



Fourth Session - Thirty-Sixth Legislature
of the
Legislative Assembly of Manitoba
Standing Committee
on
Law Amendments

Chairperson
Mr. Jack Penner
Constituency of Emerson



Vol. XLVIII No. 10 - 6 p.m., Tuesday, June 23, 1998

MANITOBA LEGISLATIVE ASSEMBLY
Thirty-Sixth Legislature

Member	Constituency	Political Affiliation
ASHTON, Steve	Thompson	N.D.P.
BARRETT, Becky	Wellington	N.D.P.
CERILLI, Marianne	Radisson	N.D.P.
CHOMIAK, Dave	Kildonan	N.D.P.
CUMMINGS, Glen, Hon.	Ste. Rose	P.C.
DACQUAY, Louise, Hon.	Seine River	P.C.
DERKACH, Leonard, Hon.	Roblin-Russell	P.C.
DEWAR, Gregory	Selkirk	N.D.P.
DOER, Gary	Concordia	N.D.P.
DOWNEY, James, Hon.	Arthur-Virden	P.C.
DRIEDGER, Albert	Steinbach	P.C.
DRIEDGER, Myrna	Charleswood	P.C.
DYCK, Peter	Pembina	P.C.
ENNS, Harry, Hon.	Lakeside	P.C.
EVANS, Clif	Interlake	N.D.P.
EVANS, Leonard S.	Brandon East	N.D.P.
FAURSCHOU, David	Portage la Prairie	P.C.
FILMON, Gary, Hon.	Tuxedo	P.C.
FINDLAY, Glen, Hon.	Springfield	P.C.
FRIESEN, Jean	Wolseley	N.D.P.
GAUDRY, Neil	St. Boniface	Lib.
GILLESHAMMER, Harold, Hon.	Minnedosa	P.C.
HELWER, Edward	Gimli	P.C.
HICKES, George	Point Douglas	N.D.P.
JENNISSEN, Gerard	Flin Flon	N.D.P.
KOWALSKI, Gary	The Maples	Lib.
LAMOUREUX, Kevin	Inkster	Lib.
LATHLIN, Oscar	The Pas	N.D.P.
LAURENDEAU, Marcel	St. Norbert	P.C.
MACKINTOSH, Gord	St. Johns	N.D.P.
MALOWAY, Jim	Elmwood	N.D.P.
MARTINDALE, Doug	Burrows	N.D.P.
McALPINE, Gerry	Sturgeon Creek	P.C.
McCRAE, James, Hon.	Brandon West	P.C.
McGIFFORD, Diane	Osborne	N.D.P.
McINTOSH, Linda, Hon.	Assiniboia	P.C.
MIHYCHUK, MaryAnn	St. James	N.D.P.
MITCHELSON, Bonnie, Hon.	River East	P.C.
NEWMAN, David, Hon.	Riel	P.C.
PENNER, Jack	Emerson	P.C.
PITURA, Frank, Hon.	Morris	P.C.
PRAZNIK, Darren, Hon.	Lac du Bonnet	P.C.
RADCLIFFE, Mike, Hon.	River Heights	P.C.
REID, Daryl	Transcona	N.D.P.
REIMER, Jack, Hon.	Niakwa	P.C.
RENDER, Shirley	St. Vital	P.C.
ROBINSON, Eric	Rupertsland	N.D.P.
ROCAN, Denis	Gladstone	P.C.
SALE, Tim	Crescentwood	N.D.P.
SANTOS, Conrad	Broadway	N.D.P.
STEFANSON, Eric, Hon.	Kirkfield Park	P.C.
STRUTHERS, Stan	Dauphin	N.D.P.
SVEINSON, Ben	La Verendrye	P.C.
TOEWS, Vic, Hon.	Rossmere	P.C.
TWEED, Mervin	Turtle Mountain	P.C.
VODREY, Rosemary, Hon.	Fort Garry	P.C.
WOWCHUK, Rosann	Swan River	N.D.P.

LEGISLATIVE ASSEMBLY OF MANITOBA

THE STANDING COMMITTEE ON LAW AMENDMENTS

Tuesday, June 23, 1998

TIME – 6 p.m.

LOCATION – Winnipeg, Manitoba

CHAIRPERSON – Mr. Jack Penner (Emerson)

VICE-CHAIRPERSON – Mr. Mervin Tweed
(Turtle Mountain)

ATTENDANCE - 10 – QUORUM - 6

Members of the Committee present:

Hon. Mr. McCrae

Mr. Ashton, Ms. Barrett, Mrs. Driedger, Messrs.
Helwer, Laurendeau, Jennissen, McAlpine, Penner,
Tweed

APPEARING:

Hon. Gary Filmon, Premier
Mr. Kevin Lamoureux, MLA for Inkster

MATTERS UNDER DISCUSSION:

Bill 2—The Elections Amendment Act

Mr. Chairperson: Will the Committee on Law Amendments please come to order. This evening the meeting will be considering Bill 2, The Elections Amendment Act. To date so far, I have not seen anybody who has been registered to make presentations. If there is anybody in the room, would they please identify themselves. Seeing nobody, we will then, with the consent of the committee, move to clause-by-clause consideration of the bill.

As normal, we will set aside the title of the bill, the preamble of the bill. I would also like to ask the committee whether it is their will to consider the amendments and the clauses in both languages. Agreed? [agreed]

Would the Premier like to make an opening statement on the bill?

Hon. Gary Filmon (Premier): Mr. Chairman, I just want to say that members of the opposition are concerned that we not proceed without them, and we certainly do not want to. If they have any comments to make, I will be happy to have that happen.

Otherwise, in the absence of any presenters, I will just indicate that there is one technical amendment to be made to reflect the change that we made in Bill 3, which is a companion bill, the removal of the requirement or the opportunity to have logos on the ballot. That technical amendment will be moved by the government House leader (Mr. McCrae), but, other than that, I have no further comments.

Mr. Chairperson: Would the opposition critic have an opening statement?

Ms. Becky Barrett (Wellington): Mr. Chair, yes, a brief opening statement. I raised a couple of concerns that we had with Bill 2 in my brief comments on second reading. They deal with, No. 1, a recommendation of many years standing from the Chief Electoral Officer, and that is having the returning officers appointed by the Chief Electoral Officer rather than by the governing party.

In the past session, we have actually tabled a private member's bill dealing with that concern, and we feel that it is incumbent upon the government to follow that recommendation of the Chief Electoral Officer, particularly, not only for administrative ease, which anyone who has dealt with the appointing and training of returning officers, as I have, in an election, knows is a very difficult, time-consuming process. You do not always get, because we do not know exactly when elections are being called—certainly in 1988 when I was dealing with this, we did not know when an election was being called. It is very difficult to quickly put in place 57 good, competent people to act as returning officers and do training with them.

Now, I understand that the process is better than it was before, but there still is a recommendation that has been on the books for years, by the Chief Electoral Officer, that returning officers be hired, be appointed and trained by the Chief Electoral Officer. We think that is an excellent recommendation, one that is sorely missing in this piece of legislation.

* (1810)

The other area of Bill 2 that we have a major concern with is spelling out specifically the allowance for all prisoners in Manitoba the right to vote, no matter what their crime or the length of incarceration. We feel that it is important that there be some recognition of the fact that there are some people in prison for particularly heinous crimes and for particularly long sentences that should not have the right to vote until their sentence has been served.

The Lortie commission has made a recommendation to that regard that we believe would follow the Charter recommendations and the Charter prescriptions. We are very concerned that the government has chosen not to address this issue, so that in effect Bill 2 will allow people incarcerated such as—and none of these live in Manitoba—Paul Bernardo or Clifford Olson the right to vote while they are in prison. We feel there is a way to deal with that issue, so that the Charter can be addressed and adhered to while at the same time society being able to say to some people, and very few in number, but people who have been incarcerated for heinous, particularly heinous crimes, as long as you are in prison, you will not have the right to vote. That is a very precious right that we as citizens have, and we believe that should have been addressed. It was a recommendation that it be looked at by the Chief Electoral Officer. We think that the elimination of any prohibition on right to vote as appears in Bill 2 is something that is very difficult for us to countenance.

Mr. Kevin Lamoureux (Inkster): I just wanted to put my comments on picking up from second reading, Mr. Chairperson. The first one is just a follow-up of what the member for Wellington (Ms. Barrett) has put on the record with respect to returning officers. I do not necessarily want to suggest, at least at this point—I think in time it would be nice to see the government get out

of the habit of appointing returning officers. I think what is more important today is to get, if possible, a commitment from the government that there will in fact be some sort of an establishment of a list or a criteria, if you like.

I know, in what discussions I have had with members from Elections Manitoba, there was a great deal of concern in terms of qualifications, an individual's abilities. Today, the government, in essence, will make appointments, and sometimes those appointments are not in keeping with what would be classified as, let us say, good timing for training purposes and so forth. Quite often, or at times, I should say, some of the appointments do not necessarily have the types of qualifications that would be deemed as necessary or beneficial for the election purposes. So it is something, which I would suggest, that the Premier give serious consideration to at least addressing that particular concern.

Maybe I have not said it in the best fashion, but the point is that there is a concern there that Elections Manitoba, I believe, has and can be addressed quite easily from the government without having to make changes to the legislation.

The second point that I wanted to bring up, and I made reference to it in bills, Mr. Chairperson, as we go through it, I believe subsection 52(1) is where I would be hoping to see a government that would be a little bit more sympathetic to another amendment that I would suggest. What we saw, the Premier respected Elections Manitoba and what it is Elections Manitoba was wanting to see with respect to the actual ballot and has brought forward the amendment to delete the logo on the ballot. I applaud the Premier on that action.

A bit better or a bigger step of faith, if you like, would be to add the phrase “declined ballot” on the ballot itself. I say that because I am sure the Premier himself, as he has knocked on many doors no doubt over the years, what we want to do is encourage Manitobans to participate in the electoral system, even those who are completely dissatisfied with what they see before them. Anything that we can do to promote participation I believe should be done.

One of those vehicles which I believe would assist is to use the words "declined ballot," so that when someone literally receives a ballot, they can go behind the voting booth, and they can put the X wherever it is that they want, including deciding to have the declined ballot. That declined ballot would also be added up at the end of the day.

It is far better, in my opinion, than what we currently have. I know that Manitobans can decline the ballot. I do believe that it would make a small difference, but I think it is very symbolic. As we go to doors and disenfranchised individuals, we can make it very clear to them that, look, if you are not happy with the system, you can always express that by putting your X on the declined ballot. I think it is something that is viable, and it is something that should be seriously looked at.

It is something that I brought up with Legislative Counsel. They did a wonderful job in providing amendments both in English and in French. I understand they even have a copy with a blank name, because it is something which I do not really believe would be appropriate, nor am I in a position, I believe, to make the amendments, but I do believe it would be a positive thing and fairly well received from all. I just think it is a positive step in the right direction.

So, with those few words, I am prepared to see it go into clause by clause.

Mr. Chairperson: We will then go to Bill 2, The Election Amendments Act clause by clause.

Mr. Filmon: I wonder if the critics from the opposition would like my views on any of the comments that they made. Mr. Chairman, I just want to respond and say that, firstly, with respect to the selection of returning officers, I can assure the member for Wellington (Ms. Barrett) that we will work very closely with Elections Manitoba and attempt to do, as the member for Inkster (Mr. Lamoureux) has said, select people within a set of defined criteria or sort of appropriateness for the experience and for the commitment that they are undertaking. We will certainly be mindful of that.

I could be wrong, but I understand that there have been some recommendations that the Chief Electoral

Officer has made to us in the past about people that he felt perhaps were not up to the job. If that is the case, then we are going to be very mindful of that in our selection process. Certainly we would not want to make the job more difficult for the Chief Electoral Officer.

At this point, I am not prepared to go the full step, we as a government are not prepared to go the full step, of turning that matter over to the Chief Electoral Officer, and I am mindful of the recommendations.

With respect to the issue of trying to define those individuals incarcerated whom we might want to make eligible to vote and those whom we might want to exclude from the vote, I am given to understand that is a very difficult legal issue. I tell the member for Wellington (Ms. Barrett) very openly that it would be the position of our government that none in incarceration should be allowed to vote. That is an issue, we believe, of people's rights to remain free in society having been relinquished as a result of their actions. We believe that obviously that issue has been decided by courts, and we are not in a position to argue against that.

* (1820)

The proposal of making some definition as to who might be and who might not be becomes therefore very difficult. Our Constitutional Law branch, I believe, has looked at it, feels that it is not something that we could with any assurance do and still comply with the Charter of Rights. Therefore, we have not attempted to draw a tide line saying: those should be eligible to vote and these others should not. It is probably not of any particular comfort to the member for Wellington (Ms. Barrett) or her colleagues to know that they got most of the prison vote, in any case, last time, but I will just say that this is done on a matter of legal advice and principle and not on the basis of anything else. We tried to take advice from the Constitutional Law branch in arriving at our decision on this matter.

With respect to the declined ballot, as the member for Inkster (Mr. Lamoureux) has pointed out, it can be done under our current circumstances, and certainly many people did take that option. It was widely promoted by one broadcast journalist I believe in the

last campaign, and yet there were not a significant number overall who chose that. People have so many choices in our democratic society, including the choice of running. If they do not think any of the candidates are acceptable to them, they can put their own name on the ballot, and there is a process for that. So I really think that he acknowledges that it is a symbolic issue. I think we are more concerned with dealing with real issues here that can affect people. So we are not going to proceed with that one at this time.

Mr. Chairperson: We will then consider Bill 2, The Elections Amendment Act, clause by clause. Clauses 1-3-pass; Clauses 4(1)-6(2)-pass; Clauses 6(3)-13-pass; Clauses 14-20(6)-pass. Clause 21.

Mr. Steve Ashton (Thompson): Mr. Chairperson, I want to indicate our concern about this section, and I want to make it clear what this section does. It repeals the previous section, which was clear in terms of individuals in prison not being able to vote. So it is a very definitive statement by this government, by the Legislature on an issue that is indeed still before the courts. There have been Charter problems, but the Federal Court of Canada ruled, I believe, in 1995 on that issue, and that is still under appeal.

I want to stress that I think most Manitobans would feel it reasonable, certainly in the case of severe offenders, that they, if they are in jail, for life in particular, if they are unable to have the liberty of being able to travel when they want and they are deprived rightly of those kinds of civil liberties, it seems to me to be a contradiction in terms if we then allow them to be able to vote. I realize this matter is before the courts, but I do believe that the federal Royal Commission on Electoral Reform does give some opportunity to provide some restrictions.

I just cannot in good conscience vote for this section of the bill, because by doing it I will, and I know I speak for many of my colleagues, be voting for a provision that will allow not just people who are in on a short-term basis—I mean, you could make arguments which are probably legitimate in some cases about rehabilitation. But someone who is in for life, I am sorry, they should not be able to vote. I think of Paul Bernardo, this was mentioned, when I think of some of the cases, Clifford Olson being able to vote. When you

vote to elect a government you are voting for someone who makes decisions on laws, laws that you have violated in a heinous way.

It seems to me that now as a Legislature to vote this section out in its entirety, I believe that we should be fighting this. I say that personally as an individual, but also as an MLA. I know I speak for my constituents on this. You know, I am one that believes in rehabilitation in our prison system. I do not believe in moving away from that wherever possible, but, when it comes to life offenders, I think we should fight this all the way. I speak for many of my colleagues, in fact, for our caucus, in saying we think this is the wrong move to take.

I do stress, by the way, that the Chief Electoral Officer in the report said this is a policy matter to be considered by the Legislature. I think we should consider it, and I think we should seriously look at—and I mentioned the Royal Commission on Electoral Reform because when you are dealing with the Charter, you have to recognize the Charter can override statutes of the Legislature. But, if there is any experience—and I am not a constitutional lawyer, obviously—in the last number of years, I think it has shown that, when there are reasonable restrictions, the Charter is balanced by those reasonable restrictions. As far as we are concerned, it is making sure that Clifford Olson or Paul Bernardo or anybody who is in for life imprisonment for murder should not be able to vote. I think it, quite frankly, cheapens the electoral process. When you commit that kind of crime and you are put away for life, you lose a lot of civil liberties. One of them should be the right to vote.

I say that it is a bit of an emotional issue for some of us when we look at it. I recognize the dilemma the government is in, but I just do not see, in good conscience, being able to support Clause 21. I can indicate that we will be opposing Clause 21, which will repeal the current prohibition, not amend it, but appeal the prohibition on prisoners being able to vote.

Ms. Barrett: I just want to add a bit of clarification on the court challenge as I understand it. The federal court in 1995 ruled that a section of the Canada Elections Act, which prohibited every prisoner who was incarcerated for a period of two years or more from

voting, violated the Charter, but the recommendation of the Lortie commission would not have prohibited every prisoner of two years or more, but would have prohibited prisoners who were charged with, convicted of, a crime for which the maximum penalty was life in prison and were incarcerated for a very long period of time as a sentence. That, we believe, would have satisfied the reasonable requirements of the Charter.

We think that the provincial government could very legitimately have put something like this recommendation into The Elections Act, pending the appeal of the federal court decision and go from there. We think there was a very strong possibility that that kind of amendment, which would not prohibit every person incarcerated over two years from voting, but only those who have been convicted of life sentence crimes would be prohibited from voting as long as they were in prison. We think that would have made it through a Charter challenge and think that the government should have made that amendment.

Mr. Filmon: Mr. Chairman, I am willing to try and have some further discussions with the members of the opposition on this to see if there is any solution that could be introduced at report stage, but we take our advice from the legal officers of the Crown. We have been given advice from the Constitutional Law branch. The members opposite probably know that this section was struck down by our federal court in 1988, and prisoners have, therefore, been able to vote here for 10 years. So this essentially confirms what has been happening for 10 years already. But the second aspect is that the federal government attempted, I am told, to put in such—[interjection] No, it was two years' indictable offence. That was what the federal government attempted to restrict it to, and that was struck down as well. They lost that.

* (1830)

So our attempting to find an appropriate break point here just by discussion, talking about our horror for people who have committed heinous crimes does not seem to be the way to make laws. You know, I am reminded of the old saying that those who enjoy the law and sausage should not watch either one of them being made. This is not the way to do it. I think that we ought to have sound legal advice and not just sit here

and negotiate what we think might fly in a federal court, or rather at the Supreme Court.

Undoubtedly, if we choose anything other than this solution, it will be the subject of a Charter challenge and it will go to the Supreme Court and we will have some judge making a ruling in the middle of the next election campaign, as they usually are called in for, because these challenges always occur whenever there is an election. I do not think it is going to be the kind of thing to do on the fly, but, as I say, at this point we can have further discussions and see whether or not it is appropriate to bring in an amendment at the report stage. I hesitate to make any decision as serious as this on the fly just sitting here and chatting around the table.

Mr. Chairperson: How is it then that you want to deal with this section? Do you want to pass this section as now indicated and then have discussions on this later?

Mr. Ashton: We are opposed to this section. So I assume we will have the vote and if there is any possibility of an amendment at report stage that will be dealt with in the House.

Mr. Chairperson: Clause 21, shall the item pass?

Some Honourable Members: Yes.

An Honourable Member: No.

Mr. Chairperson: No? On division?

An Honourable Member: On division.

Mr. Chairperson: On division. Clauses 22-25—pass; Clauses 26-27—pass; Clause 28(1)-28(3)—pass; Clauses 28(4)-33(2)—pass; Clauses 34-38—pass; Clauses 39-42—pass; Clauses 43-44(3)—pass; Clauses 44(4)-51—pass. Clause 52(1).

Hon. James McCrae (Government House Leader): Mr. Chairman, I move

THAT Section 52 of the Bill be amended as follows:

(a) in subsection (1), by striking out clauses (a) and (b); and

(b) in the proposed subsection 73(8), as set out in subsection (3),

(I) by striking out "and logo" in the section heading, and

(ii) by striking out everything after "under The Elections Finances Act as at the close of nominations".

[French version]

Il est proposé d'amender l'article 52 du projet de loi:

a) dans le paragraphe (1), par suppression des alinéas a) et b);

b) dans le paragraphe 73(8), énoncé au paragraphe (3):

(I) par suppression de "et logo" dans le titre,

(ii) par suppression de la deuxième et de la troisième phrases

Mr. Chairperson: Shall the amendment pass? Pass. Clause 52(1) as amended—pass.

Mr. Lamoureux: I am not 100 percent sure that this is the actual spot for it, but I did want to just comment very, very briefly. If we had the appropriate resources with which we could have done maybe a little more research, I think that we could have been able to demonstrate that in fact there is merit to the declined

ballot option. I understand that there are some American states which do have, not necessarily those words, but something of that nature, that there is evidence that is out there that could clearly indicate that it would make a positive difference.

I know the Premier has said that at this point in time he does not see the merit of it, but I hope at some point in time to see it. I do think that anything that can be done, as I say, to encourage people to participate, I do not think it is a negative thing. I think it is a positive thing.

Mr. Chairperson: Clause 52(1) as amended—pass; Clauses 52(2)-55(1)—pass; Clauses 55(2)-62—pass; Clauses 63-67—pass; Clauses 68-70—pass; Clauses 71-76(1)—pass; Clauses 76(2)-77(3)—pass; Clause 78—pass; Clauses 79-85—pass; Clauses 86-92—pass; Clauses 93-103—pass; Clauses 104-107—pass; title—pass; preamble—pass. Shall the bill as amended be reported?

Some Honourable Members: Yes.

Some Honourable Members: No.

Mr. Chairperson: Agreed? No? On division?

An Honourable Member: On division.

Mr. Chairperson: It will be passed on division. Thank you to the committee. Committee rise.

COMMITTEE ROSE AT: 6:36 p.m.