mr. Goethals: Yes, it could work that way–

Mr. Chairperson: Mr. Goethals, I have to recognize you before you can speak.

Mr. Goethals: I am sorry, Mr. Chair.

Mr. Chairperson: Proceed.

Mr. Goethals: Yes, sure. Any way to cure this, like two votes, anybody can stand two votes, but not 25 or 30 votes.

* (10:30)

Mr. Tweed: So your suggestion is that if, say you are a family on a family farm and you have two sons working with you, they would all be entitled to vote as resident landowners, but if you sold any piece of that property to any one non-resident, they would be limited to two ballots come the municipal election.

Mr. Goethals: Yes, or another solution maybe is that you have to be permanent residents.

Mr. Maguire: You alluded to taking the names off the present list that is there, Mr. Goethals, and that may in fact have been what you were seeking the judge to have done in your particular

circumstance, but that does not stop this from re-occurring in the same municipality or anywhere else in the province of Manitoba. So would you agree that would be just a short-term fix to meet your particular needs of the immediate situation?

Mr. Goethals: I suppose, Larry, but I would like to see something really put in place that is really firm, that if we just kind of patch it up, is that going to stay there, or–

Mr. Maguire: That is exactly my point. I think that taking the names off is a short-term fix but it does not stop the problem from reoccurring. In a no-ward system, you have alluded to that, but really that just dilutes the problem. You could still have the same number of voters on that small parcel of land, but instead of 124 municipal voters or whatever the number may be in your ward, you take four wards in, it just creates the incentive to go and get 120 names instead of 33. I mean it just dilutes the problem. I mean I do not see that as a solution, either. Could you expand on that?

Mr. Goethals: Yes, that does not solve it at all because even if you go to the no-ward system, there is nothing stopping you from putting 300, 400 or 500 names in it. It could be a motorcycle gang. It could be anything. They could come and run your whole municipality.

Mr. Maguire: Mr. Goethals, you have alluded to the issue of the number of votes. I do not know if you are aware, in the research that I have done on this, there are eight jurisdictions out of the thirteen, including the ten provinces and three territories in Canada; today in eight of those thirteen jurisdictions if you are not a resident you do not vote, period. You did allude to that as a solution.

However, British Colombia does allow, I believe, one voter for a non-resident in a particular parcel, regardless of how many people are there. It is up to the individuals involved, in fact it puts the onus on the individuals involved as non-residents to determine which one of them will be the voter and register that voter and vote prior to election day. I think you alluded to a similar solution involving two voters. Would you see that as being a future solution to at least curing this problem?

Mr. Goethals: Yes, I do, Larry.

Hon. Greg Selinger (Minister of Finance): Mr. Goethals, I just wondered: Was there some issue that was driving this desire to have more people registered to vote? Was there some conflict going on that fuelled this up? Was there an issue that was generating that kind of interest in having the vote?

Mr. Goethals: Well, there probably was a little between the former councillor, who was Mr. Sexton. They probably did not like what Mr. Sexton was doing, a small group of people, maybe.

Mr. Selinger: Your preference would be to have either the vote restricted to permanent residents, or if there is an argument, or somebody to have an absentee vote to limit it to the number of people that can vote on any particular parcel of land, say, to one or two votes.

Mr. Chairperson: Before Mr. Goethals responds, we have reached the five minutes, although he did have eight minutes left in his presentation time. Is it the will of the committee that we include what is left of his presentation time? *[Agreed]*

Okay, Mr. Goethals, you may proceed.

Mr. Goethals: Yes, what I want is, is it fixed and fixed right? One way or another, that this cannot happen in our municipality anymore, or in any other municipality or town or whatever. You get a small town or village with maybe only 300 or 400 voters or maybe less, and they come in there and buy a lot and put a bunch of names on it. They could run it from another town. They could actually run it from Saskatchewan or Alberta. Nothing stopping you with the mail-in ballots; it is just not good.

Mr. Selinger: I think Mr. Maguire recommended maybe just restricting the vote. One option would be to restrict the vote to permanent residents. I am just thinking, in some of these smaller communities, people retire, and they are away for part of the year, but they still have an interest in the land or what is going on in the community, so we might want to ensure that some of those folks that have a long-term

interest in the community can still vote but without stacking it up like we have. I think this will become the famous Winchester case now. So there might be some argument for a limited absentee vote. Would you agree with that?

Mr. Goethals: Well, yes, I suppose to a certain extent but it is–

An Honourable Member: Within limits.

Mr. Goethals: Within limits.

Mr. Leonard Derkach (Russell): Mr. Goethals, one of the issues that we have before us, I think, is the fact that we have recreational properties along our lakes where you basically have non-resident owners who are only there part of the year, but they still pay taxes to that municipality and should have some say in how matters are run.

If in fact we were to limit the number of votes from each property to two, it would still give fair representation to the people who own the property. At the same time, it would not give the ability for anyone to fix an election. I am just wondering whether you would agree with that principle at least.

Mr. Goethals: Yes. Yes, I would, because we have a resort in our area. There are people that own cabins at Metigoshe Lake from Winnipeg, Regina. Some are paying fairly decent taxes. There are two or three cabins out in our area that have the family on there, about seven, eight names, but there is nothing wrong with eliminating that to two votes. I agree with that.

Mr. Derkach: Have you discussed this matter with the AMM executive and at your regional meetings in terms of getting some agreement from the Association of Manitoba Municipalities with regard to this issue?

Mr. Goethals: Yes, we have.

Mr. Derkach: Is there agreement from AMM that indeed a solution like limiting it to a number of voters for a particular parcel of land would be a plausible solution to this?

Mr. Goethals: Because we just met with them at Souris, I do not think they have a problem with that.

Ms. Friesen: I wanted to thank you for coming and also for the other people from Winchester who are here today. I have met, as you know, a couple of times with not only you but other people from Winchester as well, and I am very well aware, I think everyone on both sides of the House is, of the difficulties and the divisions that have occurred in your community as a result of the activities of a few individuals. It has cost you money, and it has cost you divisions. In small communities, I think you are right; it may well be repeated. It has been extremely difficult.

As you know, at all of the AMM meetings, I have spoken on this bill and said that this is not going to address the immediate needs that you have. It does deal in part with giving everybody a heads-up on who is on the voters' list. Six months before, you know whom you will be talking to. I know that people in Winchester at first were looking at this bill as even expanding the opportunity for people, for the mail-in ballot. I did want to say that the mail-in ballot portion comes from a long-standing request of the AMM, and it was not attached at all to the Winchester piece.

To come to the fundamental issues that we are faced with as a result of what happened in Winchester, what I have said privately to you, publicly at the AMM, I want to put on the record here, is that changing the franchise is an issue which affects all Manitobans. There are many ways to change the franchise, and it is something which I think we are committed to looking at in time for the next election. It is something that I think we do need to do wider consultation on. The R.M. of Park, for example, which has 283 voters in a time-share, each of those non-residents having a vote, I think we do need to look at that.

There are, I understand, proposals for time-shares elsewhere in the province, so we will need to have something that is possible. We have the issue fundamentally, I think it has been raised here, of should non-residents vote at all. As we see some communities becoming smaller and smaller, the opportunities for these kinds of conditions for non-residents to have greater power than residents in the say over a community become more likely.

We already have three communities, Dunnottar, Winnipeg Beach and Victoria Beach,

where non-residents outnumber residents. How do we deal with that franchise? Do we go, as some may privately hold the view, that only residents should vote? Some provinces take that position. Would that work for the R.M. of Park? Would it work for those people with time-shares? Would it work for others, Victoria Beach or Dunnottar, for example? I think there are a number of issues that have to be considered around that.

The delegated vote, this is something we talked about when we met. I think it is certainly something that others in Winchester have been talking about. It may work. I am not necessarily opposed to it. I understand that the Opposition is going to bring in an amendment on this, and I thank them for the courtesy of informing me of this in advance. I understand that was where they were going.

* (10:40)

An Honourable Member: Oh, no.

Ms. Friesen: Well, that is what I was informed. Perhaps they have changed their mind.

In any case, I do not want to be particularly partisan on this. I think it is an issue everybody wants to see solved and that they want to see in a fair way. In my case I want to see it solved in a way that has the consent of Manitobans and has the consent of the people whom it will affect, some of whom are in Winchester, others of whom are in the cottage country, an ever-expanding cottage country, some of whom have time-shares, or, for example, the over 10 000 voters we have who have multiple ownership of more than two. So it does affect more people. That is really why I am saying let us discuss this. Let us discuss this with the people who will be affected, and let us do what we can as soon as we can, preferably before the next election, to help change this situation. I think it has been a very divisive and very difficult situation for you, and I want to see it solved in the best way and the best non-partisan way that we can as well.

Mr. Chairperson: Time for this presentation has expired, but I will allow Mr. Goethals a brief response to that.

Mr. Goethals: All I can say is I would just like to see it resolved before the year 2002, because I think we are going to run into a big shmozzle in our municipality plus somewhere else. I am going to tell you if you want a community split in half you have something like this happening. It is not very good. So I thank you for listening to me, and, hopefully, we can get it solved before the next election. Thank you.

Mr. Chairperson: Thank you for your presentation, sir.

I now call upon Mr. Neil Hathaway. Mr. Hathaway, do you have a written presentation to present to the committee?

Mr. Neil Hathaway (Private Citizen): Yes, I do.

Mr. Chairperson: Okay. Please proceed.

Mr. Hathaway: I first would like to thank Ms. Friesen for her comment. It answered some of the questions I had concerns about already, and it will certainly enhance where we are going, I am sure.

Mr. Chairman, Minister Friesen, members of the committee for Bill 38, I never would have thought that going to vote or participating as a candidate would become such an issue in my district, or that a neighbour would choose to bring trauma between friends and families. I could never have believed either that if this should happen it would be so difficult to have those in authority defend us as citizens against Noriega- or Milosovic-style tactics.

You may think this very elite company for little sleepy southwest Manitoba, but remember we had a returning officer from Municipal Affairs who did not return calls and ignored us. We have had political figures, one after the other, who paraded by giving the "this should not be allowed to happen" salute and then hoped it would go away, as they did; a justice system that was a farce and failed to do its duty, and warrants close scrutiny, even to the point of having a death threat, if this case was to proceed. Such is the price of democracy and, although high, it is worth every ounce of energy to defend it.

I will let others deal with the history of this situation. We did not drive since very early this morning to pick holes in Bill 38, but rather to thank the minister for being willing to address this issue and to offer suggestions and support to her in the hope that the Opposition too will help bring about resolution for us all. The potential of this problem striking especially the rural members is extremely high. When issues flare up like the hog issue of today, I may add, who knows what the issue will be for tomorrow, people do things that are not acceptable. This is the easiest way to bring chaos to an area.

Any old farmyard is home for any amount of names to rid or acquire a council of choice. Six days, six weeks or six months does not change anything. It is very simple. A dollar for a vote to pay 23 cents taxes, and you now control an R.M. and promote your issue, and the billing to the remainder of the municipality per person is $8. Not a bad investment. Also, if I might add in there, if somebody is elected from somewhere else you must pay their way to come and do your council business too and escort them back and forth.

We are, indeed, fortunate to have as many choices, and these must still preserve the right to buy and sell property. First, uphold The Elections Act and have the courage to enforce it. May I read three simple child-understanding sections, 28, 42 and 43 from The Elections Act? They are on the fourth page that I have given you.

Transfers for purposes of qualifying electors are ineffectual. Where, on an application under section 22 or 23, a person seeks to qualify as an elector in respect of an interest in land, which the evidence shows was transferred to him for the purpose of assisting him so to qualify, and without the intention of really giving him the interest in his own right, the name of that person shall not be allowed to remain, or be put, on the list of electors. I think that is fairly straightforward and easy to understand.

Fraudulent qualification. No person shall make, execute, accept or become a party to any lease, deed or other entrustment, or to any oral arrangement, whereby a colourable interest in any land is conferred, in order to qualify any person to vote at an election. This has been proven in court as a very colourable interest.

Offences and penalties. Any person who violates section 42 is guilty of an offence, and any person who induces or attempts to induce another to commit an offence under section 42 is guilty of an offence; it also goes on to state later, $500 and up to six months in jail. A dollar for this particular instance was a little bit ludicrous.

Why were these names not removed as stated here? If the government of the day had addressed this issue when it had happened, we would not be here today. They were informed of it. Also, had the courts enforced these sections or had it been addressed before the last election, we would not be here either. They read these sections, and it did not just go away. If these sections cannot be upheld and those with the authority are afraid to uphold them, then what is the use of the rest of the act or any new act we work on today? Really, is an enhancement to the act going to be stood up or is it just another piece of paper? When we could not stand up for the issues before or the sections before, do any of the other sections have any value in there?

We can look at the Canadian scene. In all but four provinces, including Manitoba, non-resident property owners cannot vote. Larry Maguire has addressed that. This is controversial but must be working in these provinces and for good reason. I have some misgivings on that. I see the reasons that, because of changing times, it maybe does not stand the weight that it used to, but I think I could accept that if it brought integrity back into our community.

It has been suggested that a fee be applied. People with lack of integrity and plenty of wealth care not, but this has room for discussion.

A minimum size of property to be eligible to vote is an option. However, this would affect resident as well as non-resident voters. I understand this is used in the USA. I guess I would like to say their Florida affair with their presidential election. I am not sure about theirs.

Even having been put upon by people who are admittedly vote riggers, we have very

generously suggested two votes per parcel of property of multiple or undivided ownership. Personally, I see merit and great fairness with one exception: That where vote rigging occurs and is proven in court as the Winchester case has done, then section 28 should apply and the names be removed as The Election Act states.

As the bill stands, it only provides a different timeframe to get the names on and really, it is like a public announcement that doing this is okay, and proceed. Personally, I even enhanced this on my comments to the media when Bill 38 emerged concerning special interests like hog issues. I feel confident that neither the minister nor myself are trying to enhance this situation but, in reality, we are telling those who are angry to get on board. This works for both sides of an issue, and the only people who would try to do this do not just live in Winchester.

We do not find problems with the rest of the bill, particularly, at least I do not, but it needs to be amended to prevent more chaos, and I assure you it will happen again.

* (10:50)

Again, choices, and all are acceptable:

(1) An amendment to the bill as it stands today to address this situation.

(2) It is still okay to hold hearings as the minister has expressed, but a total commitment to achieve this is needed before the October 2002 election. This is more expensive and would involve time. Maybe new ideas could be found, maybe not. We are open to any positive solutions. Personally, I believe this to be an unnecessary choice, but if this is to be, then I ask the minister to consider appointments from the Rural Municipality of Winchester. Nowhere can be found more knowledgeable appointments to help resolve this issue fairly.

(3) A complete evaluation of The Elections Act. Maybe this is needed. Protection, as provincial and federal elections have, and not make it necessary for individual to attack individual when situations like ours arise. It costs money and you get discouraged and you do not carry on, so the person who is controlling generally carries on.

However, we need something in place before our next election. We are indeed tired of defending the guilty and allowing them to control our rural municipality. They get at least two votes, one at home and one in ours. We get one, controlled by this special-interest group. If you are not preferred by them and their agenda, then too bad. I would like to comment here that I was the one who did not get those votes in the last election, but had I received them, I would have been standing here today with the same agenda to have this corrected.

Today, we are dealing with social justice. As I think of those who carried the banner in our country in the past, I look forward to seeing who will do this in the future. I think of a few in particular: Mr. Coldwell, Mr. Woodsworth, Mr. Douglas, Mr. Knowles, Mr. Schreyer in the New Democrats; Mr. Diefenbaker, Mr. Roblin in the PCs; Mr. Pearson, Mr. Trudeau in the Liberals. On the women's side, I think of Nellie McClung, Grace MacInnis, Beatrice Brigden and Sharon Carstairs, among others.

The women of today and on this hearing committee, I would think, should be very angry at anyone daring to touch the vote. Women fought so hard to obtain this right. Thousands gave their lives in two world wars and on November 11, we remember them. These people stood up and were counted on over time to defend our principles, and they did. Today, I challenge the minister to do the same and the Opposition to support the minister and to collectively support us at Winchester, but, more important, the people of Manitoba.

I challenge you to go home this evening, look at your children or grandchildren, maybe stand at a window and watch as they run down the street oblivious of the decisions you must make on their behalf. Think hard about your own values and honour of being trusted to stand up for them. Then tomorrow, come back to the Legislature. If I may borrow for a moment the patented words of famed radio and TV personality, Doctor Laura: Now, do the right thing. At a time in history when the population is losing faith in the political system, show them you can offer trust and responsibility. Listen to the grass roots speak and keep communication

open. Defend democracy against those who seek to destroy it, by simply doing the right thing.

I would like to thank the minister and the committee for allowing me to speak to this bill, an issue so close to my home. It is imperative that their freedom be preserved and resolution be brought into our lives. Thank you very much.

Mr. Chairperson: Thank you for your presentation, Mr. Hathaway. Does the committee have any questions?

Ms. Friesen: Thank you very much, Mr. Hathaway, for your presentation. As you know, we are trying to do the right thing here. We are trying to do the right thing, not just for Winchester, but one that is not going to cause difficulties for anyone else, in fact, is the right thing right across Manitoba. That is something that, I believe, we need some more time to discuss.

The elections are not till 2002, and, I believe, we will have another sitting before then and have the opportunity to deal in a public fashion before that with some of the options that are being raised by Winchester, some of the options that have emerged from our research with other provinces.

The mayor's presentation focussed upon options for voting. You have also added concerns and options for enforcement, and I think that is the other side of the question. I think it is probably not an either/or. I think it is both that needs to be addressed. The intent of the legislation is quite clear, as you have read. It is that this kind of purchase for the purpose of voting should not take place. The difficulty has been in who enforces it, when they enforce it, and at which level do they enforce it.

I think in other jurisdictions the anticipation might have been that the returning officer at the local level might have had the opportunity to remove names from the voters' list. That has not happened, and in small communities I am very aware that that is a very difficult thing to do. The other option has been the courts. Those are expensive and something that, I think, we ought to deal with in legislation.

I wonder if you have any other suggestions for us as to how we could look at the enforcement option, as to who should enforce it, how it should be done, and how we can put that into legislation.

Mr. Hathaway: I am not sure if I am the one who has the answer to that one. Indeed, those are the answers that I think we were looking for, because we were mystified as to who really has the authority. Was it the minister in charge at the original time, or was it the returning officer? I think Mr. Bouvier was the man's name. When you cannot get answers from people, and as I spoke about the problem of getting replies, to get the information needed, it is very difficult to know where you should go with it. The advice was to go to court and to follow that route which, of course, caused a very weird scenario I must say.

I do not, in a sense, have more than that. In my own feelings, I would have thought it was not from the local returning officer, as she is responsible up the ladder and plus one down below. We discussed that the other day. She said: Well, I would pass that on to the enumerator. So it was a case of passing on to whom it was going to, and the same thing happened there as was happening to others. I would have thought it would have come from personally, Mr. Bouvier, at that time, or from who is responsible for The Elections Act, or from the minister at the time who, I would have thought, would give directions to this person under difficult situations. I would think that you should go to the highest level and work down, rather than put the load on the people who are at the bottom and are living in the community. They do not have the authority.

Mr. Selinger: Just to follow up on the minister's question. We have an organization in Government for provincial elections called Elections Manitoba. I wonder if we might explore whether they might play a role in dealing with a question such as you have raised here about who is eligible to vote.

Mr. Hathaway: Yes. I think I would be looking for more ways. If there is a reason to explore, if they have anything to offer, it is certainly not

wrong to explore even though it may not fall into their jurisdiction.

It all boils down for hours as a time frame. The minister has addressed that and she addressed some of the other things that I had mentioned before I even spoke. Yes, maybe that is where the municipality or an individual has to fight an individual to prove a case. As I say, most people do not know how many rules are broken in our province in municipalities, Mr. Chair. Simply, we do not even know how many more cases of this there are.

* (11:00)

I had an RCMP officer suggest that this is maybe not the first time. You have to have somebody willing to stand up and put their foot forward and put their foot down, put their money where their mouth is and fight another local person. That does not happen in provincial and federal situations. There is protection for them. Most people I think would put their head down between their legs, walk home, and say: Geez, I do not want to be bothered with that. That is not worth my while to be beat up like this. Of course, those that are trying to bring chaos to the district become the winners by acclamation in a sense. So, yes, if there is a chance there, by all means explore it, I guess.

Mr. Maguire: Thank you very much for your presentation, Neil. I have enjoyed the opportunity of speaking to you about this locally. I take from the comments that you have just made then that you feel that the onus under the present structure is on the wrong parties?

Mr. Hathaway: How was that again?

Mr. Maguire: I could clarify that. I guess by your comments that you have made just in answering the honourable member's question, that in regard to determining the term "colourable" in this kind of an offence if it is determined, the onus is on the wrong parties here, that what your suggestion would be is that the carrot is better than the stick in this kind of scenario.

Mr. Hathaway: Yes, I feel like being raised on a farm is sure a lot easier on the owner of the farm if he blames it on the hired men. The people who are down the ladder are employees, and when we take on the job to deal with government, we take on responsibilities of making it happen. In this case, this was shirked or hoped it would go away or whatever may be the scenario. Just basically like Mr. Selinger asked what the reason is. I think it was still a mystery as to what the reason is for this whole thing. Yes, I agree.

Mr. Maguire: You have put forth a similar idea here of the two votes per undivided parcel similar to what Reeve Goethals has put forward. Would you see that as the carrot I was referring to, as opposed to the onus being on individuals or the rural municipality after the fact to determine through their own finances and their own means what deems to be an offence?

Mr. Hathaway: I think this would alleviate it a lot. It would make it much more clear. It takes away the temptation to pull a trick of this nature. I do not think you probably would have to go with more than the two votes. I also believe that one vote is acceptable. I also believe that the residency is acceptable.

They are all good choices and reasonable choices. If you look at the ones and I did give you, just as you mentioned the names and candidates, a copy of that. It was probably the second most generous situation in Canada at that point. B.C. does have as many resorts, a lot more resorts than we do, and I am sure they are very, very expensive ones, with lots of shareholders. They must handle it in some manner as do other provinces. Saskatchewan would be the lone, I would say, victim of the same situation as we are at this point in Canada.

Mr. Chairperson: No further questions? Thank you for your presentation, sir.

Mr. Hathaway: Thank you very much.

Mr. Chairperson: I now call upon Richard Sexton or Teresa Dillabough. Mr. Sexton, do you have a written presentation for the committee?

Mr. Richard Sexton (Private Citizen): Yes, I do.

Mr. Chairperson: Please proceed, sir.

Mr. Sexton: Thank you. Good morning. My presentation deals a little bit with the court case, and I am not going to go into detail on that. You can look at it in your own time. I will say that I was told I had to take this issue to court under sections 42 and 43, which I did. I spent $20,000 in legal costs alone, let alone who knows how much sweat equity that went into it, and at the end of the day Mr. Holden was removed from council, fined a dollar.

I could not believe the names would not be addressed at that time because we did prove they were there in a colourable interest, and when I challenged this in the court I thought, we asked for those three things under sections 42 and 43, that he would be removed from council and that the names be addressed. The judge did not do that, and to this day we do not know why.

My concern is, and our concern in the municipality is, even if you go through this process the way the act stands now and you do challenge it, at the end of the day, regardless of how much time and money, there is no deterrent stopping anybody from doing this again because the names still stay on the list. That is the way it is. Maybe what the judge has done here, he sort of set a precedence that it will happen again that way if somebody else challenges it or does do it again.

I would like to see some remedy put in place. I am not opposed to the two amendments that are proposed, but I want a qualifier in there that enhances that, so that I do not have to go through that again or anybody else, because this can happen anywhere in the province. I think maybe until it does start happening in other municipalities it will not grab anybody's full attention until it does, and then you are going to have everybody in here doing this. I want this committee to believe me when I am standing here and telling you this that this group will do it again, because there is no deterrent. Mr. Holden cannot run again, but somebody within their little group can.

These names that were added to this property are from Thunder Bay to Kelowna, B.C. I would think 90 percent of them do not know where the property is, 99 percent of them likely do not know who I am, or any other opponent who might run for council. A group with a hidden agenda or whatever can do the very same thing.

The reason I challenged this, I know I did lose the election, but I did not spend $20,000 and nearly three years of my life challenging it because of that. I sat back and thought if a special interest group does it there is nothing stopping animal rights from doing it, environmentalists. They could all live in Toronto and they could run your municipality. To me, that should not be allowed.

Now I do know we have an act, and this has been spoken for before, but somebody has to enforce that. It should not be up to the individual to do it, especially when you do do it and prove it, and at the end of the day maybe you are worse off, as far as getting a full decision.

I think I will just leave it at that. Everything else has been said before me. I would certainly entertain questions, because I have been involved in this.

Mr. Chairperson: Thank you for your presentation, sir. Does the committee have questions?

Mr. Derkach: Thank you very much for your presentation. I am just shocked at how much money you have spent in trying to prove the case, and at the end of the day, although I guess in society we have to say that justice was served, it appears there were many gaps in the way that the decision came down.

With regard to the amendment that is before us today, it does not do anything to address the situation that you express, because all it does is allow for people to register their property six months in advance, and then we would have to go through the same process. Somebody would still have to challenge it in a court and spend the same kind of money perhaps that you have in order to be able to prove this.

I think what we need to do in order to be able to address this is allow for either a restriction on the number of votes on a parcel of property, or at least provide for some reasonable approach to how we determine who the eligible voters are within a municipality. I am just wondering whether or not, in your experience in

having studied this issue, whether you would endorse an approach where no more than two voters can vote from a registered piece of property. Non-resident voters, I am talking about.

Mr. Sexton: I went through the municipal map when we tossed this two votes per property. I looked at everybody's property on that map and it would not leave out anybody, if they had two votes plus the residency vote. The only people it would leave out are these ones who were added on, which was proved to be a colourable interest. That is in the R.M. of Winchester. I would think most municipalities will likely be the same. Every registered piece of property, limit it to two votes. Like Mr. Hathaway said, I think we are being very generous there because B.C. has one.

You are right about going through the process and spending the money. Even if you did challenge it, and I do not think many people would, because of the expense and the time frame. We started this. It will be three years in August since we started it.

Mr. Derkach: One of the problems, of course, is when a piece of legislation is passed and an act is proclaimed, then staff within any department has to live within the parameters of that legislation. I think what happened in this particular issue was that we had to be guided by the legislation that was in place. I do not think there has ever been a case in our province where an issue like this has occurred to the extent it has. I know there are other properties in the province where there are more than one registered owner of the property who are entitled to vote as non-resident owners, but I think this is the first time we have had such a blatant abuse of the rules within the legislation.

I think what we are proposing is that we limit the number of voters that can vote, giving still an ability of a non-resident voter to have some say in what happens in that jurisdiction, but at least limit it so that it does not upset the balance in favour of those who may have some other hidden agenda or, at least, does not take the right of the resident owner away from having a major say in what happens in a municipality. I think Mr. Maguire's suggestion with the two names is something that we would endorse. We would certainly want to ensure that this meets with the approval of people like yourself who have gone through the courts and have tried to bring some justice to an issue that was so blatantly abused.

* (11:10)

Mr. Sexton: I would agree with the two votes for property. I can certainly live with that. You are right. Those ones from Thunder Bay to Kelowna will have to decide which two are going to vote, and we can live with that.

Mr. Chairperson: I have Mr. Maguire next.

Mr. Maguire: Thank you, Mr. Chairman. I thank you for coming in as the others today to make the four-hour trip in here to present to the committee this morning. You have a couple of things in your presentation that I just want to ask you a few questions about.

Obviously, I asked Mr. Hathaway the same question, but after having gone through spending two or three years of your time, as well as the $20,000 that you have talked about from an individual's perspective, just for the record, would you concur then as well, that the two-vote mechanism are a means of determining who the voter should be in the first place, which leaves the onus on the individuals, would be a far better process in resolving this issue than trying to bring enforcement in after the fact?

Mr. Sexton: If that had been in place before, it would have saved a lot of headaches if it was limited like that. We did determine that it was colourable because Mr. Holden admitted in an agreed statement of facts, which you will find attached to your brief, that he did it for the purpose of voting. Anyway, we still had to go through that whole process. Then he had the right to appeal and that is where our time frame– we waited six months to get it into appeal court and then we waited five- and-a-half months for a decision from the appeal court. They just upheld Judge Menzies' original decision. They did not comment on anything else as far the names coming off, or to change anything about penalties, or–

Mr. Maguire: Just for clarification then, there were two judges; there was an original ruling by

the judge and then the second ruling was backed up. Can you just clarify that for us?

Mr. Sexton: We had three court cases, the first one in July 1999, I believe, with Judge Menzies. Then Mr. Holden launched a constitutional challenge, which, in our minds, was a delaying tactic because they said it was unconstitutional, being whether it was civil or criminal, and then he let his lawyer go. Then the judge ordered the lawyer back because he said he was going to seek legal aid to challenge this, which, in our mind was another delaying tactic.

Anyway, Judge Menzies ruled in his decision that Mr. Holden could not run for three years, fined him a dollar, and found the property to be colourable. Then he filed an appeal, and we had an appeal court in front of three judges here in Winnipeg.

Mr. Maguire: A final question. You maybe just clarified it in your answer, but in your presentation, you made the statement that Mr. Holden could not run again. It was my understanding from those determinations that he could not run for a period of time. Can you outline how that would go, or if he could not run for a number of years, or in the next election? Two questions: What would the period of time be and, in your estimation, because there has already been an election held, would he be able to run in the next one in the fall of 2002?

Mr. Sexton: When the judge brought down a decision, he suspended him for three years from council, but the way the municipal elections fall, it would really be seven, because it is a four-year term and his three years would not have been up. The only way he could run after three would be if there was a by-election.

Hon. Jon Gerrard (River Heights): Thank you for your comments and spending so much time in bringing this whole issue forward, which clearly needs to be sorted out with proper legislation. One of the concerns about having two votes per piece of property would be the potential for somebody to split the piece of property and subdivide it, in a sense, into small pieces and then have two voters per small piece of property. Is that going to be a problem?

Mr. Sexton: I think most municipalities have a planning act, and properties can only be subdivided as low as 40 acres. I guess some pieces can be cut out smaller than that, but what Mr. Holden did here was undivided interests, and they can be fractioned to infinity. If he could have got enough names, he could have put 10 000 on there and run the whole R.M.

Mr. Gerrard: I just wanted to make sure, if one changed it to make it two votes per piece of property, that there was not a way around that, and from your perspective, there does not appear to be.

Mr. Sexton: I think, if you went by two votes per registered piece of property at Land Titles, it should alleviate the problem.

Mr. Selinger: I just want to thank you for persisting in this case. I think it is very important what you are doing here to get democracy working properly. I know you put a lot of time and expense, and I think we will find a solution, I hope, that satisfies you.

Mr. Sexton: Thank you for some encouragement that you are going to find a solution. I want to tell this panel that we have no intention of going away until this is fixed. Mr. Hathaway alluded to a death threat; well, I had that. I had the crank calls, and I had the cut-and-paste letters, I call them, but I do not scare very easily.

Ms. Friesen: You have borne the brunt of this, and I think we are all aware of that, and it should not have been that way. I think we are all very concerned about that and want to ensure that it does not happen again.

The issue of delegated voting, as I am calling it, two votes per piece of property or one vote per piece of property, is one that you have looked at it and you think that would work for Winchester. It may well be where we end up. But the issue that I am facing is that, if we were to do that now, we would be affecting the votes of at least 11 000 people outside of Winchester in addition to Winchester, people who now have a vote and who are the third, fourth, fifth owner of a property and who now have a vote, bought that property knowing that they had a vote, and

would not next week have a vote. In addition, there are the 293 people in the R.M. of Park who bought a time-share in the Elkhorn property, who now have a vote, bought that property knowing that they had a vote, and next week would not have a vote. That is my dilemma.

It may be that one of the solutions to this is such as British Columbia has, and it was obviously an issue that we shared with you when we met, but it is one that would require us to take away the franchise of people who now have it and would not have it without having had the opportunity to talk to them about this. That is my concern. It is a very serious matter to take away the franchise from anyone for whatever reason.

There are some very simple ways of doing this, in moving to a non-resident to abandoning the non-resident vote. I am not convinced that is the way you want to go or the way Manitobans generally want to go, although I know there are individuals who strongly hold that view. This raises a lot of issues, but the most immediate one that applies to the particular amendment that may be proposed here today and which may well suit the R.M. of Winchester has an impact on other people who have not been consulted, and that is my concern.

I do think that we do have time before the 2002 municipal elections to deal with this. I am trying to look at it on the basis of both the enforcement aspect, which I think needs to be spelled out. We may not get to an enforcement mechanism that we are all comfortable with, but I do think it has to be spelled out, and also the issue of how the franchise is distributed across Manitoba. We will be looking at that.

I know that you and others have met on this and that you had anticipated that this legislation might address it, but I think I was very clear when I did meet with the R.M. of Winchester in saying that these are issues which affect people right across the province, and we do need to take a little time. We know the situation you went through. Nobody should have had to go through that situation, and you bore the brunt of it, and I think we are very concerned to address that before the next municipal election. All I can do is to thank you for the time that you have put in just today to come here and to make that presentation.

Mr. Sexton: I want to thank you for your comments, Madam Minister. I want to tell you that I had a vote in Winchester. I cast a ballot, but I did not have a vote. I lost my vote, in my mind. If you need somebody to enforce your act, I have nothing to do in the wintertime.

* (11:20)

Mr. Maguire: Volunteers are hard to find sometimes, Mr. Sexton. Thanks for your offer. I am sure that the minister will appreciate that as well.

I want to just come back to this. It has been alluded to that this is a Winchester issue, the Winchester clause. It may well be known as Winchester, forever. But, in your mind, I know having been personally involved and from talking to you and others, just for the record, you do not see this as solely a Winchester issue, do you?

Mr. Sexton: Absolutely not, that could happen anywhere. I can buy a piece of property in your home municipality. I could go to Hartley and buy a lot. I could put 600 names on it, which is maybe two more than the voters that are in Cameron municipality. We can run our group. We can form our council. We can run your municipality.

Mr. Maguire: Just to end, do you believe, if the two-vote situation that we have talked about here for undivided property was put in place through an amendment that I am prepared to put forward today in this House, that it could be implemented at this time and then still proceed with a review of the act within the province, within the discussions of all groups, within the AMM, and if it was found for some reason to not be beneficial in the future, that the two-vote rule could still be changed, but that we could proceed with this kind of an amendment today, put it into the act. It would then be there, and everybody would know where they are at for the fall of 2002 election, if it is proven prior to that through review, or after, that it could be amended again.

Mr. Sexton: I could agree with that. As long as there is something in place for October 2002, for every municipality, not just Winchester, because

I will tell you, it is going to happen in Winchester. I do not want to come back here, and I do not want to spend the $20,000 again, but I will to prove a point, that it has got to be fixed. It should be a concern for every municipality and every municipal corporation there is in the province because it can happen in your own backyard, not just Winchester.

Mr. Chairperson: Time has expired, but I will allow Mr. Derkach one brief question.

Mr. Derkach: One of the areas that I have a little concern about is: The minister has indicated that she is prepared to review this and bring in legislation prior to the 2002 election. I agree with that issue, that it needs to be done before then. If we are going to, in fact, review the entire act, can you see any benefit in putting in the amendment this year, extending the period for six months for a non-resident voter to be registered on a piece of property?

Mr. Sexton: Not in itself, unless you do put in the amendment of two votes per person, because six months is just going to tell this group to make sure you do it tomorrow. Then it allows that 14 days, allows that mail-in ballot, that we had tried to come from Australia. It got there late, but we had one come from Australia to vote in that election. So that 14 days will give it time to get there now, likely.

Mr. Chairperson: Thank you for your presentation, sir. The next person on the list is Wayne Motheral of the AMM, but he is not in attendance. He has submitted a written presentation, which will be included in the transcript.

The last person for Bill 38 is Mr. Bob McCallum, Reeve of the R.M. of Morton. Mr. Morton, do you have a written presentation of your brief? Oh, I am sorry, it is Mr. McCallum.

Mr. Bob McCallum (Reeve, Rural Municipality of Morton): Yes, I do. Good morning, Mr. Chairman, other members of this committee in charge of reviewing this important piece of legislation. Just my own notes on this, before I get into my presentation is that we are the neighbouring municipality to the east of Winchester, and we are here in support of what Winchester is up against. I want to make that clarification clear to you that the presentation I have here is basically the same kind of information that has already been presented, but we, as a neighbouring municipality, are very much concerned about what has transpired with our neighbouring municipality. With that, I would like to proceed.

We are very concerned that this legislation does not address directly the situation that arose in our neighbouring municipality, the Rural Municipality of Winchester. Here is a situation where one individual, through the sale of an undivided interest in property, was able to add a number of new voters onto the voters list. According to the way our current Election Act is written, there is nothing wrong with what was done, unless it was proven that it was done to effect the outcome of an election. Unfortunately, the way the act is written now, an individual can, at a substantial cost in legal fees, not to mention his personal time, challenge this individual in court and must then prove through the court action that these names were added for the sole purpose of affecting the outcome of an election. What we are asking you to do is to write legislation to prevent such a thing from happening again.

We have discussed this at our council meeting, and one idea was to limit the number of non-resident voters that could vote in an election, who are multiple owners of a single piece of property, to two votes. Currently, shareholders of a corporation do not have the right to vote if they do not live or own property in their name. This would be similar. It was also suggested that a monetary cost minimum per piece of property be introduced before an individual would have the right to vote.

To bring home my point, and to better illustrate what the current Election Act permits to happen, be it an extreme example. Let us say that the residents of the town of Boissevain, which is in our municipality, have a population of 1542, are not happy with the way the Rural Municipality of Morton, of 784 in population, is conducting their affairs. They decide to legally purchase an undivided interest in a piece of land in the R.M. of Morton. An election comes, they nominate candidates that have their interests at heart, and because they have more electors, they

take over the control of the Rural Municipality of Morton's Council. Extreme, yes, but why are these possibilities there?

It is our feeling that there is a responsibility to the Province to respond to situations like that which occurred in Winchester. There are not many individuals that can afford the time and the money to prove that a wrong was committed. Secondly: Why should they be saddled with that responsibility? Should not the Province of Manitoba be a stakeholder in this court action? After all, they wrote the act. They should, therefore, take a more active role to defend it.

Thirdly, we know that the federal government of Canada and the Province of Manitoba are constantly amending The Income Tax Act to close loopholes in that act. So why is this one so difficult? Yes, I know, as soon as a loophole is closed, some would like to find another. So what? We know that these exist, so let us put together some responsible legislation to close it.

Nevertheless, we have one immediate concern that affects the R.M. of Winchester. We have, on their election roll, a number of electors that should have been removed from the voters' list at the time that Judge Menzies made his judgment concerning the Holden-Sexton case. They still remain on the electors' roll and will affect the outcome of the next election. Something should be done about them before the next election.

* (11:30)

Finally, some people are of the strong opinion that this is a local problem, and they are dealing with it as something far and distant from them. Believe me, that this could happen again anywhere in Manitoba, especially with the attention that this case has got over the past three years. Yes, it could happen even in your own backyard.

With that, I would thank you very much for listening to me in my presentation. I know that the minister, Ms. Friesen, has talked to us about this and that I have heard your comments here this morning. With that, Mr. Chairman, I would close my address.

Mr. Chairperson: Thank you for your presentation, sir. Questions from the committee?

Mr. Derkach: Well, thank you, Mr. Chair and Reeve. I think this is an issue that has the attention of all parties in the Legislature. It is not one that has sort of a partisan bend to it, and I thank you and other municipalities who have joined to encourage Government to address this issue.

I also agree with the minister when she says that we need to take some time to consult with other municipalities, the AMM to ensure that whatever is put into legislation does not impact negatively and then create a problem down the road when the elections come in 2002. So I support her in taking the time to do that, to consult with municipalities through the province.

The fall election of 2002 is still some way from us now, and I am sure that before that time we could have legislation passed that would address this issue. I am wondering, as a reeve, whether or not you would be supportive of not trying to put a Band-Aid solution to this at this time, but rather to take the time to ensure that we address this in a way where it is not going to cost individuals like Mr. Sexton another $20,000 to be able to prove the case so that indeed we have a better piece of legislation before us than what we have today.

Mr. McCallum: Yes, Mr. Derkach, I would agree with that. A Band-Aid fix is not what we are after here. We are after a permanent fix. The election of 2002 is just a matter of months away and, as you know, time flies on us. As we move slowly it will be here. If nothing is done soon then we are going to be faced with the same dilemma.

Mr. Derkach: I respect that, Reeve. I think the minister has already indicated from her comments that she is prepared to move ahead with legislation before the 2002 elections. I think by having the parties, if you like, work together to ensure that, in fact, we have something in place that will address the issue is going to make it better for all of us and make all of our lives a

little easier. Certainly, my position would be that we take the time, but I think it is important that we would have the support of municipalities to do that.

Mr. McCallum: Thank you very much, Mr. Derkach. I appreciate your comments.

Mr. Gerrard: Thank you for your presentation. Clearly, the issue needs to be resolved, and resolved in a way that is going to provide a good, solid solution before 2002. I think there is indeed some urgency to doing this properly.

One of the questions that I would ask you deals with residency requirements. I notice that most other provinces have some level of residency requirements. The approach to date in Manitoba has not been to require any residency requirements because people may have vacation homes and so on.

I would just ask your opinion on this. Other provinces may require a residency just on the day of election or for a relatively short period of time in a way that would in fact accommodate somebody who is a vacation home-owner perhaps.

Mr. McCallum: Well, I guess we look at B.C. as a prime example. I mean they are restricted to one vote as per property there. I am sure there are lots of vacation homes and expensive pieces of property there where somebody has to make a decision on who is going to vote. There is no easy solution, and there is no one province, I do not think, that have the same legislation on how we handle this. So I can understand this can be a very difficult solution to get around. I do not, as the reeve of a municipality, have the answers to all either. I think, as the comments have been made around the table here today, we need to work together on that. That is my approach to this.

Mr. Gerrard: In B.C., in addition to the one vote per piece of property, they have a 30-day residency requirement. What would be the impact of imposing a 10- or a 20- or a 30-day residency requirement?

Mr. McCallum: I guess, Mr. Gerrard, that is something I have not personally thought out. In all fairness to your question, at this point, I do not quite have the answer for that, but it is something that maybe needs to be looked at.

Mr. Gerrard: I am not sort of proposing this, but I think in the context of having a thorough look at the act it is one of the things that should be looked at in the context of what happens in other provinces. Thank you.

Mr. McCallum: I think that is true. I think it is something that maybe we need to look at as to how other provinces look at the elections act, how they operate their elections, and do it fairly.

Ms. Friesen: Reeve McCallum, I just wanted to add my thanks for supporting your neighbouring municipality. I know they appreciate it, and I think it does symbolically draw attention to the fact that this is not just a Winchester issue and, as the AMM has spoken to me of, this is something which could and may happen.

I did begin this session by saying I think all sides of the House want to see a resolution to this. I do not think anybody likes what they saw happen, and they want to see this dealt with quickly. So I appreciate Mr. Derkach's comments, and I hope we can work through this and get, before the next election, a system that at least all of us have talked about. All of us are not necessarily of one mind, but at least we have had the opportunity to consult people who may now have a vote and who may not have a vote in the future, or at least have a substantially reduced vote. I do think that needs to be discussed. Thanks.

Mr. McCallum: I would like to say on behalf of the group of people who drove the four hours this morning that we appreciate the fact that you people showed up here this morning to listen to our concerns, to the honourable minister for being here, as well, to hear our concerns, and I know you have heard it many times. I repeat Richard Sexton's comments that we will continue to draw it to your attention. We hope it will be addressed. We are not going to go away in the dark until we know that we are comfortable with what is going to transpire in the future here before the election of 2002.

So, with that, I know that we have taken up a lot of your time here this morning, committee members. We do appreciate it very, very much because we think that this is a very important issue. With that, Mr. Chairman, I would like to wrap up my address.

Mr. Chairperson: Actually, we still do have a little bit of time left, sir. I will give Mr. Maguire an opportunity to ask a question.

Mr. McCallum: I am sorry, Larry.

Mr. Maguire: Thank you very much, Mr. Chairman, and thanks for coming in as well, Reeve McCallum, Bob. Thank you for being here and backing your neighbouring municipality on this issue. I know you have spoken out at the AMM meetings as well, and I want to assure you that this needs to be done in a spirit of co-operation between the parties in Manitoba to make sure that we do make legislation that is going to be sound and to try to meet the needs of the people that are going to be voting in the next election, and, if we can do it sooner, that might even impact by-elections that will undoubtedly be held because we all do not know when our time is up. So, if there are by-elections that can be held that are going to be held, I mean, we need to do this with some certainty and with some degree of co-operativism that will allow us to put forth some legislation that will perhaps correct this situation while the rest of the act continues to be looked at. I can assure you that is what we will be working toward, so thank you for your presentation again.

Mr. McCallum: I thank you, Larry. I know that you are a neighbour of ours down home, and I know that you are very familiar with the situation because you have talked with us in Morton. You have talked with Winchester, I know, from time to time, and I know that you have also visited with the Honourable Ms. Friesen about this issue. So, with that, it seems to be that it is becoming a more enlightened issue, and we do appreciate it very, very much. I can see by the table here this morning that we have raised a few issues with some people that may be just on the fringe of it, and now I think you are in the midst of it. So, with that, yes, Larry, I do appreciate your concerns and your support.

* (11:40)

Mr. Maguire: Do not worry about the time, Reeve. It is not four o'clock in the morning yet.

Mr. McCallum: With that, Mr. Chairman, with your permission then, if there are no further questions, I think my presentation is complete.

Mr. Chairperson: Okay. No further questions? Thank you for your presentation, Mr. McCallum. That concludes presentations on Bill 38. We will now move to Bill 31.

Bill 31–The Municipal Assessment Amendment Act

Mr. Chairperson: I call Mr. David Sanders of Colliers Pratt McGarry. Mr. Sanders, do you have a written presentation for the committee? You may proceed when you are ready, sir.

Mr. David Sanders (Director, Real Estate Advisory Services, Colliers Pratt McGarry): Mr. Chairperson, honourable ministers, members of the committee. I have asked to appear before you this morning in order to explain why you should withdraw Bill 31 and not proceed with it. This bill should really be called the taxpayer intimidation and ambush act or the unjust appeal act.

In my opinion, the primary purpose and effect of this bill is to enable assessors to intimidate taxpayers and discourage them from filing or proceeding with appeals of their property and business assessments. If this bill is passed, most taxpayers who are unfamiliar with assessment law and practice will be afraid to appeal their assessments for fear that they will be increased as a result.

Many aspects of our present assessment law and practice are unfair, but this bill will make things much worse not better. I am sure that the minister has introduced this bill because she has been advised that it will provide for fairer procedures and result in fairer assessments, but unfortunately nothing could be further from the truth. Once I explain what really goes on, I believe you will all agree that Bill 31 should be withdrawn immediately. Manitoba's assessment

legislation is in desperate need of revision but not in this way.

My presentation this morning is based on more than six years of experience in conducting property and business assessment appeals on behalf of commercial, institutional and even government taxpayers in Manitoba. I am director of Real Estate Advisory Services for Colliers Pratt McGarry, which is one of Winnipeg's largest commercial real estate firms. My group handles about 1000 appeals every year, and I appear before the Board of Revision or the Municipal Board almost every day.

In addition, on a pro bono assignment from the Public Interest Law Centre, I am personally representing the North End Community Renewal Corporation and almost 300 individual homeowners in conducting their current residential assessment appeals.

I am acutely aware of the public interest in assessing and taxing property owners and businesses in a manner which is fair and equitable and which is seen to be fair and equitable. I served the Manitoba government as Deputy Minister of Urban Affairs actually a quarter century ago. I have a master's degree in political science and urban land economics, and just this morning I received my call to the bar.

With respect to Bill 31, members of this committee should be aware of the recent history of this issue. Before 1990, the city assessor was authorized by section 188 of the old City of Winnipeg Act to file a cross-complaint and seek an increase in any assessment appealed by a taxpayer, giving only 10 days' notice. In my brief, I have quoted those sections from the old act for your benefit.

During the late 1980s, a commission which was headed by former Premier Walter Weir conducted a very thorough review of Manitoba's assessment legislation, and in *A Fair Way to Share–Report of the Manitoba Assessment Review Committee*, the Weir commission specifically recommended that the authority of the City of Winnipeg to cross-complain in respect to an appeal on the assessment of property be cancelled. The commission understood the dynamics of assessor intimidation very well and said, and I quote: "The City of Winnipeg presently has the authority to lodge a cross-complaint in respect to any appeal made to its Board of Revision. The City has suggested that this authority should be cancelled. The Committee agrees with this suggestion as such action can only operate as a deterrent to public relations and create a hesitancy on the part of any ratepayer to seek adjustment which he considers to be warranted."

The Weir commission also went on to say, and I quote: "A Board of Revision should not have the authority to make an adjustment that is in reverse to that requested by the complainant. No complainant should hesitate to complain against the valuation of his property for fear that the decision of the Board of Revision could be detrimental to his existing position."

The commission also made identical recommendations with respect to the authority of the Municipal Board.

The provincial government of the day accepted those recommendations and revised both The Municipal Assessment Act and The City of Winnipeg Act accordingly in 1990.

However, in 1996, the provincial government was persuaded by the assessors to attempt to reverse its predecessor's commitments to a fair appeal process by amending sections 54(1) and 60(1) of The Municipal Assessment Act so as to enable the Board of Revision and the Municipal Board to increase an assessment in response to a taxpayer's appeal seeking a decrease without any notice being given by the assessor before the hearing.

Thereafter, taxpayers were, in fact, ambushed at the hearing or, more commonly, intimidated into withdrawing their appeals beforehand until December of 1998. In the Valley Gardens decision, the Manitoba Court of Appeal ruled that the 1996 amendments did not give the assessors the power to threaten to ambush the taxpayer at a board hearing through what Mr. Justice Huband called, and I quote: "a side-wind demand by the assessor, without prior notice, for an increase in the assessment."

The court rested its decision on the fact that even the amended sections 54(1) and 60(1) of

The Municipal Assessment Act allow boards to change assessments only, "as the board or panel considers just and expedient." Please remember those words.

The court found it would be procedurally unfair and hardly, quote, "just" for a board to increase an assessment in the absence of an application for an increase by the city assessor to the Board of Revision and in the further absence by the assessor of an appeal to the Municipal Board.

The court found that, and I quote: "The broad wording of section 54(1) and section 60(1) is tempered by the requirement that any change be, quote, "just" and "in the context of the whole of the statute, that imports the notion of procedural fairness." That is the court's quote.

In 1999, in response to the court's decision and again at the assessor's request, the provincial government introduced Bill 25, which contained amendments to delete the requirements that boards make only those changes which they considered just and expedient. After receiving strong representations in opposition to what I then characterized as the unjust appeal amendments, the minister withdrew the offending sections of the bill.

Now today, unfortunately, here we go again, for the third time in recent memory.

First let me explain very specifically what Bill 31 would really do and what it would not do.

Clause 4 of the bill would amend Section 42(1) to make it clear that the "matters" which may be the subject of an application are only liability to taxation, amount of an assessed value, the classification of property or a refusal by an assessor to amend an assessment under subsection 13(2) of the act. The term "matters" is an entirely new term for these issues which have previously been considered to be the possible "grounds" for an application.

Clause 5(1) of the bill would amend section 43(1)(c) to require that an initial application filed at the Board of Revision must set out not only the matters at issue but now also, quote: "the grounds for each of those matters." I can only assume that the grounds are different from the matters, and this amendment means that, in future, taxpayers will be required to set out the factual basis for their application at the time of filing. I am quite sure the city law department will interpret this amendment in that way.

Clause 5(2) of the bill would inexplicably delete the present subsection 43(2), which states that a Board of Revision may not consider an application which is not in compliance with subsection 43(1). Subsection 43(2) would be replaced with new subsections 43(2) and 43(3), which would restore the assessor's old pre-1990 authority to file cross-complaints to taxpayers' appeals, with 10 days' notice to the taxpayer.

Clause 6(1) of the bill is the first of the two unjust appeal amendments, which deletes the present requirement of section 54(1) that boards of revision make only those changes which the board or panel considers just and expedient.

* (11:50)

Clause 6(2) of the bill adds a new subsection 54(2.1), which grants the board or panel the new authority to increase an assessment if the assessor has filed a new section 43(3) cross-complaint.

Clause 7 of the bill would replace section 56(4) by changing the nature of an appeal to the Court of Queen's Bench or the Municipal Board from the present, and I quote: "a full hearing on the issues that are the subject of the appeal, as if the issues were being heard for the first time," to, and I quote, new wording: "a new hearing on the matters that were put at issue before the board."

Mr. Chair, this is not an innocuous amendment. It is a specific response to the decisions of the Manitoba Court of Appeal, which has ruled that such appeal hearings are confined to the issues and positions taken at the first round before the Board of Revision, and the court has therefore rejected attempts by assessors to raise entirely new issues at second-level appeals, for example, in the Valley Gardens and New Holland Canada cases. The obvious purpose of this amendment is to grant the assessor a new right to raise entirely new issues and present

entirely new positions so long as they relate to one or more of the four matters in appeal.

Clause 8 of the bill would require that an appeal filed at the Municipal Board set out not only the matters in appeal but also the grounds of appeal for each of those matters, presumably again meaning that the factual basis of the appeal would have to be provided. The clause would also add new subsections 57(8) and 57(9), allowing the assessor to decide, even at this late stage in the process, to seek an increase in the assessed value upon giving only 10 days' notice prior to the hearing.

I presume the drafter of this clause is entirely unaware of the Municipal Board's rules of procedure which require that parties file and exchange their briefs and evidence at least 15 working days before the hearing, which means at least 21 calendar days before, or else the drafter is really determined to enable the assessor to intimidate and/or ambush the taxpayer right up to the last moment.

Clause 9 of the bill is the second of the two unjust appeal amendments, which deletes the present requirement of section 60(1) that the Municipal Board make only those changes which the board considers just and expedient.

Clause 10 of the bill adds a new subsection 60(1.3) granting the Municipal Board the new authority to increase an assessment if the assessor has filed a new section 57(9) cross-complaint.

Clauses 11 and 12 of the bill provide that these amendments come into force only on January 1, 2002, and that applications and appeals commenced before that date will continue under the present act.

Now, in my opinion, that is what Bill 31 would do.

Let me now explain what Bill 31 does not do. It does not give the boards a new authority to increase assessments. The boards have always had authority to increase assessments in response to an application filed properly by the assessor or even a taxpayer, which, I am told, is happening.

It does not require the assessor to give sufficient and appropriate notice of his intent to seek an increase. In my experience, a notice which is mailed by the assessor may not reach the taxpayer's hands until more than 10 days has passed and is unlikely to be forwarded to the taxpayer's agent before the hearing. While the bill would require the assessor to mail a notice of the assessor's intention to request an increase, I ask you to note that there is no requirement that the assessor provide any information as to the grounds for such a request, the factual evidence on which it is based or even the amount of the increase to be requested.

Bill 31 does not assist local governments in obtaining fair assessments. Since the right to make application for revision was severely restricted for the first time in Manitoba's history by the 1996 amendments to section 42(1), local governments no longer have the right to appeal assessments, except for properties they own or occupy themselves.

Municipalities do continue to have the right to intervene and appeal decisions of the Board of Revision to the Municipal Board, although they very rarely bother. In any case, Bill 31 does not expand the role and authority of local governments, which I certainly distinguish from the offices of the provincial municipal assessor and the city assessor, neither of which are subject to the direction of local governments with respect to the exercise of their respective statutory authorities, or should not be.

This bill does not bring Manitoba closer to the principles and practices of other provincial jurisdictions. I have conducted appeals in British Columbia, Alberta, Saskatchewan and Ontario, and I have never, ever been faced with a threat that the assessor will seek an increase. Some of these appeals have involved assessments which, upon review with the assessor, appeared to be low. Nevertheless, the assessors have not threatened to seek increases in these cases, and I have been able to withdraw such appeals without adverse consequences for the taxpayer.

In summary, it should be perfectly clear that the primary purpose and effect of this bill is to enable assessors to intimidate taxpayers and discourage them from filing or proceeding with

appeals of their property and business assessments. This bill will allow the assessors to threaten to seek increases at any time right up to just before the hearing of a second-level appeal at the Municipal Board and to make such threats without having to declare in advance the grounds, factual basis or even the amount of the increase sought. The bill will also allow the assessor to raise entirely new issues and facts regarding the matter of the assessed value at the second-level Municipal Board hearing.

I should add that, under present Manitoba law, a taxpayer has the right to withdraw an appeal at any time before a hearing is concluded. I am now concerned that the assessors may believe that the proposed revisions to sections 54 and 60 will enable the boards to increase assessments in response to the assessors' notices of intent to seek an increase, even after a taxpayer withdraws his original application or appeal.

Mr. Chairperson: You have one minute.

Mr. Sanders: I do not believe that it is the intention of the Government to enable assessors to intimidate and ambush taxpayer appellants, and that is why I have every hope that the Government will now withdraw this bill.

I did want to explain what really goes on in the assessment appeal system and to expose some of the myths which may be affecting the Government's view of this matter. I would ask, if I am not allowed to present this in view of the time, that all of my brief be included in the written record of the committee.

The myths, I suggest, are these. First, there is a myth that an individual taxpayer can determine whether his assessment is fair and just before he files an appeal, or at least before he proceeds to a hearing. It is a myth that the meaning of value is clear, that the assessor's valuations are reasonable and that the decisions of the boards are predictable.

It is a myth that the assessor does not have the authority to seek an increase in the assessment of a property he believes to be undervalued. There are many ways that the assessor may presently do that, although very often the assessor fails to take advantage of them.

Finally, I suggest it is a myth that the assessor would never use the powers proposed in Bill 31 to intimidate taxpayers and discourage appeals. Please do not kid yourself, and if you have every doubt in this matter, I ask you to read my text, and particularly refer to the transcript of the Board of Revision hearing of June 7 in which the chairman of the Board of Revision refers to the intimidation tactics of the Assessment Department.

There are many issues that do need resolving. I have referred to them in my brief. I would be happy to answer questions on them. I thank the Chair and members of the committee for listening thus far.

Mr. Chairperson: Thank you, sir. Mr. Sanders has requested that the remainder of his brief be included in the transcript. Does the committee have any comment on that? *[Agreed]* Okay, sir. Questions?

Hon. Jean Friesen (Minister of Intergovernmental Affairs): Mr. Sanders, congratulations on your call to the bar today.

Mr. Sanders: Thank you.

Ms. Friesen: Your paper, I have not quite finished it, although I was reading ahead of you, raises a number of issues that we will respond to. I am puzzled by some of them, quite puzzled by your Saskatchewan experience, for example. I do note that many of your comments do deal with behaviour of assessors, as well as I do recognize that you are addressing some issues of principle here. But you are aware, I assume, that this is a change which has been requested by the City of Winnipeg, and it is a change which has been endorsed by the Association of Manitoba Municipalities.

Mr. Sanders: Thank you for your assurance that you find this of interest. I should say that I have not had an opportunity prior to this presentation to speak to the minister about this matter, although I believe that the members of her staff are fully aware of my views of this matter, certainly from the previous go-round with Bill 25. The fact that it has been requested by the City of Winnipeg is nothing new. The fact that it may be requested by the Association of Urban Municipalities does not surprise me. That does not change my presentation one bit.

Hon. Jon Gerrard (River Heights): The detail which you provide in your presentation–first of all, thank you for taking the time and effort to look over this as carefully as you have done–certainly suggests to me that the legislation was put together perhaps a little too hurriedly in some areas and needs to be looked at quite carefully. So thank you very much for your presentation.

Mr. Sanders: Mr. Gerrard, it might be not so much that it may have been put together hurriedly, but rather it has been put together based on, in my view, misleading information as to the real dynamics of assessment appeal, the assessment appeal process in this province, or particularly in the city of Winnipeg.

* (12:00)

Mr. Leonard Derkach (Russell): This is an issue that, I think, has come before ministers for a long time, and it is one that came before me when I was in the department. I appreciate the response, and I think it is not the first time I have heard that. I have a problem with this, quite frankly, because I believe it is up to the assessor to determine the correct value of property. I think that it puts the onus back on the taxpayer, who in many instances goes to a Board of Revision, not with a high-paid lawyer, but goes there by himself or herself to plead the case. If now that property owner is going to be intimidated by the fact that the assessment can go up when he or she is simply trying to ensure that the assessment is correct and, in her or his humble opinion, it appears that it is too high, it is going to eliminate a lot of people from legitimately going forward to try and ensure that the assessment on their property is correct. Is that your view?

Mr. Sanders: Absolutely. As I explained in my brief, it is very often necessary to file an appeal and go to the hearing before the taxpayer can find out how the assessment is prepared. In case of residential appeals, the Assessment Department of the City of Winnipeg refuses to explain how the assessment was prepared to this day. You will see it in my brief in more detail on this point.

If they are threatened with a possible increase by the assessor, the natural reaction of most taxpayers is to withdraw. We had the example in '99 when the assessor filed cross appeals of every single business assessment appeal filed by the taxpayer because the Assessment Department had access to the Board of Revision computer, monitored it and filed their own appeals in advance. They did file 175 after the deadline, and I wish you would read about this, but they were finally ruled invalid by the chair of the Board of Revision.

Nevertheless, I can tell you, because I personally was conducting over half of the 700 appeals that year, and many of my clients, when they received notice of the assessor's appeal, frankly freaked. It caused a lot of grief. In the end, there were no increases on any of the ones that I handled, except for one which had expanded their premises and the assessor could have changed under their authority under another section of the act. I had one who insisted on withdrawing despite my best advice.

I cannot speak for all the others and, certainly, those who filed their own, because they would not have someone like myself who is familiar with the process and either confident enough or crazy enough to proceed in the face of the assessor appeals.

There are other examples.

Mr. Chairperson: We are over time. Mr. Derkach, briefly, one last question.

Mr. Derkach: Thank you very much for your indulgence, sir.

On the other side of the coin, I have to ask the other question, and that is that most individual professionals who appeal assessments on behalf of property owners do so on the basis of a percentage of the reduction if there is a reduction on the assessment, so that, indeed, it becomes a fairly lucrative business for those who are involved in appealing assessments as well. How are we to invoke some fairness into the system to discourage just simple appeals on the basis that I might be able to earn X number of dollars off my appeal on the property?

Mr. Sanders: Mr. Derkach, I think there is some misunderstanding in that question. I appreciate it, though. I appreciate that there is a tendency to view tax agents, such as myself and my

colleagues in this room, as somehow predators on the assessment system. I ask you to note that the only changes we ever achieve are ones that either the Assessment Department or a board decides are fair and just.

Secondly, if we do proceed on a contingency basis, as I do generally and others do, it costs the taxpayer nothing to seek a review, even an appeal, and in the event that there is no saving, there is no cost to them, which means that a taxpayer has much greater freedom, if you will, to question, review and obtain a professional opinion about their assessment than if they have to pay up front.

Frankly, one of my nicknames is Quality Control, and, yes, unfortunately, there is a lot still wrong with the assessment system. I have four staff and we work flat-out year round. I might also add that it is our policy to encourage our clients to provide full and complete disclosure of their income and expense questionnaires and sales information to the Assessment Department when requested in advance for hearings in the hope that the truth will come out and a fair assessment will be determined. While I am, only as of today, an officer of the court, we have behaved in that way in which, if you are familiar with it, the principle is that the truth comes first. I believe that my colleagues, by and large, certainly follow that same approach.

So I think there is some misunderstanding about, certainly, the behaviour, motivation and effect of the work of the tax agents, at least those who are resident in this province.

Mr. Chairperson: Thank you for your presentation, Mr. Sanders.

We have reached the order of the day where, at 12 o'clock, we were to revisit what we would do. Before I ask what the will of the committee is, for your information it is my understanding that the House leaders have met and have agreed that they will call this committee to sit again at 6:30. So I leave that with you and ask what is the will of the committee. Any members that are here that have not had an opportunity to present yet will have an opportunity when this committee is reconvened and the Clerk will be calling them to inform them as to this.

Mr. Stan Struthers (Dauphin-Roblin): I would suggest, Mr. Chair, that the committee should rise and meet again at 6:30 and hear the rest of the presentations, followed by clause-by-clause of the bills after that.

Mr. Chairperson: Is the committee agreeable to that suggestion? *[Agreed]*

Committee rise.

COMMITTEE ROSE AT: 12:06 p.m.

WRITTEN PRESENTATIONS PRESENTED BUT NOT READ

Re: Bill 31

Dear Minister Friesen:

The AMM has reviewed the proposed amendments to The Municipal Assessment Act contained in Bill 31: The Municipal Assessment Amendment Act. The AMM understands that this legislation will amend The Municipal Assessment Act to ensure that the Board of Revision and the Municipal Board have the ability to determine the fair value of the assessment for a property. In doing so, it makes administrative and procedural amendments to the hearing process related to those appeal tribunals.

The AMM supports this bill and we would appreciate this letter being forwarded to the appropriate committee for their consideration.

Thank you for providing this amendment to The Municipal Assessment Act.

Sincerely,

Joe Masi
Director of Policy and Research
Association of Manitoba Municipalities

* * *

Re: Bill 31

Continuation of David Sanders's presentation:

I obviously need to explain what really goes on in the assessment appeal system we now

have, and to expose some of the myths which may be affecting the Government's view of these matters.

Myth #1 An individual taxpayer can determine whether his assessment is fair and just before he files an appeal, or at least before he proceeds to a hearing.

Generally, a taxpayer is unable to find out how the Assessment Department has determined and calculated his assessment without first filing an appeal.

It is true that the city assessor has just provided a public preview of his proposed new 2002 assessments of residential properties. However, the assessor either cannot or will not explain how the individual assessments were calculated. In the case of residential properties, assessors appearing at appeal hearings have consistently refused to provide any specific information on how the residential assessments were calculated in the first place. I strongly suspect that the city assessor just does not want to admit that the 1998-2001 residential assessments were still prepared using the City's **1950** Cost Manual. In connection with my current appeals of some 235 North End residential assessments, I have asked the Municipal Board to compel the city assessor to provide such information. Two months have passed since my request was made, but the board has still not issued an order on the matter, and the hearings have been postponed for a second time.

In the case of commercial properties, the city assessor has provided some previews of industrial and retail properties, but the deadline for making changes to the new 2002 roll has now passed and I have yet to receive a value or an explanation for any office buildings.

Apart from such limited previews, the unfortunate reality in the case of the City is that there is only an extremely short notice period allowed between the provision of the new assessment and the deadline for filing an appeal. This year the new 2002 assessments will be mailed on July16th, and the appeal deadline will be Monday, August 13th. The staff of the City Assessment Department are generally unable to respond to new taxpayer inquiries within that short a period, and in the past assessors have often just encouraged taxpayers to go ahead and file an appeal.

Once an appeal is filed, a taxpayer may still be unable to find out how the Assessment Department has determined and calculated his assessment until shortly before the hearing. In the case of business assessments, the City's Property Assessment Department has previously refused to promise any explanation until the day before the hearing. More than once I have been provided with the city assessor's explanation of assessments only minutes before the commencement of a hearing of as many as 28 appeals on the docket at the Board of Revision. While most individual assessors try to respond to taxpayer inquires before a hearing, I also have had city assessors flatly refuse to provide an explanation of how the assessment in appeal was calculated before the hearing.

In any event, assessments are not easily understood, certainly not by the unsophisticated taxpayer. Reality assessments may have been prepared using the Cost Approach, the Direct Comparison Approach, or the Income Approach to Value, and these valuation methods produce quite different results. Few taxpayers have access to sufficient information to judge whether their assessments are indeed fair and just in relation to the assessments of other properties. The City of Winnipeg Business Assessment Roll is absolutely riddled with arbitrary, inconsistent and unfair assessments, but no individual taxpayer can possibly tell whether his business assessment is truly fair and just in relation to the assessments of all other business premises, as required by law. Worse still, most board members still refuse to hear evidence with regard to the assessment of other properties, despite the clear direction of our Court of Appeal that a board must be satisfied that a fair and just relation with other assessments has been achieved (Leila Farms Limited v. Assessor for the City of Winnipeg, Manitoba C.A., 1997.)

At appeal hearings, city assessors refuse to provide the assessments of their comparable properties submitted in evidence. Furthermore, they argue that the boards should not consider any assessments of other similar properties because those assessments "might be wrong."

The city assessor might be interested to know that despite the fact the he has personally sworn those assessments to be "correct," as required by section 188 of The City of Winnipeg Act, his own staff insist that all of them may in fact be wrong. In a recent case the Municipal Board accepted that view, and refused to consider any evidence of the assessments of other similar properties on the grounds that they "might not be properly assessed." We are presently seeking leave to appeal that decision to the Court of Appeal, on that and other grounds.

The truth is that the taxpayer is often unable to find out how his assessment was determined before the hearing, or even at the hearing in the case of residential properties. Few taxpayers can determine whether their assessments are fair and just in relation to the assessments of other properties, and most board members will not listen to evidence or argument on that point anyway.

Myth #2 The meaning of "value" is clear, the assessors' valuations are reasonable, and the decisions of the boards are predictable.

Any suggestion that the amendments in Bill 31 will not serve to intimidate and discourage taxpayer appellants is predicated on the notion that the taxpayer can determine in advance whether there is any realistic possibility of receiving an increase as a result of this appeal.

First, after 130 years of experience, **we still do not have a reliable definition of how a fair assessed "value" should be determined.** I do not have time to explain all the problems now, but I would offer just two examples. We recently obtained a Court of Appeal decision that a 1995 assessment appeal had been decided improperly by relying on the terms of a lease commencing two years after the 1991 reference year for value. We are also now seeking leave to appeal a 2001 assessment of an owner-occupied office building which has been valued at twice the assessed value of similar buildings which are rented to tenants. In this case we are appealing the failure of the Municipal Board to value the property in fee simple, as required for the production of equitable assessments, a concept which even senior city assessors have proven incapable of explaining properly. I could go on and on, but I will not.

Secondly, **the assessor's valuations are often unreasonably high.** I have just completed a Municipal Board hearing at which the assessor valued the property at $16.9 million, and my value was $8.7 million. The assessment in appeal is $9.8 million. If the assessor had been allowed to seek an increase at this hearing, do you think any sane taxpayer would have gone ahead with the appeal? Incidentally, the assessor had previously valued the same property at $17.9 million and yet failed to exercise his existing right to appeal the 2001 assessment under section 42(1) of the act. In another case, we appealed an assessment of $5.2 million, seeking a reduction to $3.7 million. The assessor submitted a brief to the Municipal Board with a value of $10.5 million, but then agreed to settle the appeal before the hearing at the reduced value of $4.9 million. We have just completed the hearing of an appeal of an office building which the assessor has successively valued at $1.8 million originally, $2.6 million at the Board of Revision, and $1.6 million at the Municipal Board. Our value, prepared in accordance with the assessor's own published valuation parameters, is only $1 million. These are Winnipeg appeals. At a recent hearing of a Brandon 2000 appeal, the provincial assessor submitted a value of $1.9 million, failing to advise the Municipal Board that he had already settled a 2001 appeal for the new owners of the same property at $1.3 million. Our value if $850,000.

I do not have to impute improper motives to the assessors who present such unreasonably high values. The fact that they do determine and submit such high values, frequently, is all that you need to know.

Finally, the truth is that for all practical purposes, **the results of appeals heard by the Board of Revision and the Municipal Board are unpredictable.** Neither of the boards consider themselves bound by past precedent. Frequently the boards are persuaded to adopt new principles of valuation in the course of hearing appeals for the same four-year assessment cycle. The expertise of the individual members and panels is quite variable. The Board of Revision does not operate under the discipline

of having to give either oral or written reasons for its decisions. The Municipal Board does give written decisions, and has the power to review and revise its decisions, but if the board refuses to revise its decision, our Court of Appeal generally refuses to grant leave to hear an appeal of a Municipal Board decision except on a pure point of law. When the Court of Appeal does hear an appeal, it often issues a decision which radically alters the interpretation of our assessment laws.

In this context, I submit to you that is only a very brave or a very foolish taxpayer who would even launch an appeal seeking a decrease, if he is faced with the possibility of having his assessment increased as a result.

Myth #3 The assessor does not have the authority to seek an increase in the assessment of a property he believes to be undervalued.

This myth is completely at odds with the facts. If the assessor finds that a property or business premises have been undervalued for any reason, he already has a great many ways to obtain an increase in the assessment.

The city assessor has always had ample authority to just issue an increased realty or business assessment pursuant to sections 13(1) and 14(2) of the MAA, plus sections 183(2), 208(1) and 208(2) of The City of Winnipeg Act (CWA). Where those sections apply, the assessor can issue increased assessments at any time, **without even making an appeal.**

If the assessor's reason for seeking an increase is not included in his authority under any of those sections, the assessor always has an annual right to file his own appeal in accordance with section 42(1) of the MAA, and to seek board approval of the increase for any reason the assessor cares to advance.

Please, please recognize that there is nothing in the present interpretation Manitoba law which prevents the assessors from seeking increases on appeal, and from boards granting them, except the assessors' own failure to file section 42(1) appeals where they believe increases to be justified.

The only additional authority which was to have been produced by the 1996 amendments, which was to be "restored" by Bill 25 in 1999, and which will be provided by the present Bill 31, is the power of the assessor to intimidate taxpayers and discourage them from filing or pursuing appeals.

Myth #4 The assessor would never use the powers proposed in Bill 31 to intimidate taxpayers and discourage appeals.

Do not kid yourself.

Historically, the City Assessment Department as an organization has been much more concerned about finding ways to prevent or discourage appeals than about preparing fair and just assessments in the first place. The members of the committee might wish to review John Scurfield's description of the "siege mentality" in the department, in his report on the 1996 City of Winnipeg Property Tax Assessment Inquiry. From my perspective, little progress has been made on this account since then.

Intimidation is a strong word, but I am using it advisedly, and I am not the only one to use the word.

Members of the committee may be interested to know that the supposedly independent City of Winnipeg Board of Revision has a computer system on which it enters and tracks applications for revision which have been filed with the board.

The City Assessment Department has direct access to that system, and staff may view the board's application records at any time. In 1999, after the Valley Gardens decision was issued, the assessors monitored the board's computer system, and as soon as they found a taxpayer had filed an appeal of his 1999 business assessment, the assessors prepared and filed their own appeal seeking an increase in that assessment, for no other reason than that the taxpayer had filed an appeal. Despite the fact that the business assessors well knew that many other business assessments were either too high or too low, the city assessor only filed cross-appeals of taxpayer appeals.

When they could not keep up with matching the taxpayer appeals filed on the deadline day,

they **intimidated** the staff of the Board of Revision into accepting some 175 assessor's appeals one or more days after the official deadline.

I discovered that some of the assessor's appeals had been filed late, because I had filed some at the last minute, and even some after the official deadline with a valid excuse, and yet somehow the assessor had managed to put in a cross-appeal. After several weeks, the chairman of the Board of Revision made his own investigation and then ruled and 175 late assessor appeals invalid.

The Assessment Department's behaviour here was bad enough, but to my astonishment the assessor actually sent legal counsel to argue that the Board of Revision should accept those late appeals as valid. I urge you to read the attached excerpts from the transcript which I arranged to have made of the Board of Revision hearing on June 7, 1999, at which time the **chairman of the Board of Revision specifically refers to the city assessor's "intimidation tactics," and the "administrative threat" made to board staff that the assessor would file appeals of the entire business assessment roll if the board would not agree to accept the late appeals.**

As I have said, all of those assessor's appeals were filed solely for the purpose of enabling the assessors to threaten taxpayer appellants with an increase on appeal. I conducted more than half of the 743 business assessment appeals that year, and in the end the assessor obtained only one increase on my appeals, for some premises which had been expanded and for which the assessor already had the ability to just issue an increase at any time under section 183 of The City of Winnipeg Act.

The following year, the Assessment Department made good on its earlier threat, and actually filed more than 4000 appeals of business assessments, about one-third of the total roll, again solely for the purpose of enabling the assessor to threaten to seek and increase if any of those taxpayers should appeal. Once the assessor learned which taxpayers had actually filed appeals, the assessor withdrew all the others. Again the assessor did not file any appeals to change business assessments which it well knew to be too high or too low.

During this past year the City Assessment Department has apparently been under extreme and highly improper pressure from not only the City, but also the school divisions, to increase the taxable assessment by issuing supplementary assessments for new and expanded properties. In a number of cases the City was rushed into issuing new supplementary assessments quickly, which the city assessor immediately tried to appeal himself, supposedly for the purpose of seeking a further increase on appeal. The City's attempts to appeal its own supplementary assessments issued under section 208 of The City of Winnipeg Act have since been ruled invalid by both the Board of Revision and the Court of Queen's Bench, but so far its similar appeals of supplementary assessments issued under section 14(2) of the MAA have not yet been ruled invalid–as they should be.

Members of the committee may also be interested to know that during the past year the city assessor issued some 7000 supplementary assessments for residential properties, on the grounds that its inspections had identified new physical improvements, such as the construction of a deck or installation of air-conditioning. However, the city assessor did not add a value for the identified physical improvements. Instead, the Assessment Department simply reassessed the entire property, often at a substantially higher value. I recently listened to an entire docket of taxpayer appeals of such supplementary assessments at the Board of Revision, which the assessor advised had been "triggered" by the identified physical changes, but in all cases were based on valuations which made no reference whatsoever to the particular physical changes. In my opinion, every one of those supplementary assessments were issued by the city assessor without legal authority.

With respect to the city assessor's preoccupation with preventing appeals, I would offer two other extremely important examples:

Tenant Appeals of Reality Assessments

For the 125 years prior to 1995, anyone had the right to appeal any assessment in Manitoba.

In 1996, the province moved to amend the act to severely limit the right of appeal to only the owners of real properties, and the assessor. In response to representations from me, and others, the province broadened the right to extend it to mortgagees in possession and tenants.

I hasten to point out that the vast majority of reality taxes are paid by individual citizens and the small businesses which are the tenants of commercial properties.

However, the city assessor has succeeded in persuading the Municipal Board that a tenant is entitled to appeal a reality assessment under section 42(1) only if that tenant pays **all** of the reality taxes on the property. This effectively nullifies the Legislature's intention that all tenants, as directly interested parties, should have a right of appeal. The Municipal Board's decision has not yet been challenged in court, to my knowledge.

However, if this Government has any interest in the rights of tenants, it will take this opportunity to revise section 42(1) to extend the right of appeal to "an occupier of premises who is required under the terms of a lease to pay **any portion of** the taxes on the property."

Section 13 Changes

Section 13 of the MAA enumerates specific reasons why the assessor shall make amendments to the assessment roll between the years in which new general assessments are issued. The city assessor is presently arguing, and so far the Municipal Board has sometimes agreed, that appeal board have no authority to make changes in response to regular taxpayer appeals, for reasons enumerated in section 13(1).

The city assessor is also arguing that if the taxpayer files an appeal of the assessor's refusal to make such changes pursuant to section 13(2), the language of the legislation and the fact that the City has made an administrative decision to close the annual roll six months earlier means that any such appeal can have no effect except during a brief part of the present four-year assessment cycle.

The positions taken by the city assessor on these two matters, trying to limit and nullify the taxpayers' ability to seek a fair and just assessment, should be contrasted with the assessor's extensive powers to issue retroactive assessments.

We have argued both issues before the Municipal Board, and are awaiting decisions. However, it is obvious to me that section 13 needs revision to ensure some fairness in its use.

There are many other aspects of our assessment legislation which needs to be changed, including the inadequate notice period of only 20 days in the City of Winnipeg, and the odious "penalty" clauses in sections 54 and 60, which even the Municipal Board notes could result in hugely different financial penalties **"for no apparent reason."** The penalties, if ever made enforceable, would actually be borne mostly by tenants who had nothing to do with the reasons for invoking these penalties. Fortunately, the city assessor has once again failed to take the necessary steps to make these penalties enforceable, and so they cannot be invoked for the next four years.

Conclusion

Bill 31 should be withdrawn immediately.

The Government should make an effort to consult with interested parties, besides the assessors, and then bring in a comprehensive set of amendments to improve the fairness of the Manitoba legislative scheme for assessment.

Please note that the Court of Appeal has grown increasingly frustrated by the apparent inability of the province to enact clear and fair legislation, compounded especially by the city assessor's apparent difficulties in understanding and administering fairly the legislation we do have now.

In his judgment delivered in 1999 in Sandstone Developments Ltd. v. The Assessor for the City of Winnipeg, Kroft J.A. began as follows:

"Here we have yet another application pursuant to sec. 63 of The Municipal Assessment Act C.C.S.M., c. M226 (the MAA), for leave to appeal from an order of the Municipal Board (the board)! Once again, the

problem arises because of the conspicuous ambiguities and inconsistencies between the MAA and the assessment provisions of The City of Winnipeg Act, C.C.S.M., c. 10 (the CWA)! **Citizens, lawyers, courts and municipalities would be well served if a comprehensive revision of the statutory provisions in Manitoba pertaining to real property assessment wee undertaken."** (emphasis mine)

I agree. We need assessment reform, but not Bill 31.

Colliers Pratt McGarry
David M. Sanders
Real Estate Advisory Services

* * *

Re: Bill 38

The Association of Manitoba Municipalities (AMM) is pleased to present our position with respect to Bill 38, The Local Authorities Election Amendment Act. The AMM was created on January 1, 1999, as a result of a merger between The Manitoba Association of Urban Municipalities and The Union of Manitoba Municipalities. The AMM now represents all of Manitoba's 201 municipalities. This allows municipalities to speak with a unified and strong voice on policy issues.

As the AMM's annual June District Meetings are still taking place, President Motheral and the AMM Executive is in Leaf Rapids this morning at our Northern June District Meeting. We are pleased to submit this presentation to the committee for its consideration.

The AMM is generally supportive to the changes being made to The Local Authorities Election Act. However, our association feels that the changes proposed in Bill 38 are not as thorough as we had hoped. The AMM believes that a comprehensive overhaul of The Local Authorities Elections Act is not only necessary, but urgent in light of the 2002 municipal election which is fast approaching.

Bill 38 introduces the requirement for non-residents to own property for at least six months in order to qualify to vote at a municipal election. This change is in response to problems experienced in the R.M. of Winchester during the 1998 municipal election. Shortly before the 1998 municipal election, 3 small pieces of land in the R.M. of Winchester were divided, and 33 names were added. In effect, this created 33 new votes for land with an undivided interest. To put these 33 votes into context, the ward of the R.M. of Winchester where this took place only has 124 eligible voters, and a by-election in this ward last month was decided by a margin of 4 votes. The changes proposed in Bill 38 will not prevent this problem from occurring again. This problem only make it mandatory for anyone wishing to take advantage of this loophole to start planning six months earlier. The AMM recognizes that this provision is better than the current system. However, we would encourage the province to examine more rigorous amendments to The Local Authorities Elections Act prior to the 2002 election to prevent land with undivided interest from being divided on paper for the purpose of manipulating the democratic process.

At our June district meetings, Minister Friesen acknowledged that the amendments proposed in Bill 38 do not completely solve the problem that we have seen in the R.M. of Winchester. We were pleased that the minister indicated the Government's willingness to look further at this issue, and the AMM welcomes the opportunity to be involved in developing a solution to this problem.

Another concern to the AMM with Bill 38 is the fact that there is no provision that would facilitate local election funding disclosure under The Local Authorities Election Act. The AMM is aware that in most municipalities this is not an issue, but in others it has become a concern. In the spirit of transparency and legitimacy, the AMM believes that any amendments being made to The Local Authorities Elections Act should provide for local election funding disclosure.

Bill 38 provides amendments that require voters who are not on the voters list to show identification in addition to signing an affidavit. This is a welcome change, but the AMM would caution that election officers should also have the authority to request identification from voters in any situation. This is the case in federal elections, and prevents those ineligible to vote

from claiming to be someone who is on the voters list. The AMM supports Bill 38's amendments regarding the provision of identification for adding voters not on the list of electors, but our association hopes that these measures are taken further in a more comprehensive overhaul of The Local Authorities Elections Act prior to the 2002 municipal election. This overhaul would give election officers the authority to request identification of any elector when they deem it necessary.

Under the current Local Authorities Election Act, prescribed forms are included as schedules to the legislation. Changes proposed in Bill 38 would see these schedules removed from the legislation and be specified in a regulation.

The AMM is not opposed to these schedules being put into regulation, but our association shares the concerns of the City of Winnipeg that these forms are currently too prescriptive and inflexible. These forms have a significant effect on the election process, and municipalities have not had an opportunity to see what changes will be made as a result of the forms being put into a regulation. Compounding this concern is the AMM's understanding that the Department of Intergovernmental Affairs will not be sharing this information until closer to the 2002 municipal election. The AMM believes that municipalities should have input into these forms, and would encourage province to consult thoroughly with municipalities prior to these forms being adopted.

Bill 38 also provides that in order to vote by mail, voters will have to request a ballot at least 14 days in advance, instead of the current 7. Moreover, municipalities are responsible to provide to the voter a "vote by mail ballot" 7 days in advance, instead of the current 4. The AMM is supportive of these changes, and believes that they will help municipalities conduct fair and efficient elections.

As indicated earlier in this submission, the AMM strongly believes that a more comprehensive review of The Local Authorities Election Act needs to be undertaken very soon. Such a review could make recommendations for changes to the act that would be in place for the 2002 municipal election.

These changes would include provisions to ensure that land is not divided in an attempt to create votes. Candidates would be required to disclose the funding sources of their campaigns. Elections officials would be given the authority to request identification from voters. As well, municipalities should have the opportunity to have input into the development of the forms that are currently prescribed by the act. These changes would go a long way to making Manitoba's municipal elections truly fair and democratic.

Thank you for allowing the AMM an opportunity to present its views on Bill 38, The Local Authorities Election Amendment Act. The AMM supports these changes, but we strongly urge the province to undertake a comprehensive review of The Local Authorities Election Act prior to the 2002 municipal elections.

Brad Kirbyson
Policy and Research Analyst
Association of Manitoba Municipalities

* * *