ISSN 0542—5492

Second Session — Thirty-Second Legislature

of the

Legislative Assembly of Manitoba

STANDING COMMITTEE

on

LAW AMENDMENTS

31-32 Elizabeth II

Chairman
P. Eyler
Constituency of River East

MG-8048

VOL. XXXI No. 1 - 10:00 a.m., THURSDAY, 7 APRIL, 1983.

Printed by the Office of the Queens Printer, Province of Manitoba

MANITOBA LEGISLATIVE ASSEMBLY
Thirty-Second Legislature

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LEGISLATIVE ASSEMBLY OF MANITOBA
THE STANDING COMMITTEE ON LAW AMENDMENTS
Thursday, 7 April, 1983

TIME — 10:00 a.m.

LOCATION — WINNIPEG

CHAIRMAN — P. Eyler, River East

ATTENDANCE — QUORUM - 10

Members of the Committee present:

Hon. L. Evans, Hon. M. Hemphill, Hon. E. Kostyra, Hon. A. Mackling, Hon. W. Parasiuk, Hon. R. Penner and Hon. J. Storie. Mr. Ashton, Mrs. Dodick, Messrs. Downey, Driedger, Eyler, Filmon, Graham; Mrs. Hammond; Messrs. Lecuyer and Nordman; Mrs. Oleson, Ms. Phillips; Messrs. Santos and Steen.

WITNESSES: Messrs. M.L. Henkelman and R. K. Howard, Canadian Association of Petroleum Landmen.

Mr. Larry Vanbeselaere, Private Citizen.

Messrs. Bob Andrew, R. Kohaly, A. Turbak, Manitoba Surface Rights Association.

WRITTEN BRIEFS SUBMITTED AND INCLUDED IN THIS TRANSCRIPT:

Canadian Association of Petroleum Landmen;

Manitoba Surface Rights Association;

Agricultural Producers from Waskada, Manitoba.

MATTERS UNDER DISCUSSION:

Bill No. 5 - The Surface Rights Act; Loi sur les droits de surface.

* * * *

MR. CHAIRMAN: We will be considering today primarily Bill No. 5, The Surface Rights Act. I understand there are a number of delegations who have come from out of town, so I imagine it is the will of the committee that we listen to the out-of-town delegations first. (Agreed)

Is there any concern about the order of the delegations as printed on the paper? Mr. Penner.

HON. R. PENNER: I think we should go along with your first suggestion, that is hear the persons who are from out of town first. There are a couple of people from Winnipeg who can, I think should drop to the bottom of the list.

MR. CHAIRMAN: Is that agreed? (Agreed) The first delegation on the list is Mr. Merv Henkelman, Mr. John Kanderka and Mr. Bob Howard. Would the delegation like to approach the podium at the end of the table?

MR. M. HENKELMAN: Mr. Chairman, did you want us all to approach the podium or just one at at time.

MR. CHAIRMAN: According to my list there is one delegation with three people. Are you speaking on behalf of the entire delegation or are there three separate presentations?

MR. M. HENKELMAN: Two of us will speak on behalf of the group.

MR. CHAIRMAN: All right, and you're Mr. Henkelman? Do you have a written copy of your presentation?

MR. M. HENKELMAN: I believe the written copy of our presentation was delivered to each of the members of the committee by delivery last week or early this week. Did everybody receive their copy?

MR. CHAIRMAN: Okay, would you like to proceed then?

MR. M. HENKELMAN: Thank you.

Mr. Chairman, honourable members and ladies and gentlemen. My name is Merv Henkelman. I am Assistant Chairman of the Surface Rights Committee of the Canadian Association of Petroleum Landmen. I am also a Landman with Canadian Landmasters Resource Services Ltd. Our purpose in attending today is to put forth ideas of our membership and express the needs of our industry in relation to the proposals of Bill No. 5.

Our committee members here today are Bob Howard of Roxy Petroleum. I would like you to stand, Bob, and John Kanderka, with Voyageur Petroleums.

As you are aware there are two other trade associations in our industry, one being the Independent Petroleum Association and also the Canadian Petroleum Association. The association works in concert with the appropriate committees of the Canadian Petroleum Association and the Canadian Association of Petroleum Landmen in consideration of matters as they relate to surface rights activity in all the western provinces. This is what IPAC is saying, and I think you have a copy of their brief, "To this end we can endorse the report of the Canadian Association of Petroleum Landmen with respect to Bill 5, The Surface Rights Act. But in doing so, we would offer the following specific comments and recommendations on certain portions either to reinforce, expand, or clarify the points made by the Canadian Association of Petroleum Landmen." I just read that little text out of the preamble of their letter brief that I believe they sent in to all of the members of this committee.

We have worked as a joint committee not only on Bill 5, but we have on many things in the past, and we have a high profile in surface rights in Alberta as well. We've been working in concert for a long time.

The Canadian Association of Petroleum Landmen represent more than 950 professional men and women employed within the petroleum industry in Canada with primary functions and responsibilities lying in the

following areas. Exploration is one. As an integral part of the exploration team comprising geologists, geophysicists, and engineers, the landman plays a vital role in the formulation of exploration and development strategies right from the outset of an exploration concept through to the placing of successful wells onstream and the administration of all associated land matters thereafter.

With respect to the next point (b) Negotiations, the landman is the key landowner company, government company, and company-company contact within the petroleum industry and is responsible for the negotiation of all industry-related agreements, including farm-ins, farm-outs, options, leases, surface rights, etc. The landman is also responsible for the preparation, interpretation, and administration of all industry agreements so negotiated.

The next point would be administration. The landman is responsible for all land administration including leases, rentals, groupings, transfers, assignments, innovation agreements, etc.

Another major point is public relations. In his capacity as the outside company contact, the landman has much of the responsibility for his company's public relations activities. It is quite evident from the above that our association is very concerned with the implementation in the form that The Surface Rights Act will take, for our members will have the greatest input and responsibility relative to interpretation, implementation, and general understanding of the program within the industry.

At this point I'd like to tell you, and I hate belabouring this point, but I'd like to tell you what a landman is. Now, this is very simple. A landman: Firstly, he's a person who negotiates for interest in land on behalf of an employer; as an agent on behalf of another person; or on his own behalf. He also, is a person who offers advice, for a fee, to a landowner for what I've just told you.

Although we recognize that as in any situation, whether it be farming, politics or the petroleum industry, as new people are brought into the particular field, a certain degree of training is required in order to improve the knowledge, efficiency and effectiveness of each individual, in whatever field of endeavour it might be.

Our association and its members, specializing in surface rights acquisition, have a wealth of experience in negotiation and acquisition of surface rights and in a knowledge of government regulations associated with surface rights acquisition and are extremely well versed in virtually every kind of farming operation. The knowledge of the surface landman has been demonstrated statistically by the fact that a very low percentage of cases are submitted to the Surface Rights or the Mining Board area. The majority of the surface agreements are negotiated and consummated between the surface landman and the landowner without ill-will or malice on behalf of either party.

I'd just like to speak a little bit about land and ownership. Ownership of land, that is farmland, does not mean that a farmer has complete control of his property and can do with it what he wishes, even if his actions do not infringe on the rights and privileges of others. Governments, through special Acts, permit others to acquire title to, or use of, all or part of your land. These Acts are based on the assumption that the acquiring or use of your land is in the interest of the general public. Acquiring of use of your land may be achieved by, No. I, satisfactory negotiation, expropriation - and that's a procedure whereby governments, federal, provincial or municipal and companies may acquire land in part or in total even if you do not wish to sell - Right of Entry, an order which grants other parties the right to enter and to use your land without your permission.

The legislation, for the purposes referred to the above, is also designed to protect the landowner and to assure that he receives fair compensation for the property acquired or used in fair compensation for damages and inconveniences.

The following is one of the major points that we would like to discuss and that we promote at all times. The topic is harmony. This section - you might refer to your brief in front of you - is on Page 2. We wish to congratulate your government for introduction of Bill 5 at a time when surface rights activity is increasing. Commencing with the Commission of Inquiry into Surface Rights in Manitoba, as well as your dialogue with the agricultural community and our industry in creating an environment for co-operative legislation in Manitoba today, we recognize it is necessary to promote harmony between the industries of agriculture and petroleum.

We attribute a lack of harmony in surface rights today to the period of relative inactivity in Manitoba experienced in the 1970's compared to certain other areas of Canada. The past three years though in Manitoba, and I can attest to this because I have been involved in it, has produced a flurry of exploration and development drilling activity. Given some consistency in lessors' royalty rates, there is optimism in our industry that this trend will provide long-term growth.

I am going to digress here for a minutes. I talked to a lot of companies. We have a lot of clients in Manitoba, and this is the first time in the history of my being a landman that Manitoba has been an interesting subject on the streets of Calgary. Everybody is excited about it and it will be a continuing stabilized exploration and development program. In all the years that I have been in the land business, I haven't seen this. It's been very cyclical and I think you should be excited about it. So let's protect both the interests of the landowners and the interests of the industry and keep it going.

You have recognized and proposed the two key ingredients we feel are necessary to provide harmony in surface rights. Bill No. 5 proposes two things: A new Surface Rights Act; the formation of a Surface Rights Board; and this is exciting.

I'm going to skip over to Page 5 now, Board Jurisdiction, because we believe this is another major point. If a good Surface Rights Act is to provide a fair and expedient means of arbitration, then the jurisdiction of this Board must be autonomous and free from the departmental influences of agriculture and mining. We commend you on the process for making appointments outlined in Part 2, Section 6(1). However, we strongly recommend that the Surface Rights Board report directly to the Department of the Attorney-General as the most impartial body.

Another key element, Board Membership and Qualifications: We feel that the effectiveness of this Board depends greatly upon the selection of its

membership. Based on our past experience - and, believe me, we've got a lot of that; especially those that are in the mainstream in Alberta - we wish to set forth the following criteria for membership on the Board.

Okay, we really feel that full-time members are required. All members should be full-time members whose primary source of income is derived from this endeavour. Such a membership will provide continuity of arbitration decisions from one district of Manitoba to the next. These members who will derive their income solely from this source will not suffer conflicts of business interests, leaving the members free to consider only the evidence before them.

Another key element, Varied backgrounds: To assure proper consideration of each party, the Surface Rights Board should contain a reasonable mix of experience and background amongst its members. Certainly, one member should be chosen for his agricultural understanding and another for his familiarity with petroleum operations.

Another good category, Expertise: If experienced individuals with this mix of backgrounds can be hired, some criteria for expertise will be met. It's our experience that membership must exhibit highly developed communication skills and the ability to learn a legal process to take place in a hearing. Members must be also able to control the ambitions and moods of the parties in a Surface Rights Hearing and in some case the manoeuvrings of their legal counsel.

Another good point, Neutrality: The process for selecting members of the Board should be based upon qualifications rather than political, social, or other affiliations.

Considering the complexity of the time restraints, we proposed the redrafting of the Right of Entry portions of Bill 5. We have suggested a redrafting towards the end of the brief that you have in front on you, if you take a look at that. With an explanation of this process, I'll introduce Bob Howard and he'll take over from here.

Thank you very much, Mr. Chairman, and all members.

MR. CHAIRMAN: Could you state your name for the record please?

MR. B. HOWARD: Good morning. My name is Bob Howard and I'm here representing both the CAPL and Roxy Petroleum, and John Kanderka, who won't be speaking today, is also with our delegation and representing both the CAPL and Voyageur Petroleum. I hope you've all done your homework; we've got a pretty important piece of legislation here that's going to affect a large segment of the population and it's going to sit that way for a long time.

I'd like to say off the bat that I think it's a pretty well-written piece, but there are some problems with it, and there are some major problems with it; not very many but there are a couple. One of them, as we see it, is the Right of Entry. I'm going to refer to an address that was intended, at least, for Mr. Parasiuk on the 18 of February. I hope he's had an opportunity to read it since and I think it's worth repeating.

The subject of Right of Entry itself is one of the most critical aspects of any surface rights legislation, as it must be infused into any operator's exploratory or development plans. Without a predictable time frame within which to operate, opportunities for economic growth diminish considerably and are, at times, lost entirely. A predictable time frame is the key. The act of drilling a well involves a great deal of planning in order to justify expenses usually exceeding one-quarter of a million dollars per well.

Geophysics must be studied at length and geology must be made reasonably predictable. Engineers must be able to provide justifiable economic recovery from all expenses, and contractual landmen must complete often complex negotiations with surrounding mineral interests. It's a team effort. A lot of time, a lot of planning goes into this stuff.

To set up a comprehensive drilling program is a formidable task and it brings us back to a critical facet of the subject, which is time. The effect of leaving a nonpredictable time frame in a critical area is extremely disruptive, often with regrettable result, as I can attest to in both Saskatchewan and Manitoba, where we've seen hundreds and hundreds of thousands of dollars flushed right out of communities; no predictable time frame to operate with, a decrease in activity, lost revenue to the operator, the government, and the citizens and a lack of confidence with which to pursue new opportunities.

To be able to properly comprehend the aspect of a Right of Entry, we believe an examination of its origins is essential. When an operator invests the time, energy and capital required to acquire legal rights to explore and then invests that same in choosing an economical place to drill, negotiations begin. The goal of any operator must be to provide ample consideration and equitable compensation for these rights. To do otherwise would definitely be contrary to his future interests.

With all due respect, the amount of money we're talking about is a drop in the bucket. It's in no operator's best interest, there's no percentage in it, for an operator to try and save $500 on a landowner.

When an operator is unable to agree at a reasonable agreement which is in the best interests of both parties, it is always for one of three basic reasons - where the well is, any undue hardship that may be caused, or compensation - it's always one of those three. If undue hardship will be created by activity or the location of the activity is onerous, the problem must obviously be addressed prior to somebody going in. Failure to do so could cause irreparable harm.

When compensation is the reason for a dispute, no irreparable harm comes from immediate Right of Entry; no irreparable harm. If all we're talking about is dollars, let's get on with the job. There's a lot more at stake.

There exists those who would have people believe that some operators show disregard for landowners' rights and those that say most landowners are unreasonable. We believe each example is a rarity, the exception rather than the rule. But the purpose of legislation should be in the public's best interest to ensure that neither party's rights suffer undue hardship. Taking this into consideration, it seems clear that when it is shown that one party's rights will not suffer any undue hardship by allowing the other to exercise those rights, to exercise his own rights, that activity must be allowed to commence and the key is a reasonable and predictable time frame.

This would apply to a farmer requiring access to a severed portion of his land for seeding. He has to be allowed, within a reasonable and predictable time frame, and it would also apply to an operator drilling, to preserve a mineral interest that he's invested a lot of time and money in.

Our amendments to the bill are composed in order to provide this reasonable and predictable time frame. The ramifications of leaving loopholes or delays for ulterior motives are far-reaching and they are dangerous. It is regrettable that legislation must be specifically designed to eliminate these practices, but it's something like "no deals are made on handshakes anymore." We have got to put the legislation together to eliminate the loopholes which is not in the intent of the bill.

The practices do exist. When, in negotiating an agreement, one party's rights are restricted by time, and the other party's rights are not, that element, time, is a common weapon for a non-restricted party with grossly self-serving interests. To allow this to occur destroys the credibility of an honest agreement and, in our view, is contrary to the public interest. One example occurs when a surface owner also owns the mineral rights and, for the purpose of obtaining a new mineral lease, utilizes any forestalling technique available to him.

Legislation throughout the balance of Western Canada does take precautions against abuse and we urge the Government of Manitoba, and the committee members present today, to consider that very very carefully. Indeterminate time frames for Right of Entry orders - and I cannot stress that enough - must be predictable. We can't go on a flyer; we've got to know. Make the rules; we'll live by them.

Allowance of absolutely unnecessary hearings in purely compensatory matters, I can't see you allowing it but it's written into the bill. Automatic assessment of liability for costs; why automatic assessment? Our comments in the amendments, I think, will point out what sort of a weapon that can turn into.

These are all areas that we believe would be subject to abuse. Please consider the suggestions and ideas; we have learned through experience. We trust they will be considered with the same impartiality with which we have attempted to construct them. There is no percentage in it for any operator to try and take deliberate advantage of a landowner. Objective - fair legislation equal to both parties; let's set up some rules that we can follow, but let's not have the indeterminate and unpredictable aspects that are in this bill.

I would also like to say that we feel that there are other problems in the bill. We have made mention to them in our amendments which are contained in the back of our brief - I hope you each have a copy of it. There are extra copies at the front if you don't. We would like you to consider them carefully. We represent the bulk of industry with this joint committee, and we would also like to make ourselves available at the committee's discretion to discuss, in detail on a clause-by-clause basis, if necessary, any parts of this bill. But for the sake of brevity, and I know that we all have other topics we want to listen to, I'll close.

Thank you for your time.

MR. CHAIRMAN: Thank you, Mr. Howard.

The second presentation I have on my list is from a Mr. Larry Vanbeselaere.

Mr. Graham.

MR. H. GRAHAM: Mr. Chairman, are members of the committee going to be allowed to ask questions of any of the people that present briefs?

MR. CHAIRMAN: Certainly. Do you have any questions for the previous speaker?

MR. H. GRAHAM: Yes, I would like to ask a few questions.

MR. CHAIRMAN: Could Mr. Howard come back?

MR. R. HOWARD: Sorry, I ran away too quick on you.

MR. CHAIRMAN: Mr. Graham.

MR. H. GRAHAM: Thank you, Mr. Chairman. Mr. Howard, I think that the main thrust of your presentation seems to be an element of time. I would presume that is the time that is required from the point where an application for Right of Entry is made until it is granted. Is that the time frame that you're talking about?

MR. CHAIRMAN: Mr. Howard.

MR. R. HOWARD: I would say that is one of the time frames that we're referring to and probably, Harry, the most crucial time frame is from the time we apply, and when we can establish that we've got good reasons to apply and we can't get any further, until the time that we're allowed on the land. That is probably the most crucial, but it's not the only one.

MR. H. GRAHAM: What are the other time frames that you are considering?

MR. R. HOWARD: The Act makes reference to a waiver and no availability of a waiver and three-day waiting periods and other - let me see, I'm going to have to try and wing it here. I would say, in the process of negotiation, where forestalling techniques are often used, the time frame that the Board that's going to be set up, that time frame that they will recognize is an important time frame. Will they say, you have to make 10 contacts? Will they say, you have to make one? A lot of this is subject to regulations, I understand, but it's not the only important time frame was the point. As you have determined, and I quite concur, it is the most important one is the aspect of Right of Entry, yes.

MR. H. GRAHAM: It would appear to me, in studying the bill, that there are various areas where there are time frames suggested in the bill for various things, but it does not appear anywhere in the bill, that I can find anyway, where there is a time frame set out from the time a person first applies for Right of Entry to the time when the Board has to deal with that application.

MR. R. HOWARD: That's quite right.

MR. H. GRAHAM: It seems that the Board, in its collective wisdom, could literally sit on it for months if they wanted to.

MR. R. HOWARD: That's absolutely right.

MR. H. GRAHAM: I think that is a concern probably to everyone.

MR. R. HOWARD: I really think that it should be a concern to both sides, not just industry, but farmers as well. If somebody applies in January and they don't know whether or not to seed an area in May, how fair is that?

MR. H. GRAHAM: That was the No. 1 concern I had. Thank you.

MR. CHAIRMAN: Before we go on, I would like to explain the procedures for the members of the public. Usually you should wait until you're recognized. It is not simply a formality, it is also for the benefit of Hansard. The proceedings are being taped and it's only by recognition from the Chair that the transcribers will know who it is that is speaking.

Mr. Parasiuk.

HON. W. PARASIUK: Mr. Howard, you recognize that this is breaking new ground in Manitoba with a new Act and we don't have a lot of Manitoba experience to go on. The general presentation draws on experience in Alberta and Saskatchewan where the activity has been much greater. Roughly, what are the number of wells that are drilled each year in Alberta, compared to Manitoba?

MR. CHAIRMAN: Mr. Howard.

MR. R. HOWARD: If I could just ask someone who might have a better idea as to the multiplication figure . . .

HON. W. PARASIUK: We had something in the order of 200 last year in Manitoba. Would you have something in the order of, say, 2,000 maybe?

MR. R. HOWARD: That's probably a reasonable estimate. We have a considerably greater amount of wells drilled there, yes, with a lot more varied land patterns to deal with than here in Manitoba where the drilling is almost exclusively on improved land.

HON. W. PARASIUK: That's one of the reasons why we may not go with full-time Board members in the first instance, because we may just not have enough work for full-time Board members. At the same time, we want to give a wee bit of latitude. In the first instance, a Board may in fact be swamped with a backlog of cases that it has to deal with. If we did have a very determined time frame at least for this first year, the Board, despite all its best efforts, might not be able to accomplish what is spelled out in the Act.

I have said it in the debate on second reading that it is our intent to be evolutionary with the bill. That is, to bring in legislation that is breaking new ground; to bring in a set of procedures, to watch these, to monitor them closely in consultation with both industries; and to make the appropriate modifications legislatively or through regulation on an ongoing basis really in the light of actual experience.

So I can appreciate the comments that you have made. I was just trying to establish a bit of a context.

MR. R. HOWARD: I would concur with your comments that there probably will be a backlog with which to deal initially. However, I would also suggest that this particular bill grants the Board so much power and so assesses them or, rather, charges them with so many duties that they're not going to have any problem filling their days for years and years to come as I view it. Activity in Manitoba, as it is viewed in our province, is not going to decrease.

We also have fears that part-time members may indeed have conflicts with which their own consciences are going to have problems and that sort of thing. If that initial backlog has to be dealt with more expediently, perhaps the government would consider a full-time Board with additional part-time members for the period of the backlog.

MR. CHAIRMAN: Mr. Downey.

MR. J. DOWNEY: Mr. Chairman, I would like to ask Mr. Howard a couple of questions specifically dealing with, first of all, the Board appointments and some of the current difficulties between some of the farm community and the oil industry in the southwest. I would ask Mr. Howard through you, Mr. Chairman, if it would probably be in the best interests of the farm community if the surface rights people - and I note the previous speaker, Mr. Henkelman, suggested they be non-political and non-bias - that if a recommendation were to come from the Surface Rights Association of individuals that they would like to sit on the Board, would that be acceptable to the land people who are presenting the brief? Would that be a pretty good start, in your feelings, to start resolving some of the current problems?

MR. R. HOWARD: I think it would be a good start in opening dialogue, but I am certainly not going to suggest that industry would be prepared to blindly accept the recommendations of a group with which they've had some difficulty in the past. I do believe that both sides on the issue should have input into the matter and, failing that, we've both got to hope and pray that the government will be objective and fair in its allocation of Board members.

MR. J. DOWNEY: Mr. Chairman, as well, then, to Mr. Howard. He would probably be prepared to recommend the name, if the Petroleum Landowners Association, or whatever the proper title is, were asked to put names forward, would be prepared to present them and expect that they be put on the Board as well?

MR. R. HOWARD: If called upon to do so by the committee, we'd be happy to provide our suggestions.

MR. J. DOWNEY: Further, Mr. Chairman, to Mr. Howard, I think the Right of Entry is as well a pretty major concern to the farm community, and to fully appreciate the effect that an oil industry has moving into pretty much what has been a traditionally farming community, an area which most farmers have derived their

livelihoods and are in most cases pretty proud people, proud of the property, proud of their farming operations - most of them have a cropping pattern that has been pretty much the basis for which they've made their livelihood - setting aside the fact that whether they have or whether they have not got oil rights, I think is not the issue here. It's just a matter of the same kind of example or comparison that I could draw, Mr. Chairman, which would be an individual who had a nice acreage near the city or had a nice big front lawn and someone was going to move in and disrupt their current way of life and their current scenery, whether it be just the overall impact of a new industry, that it does have a fairly major emotional and in some cases undesirable effect on those individuals.

Has the Land Association been involved in any study or work or keeping pace with the work that is being done in Alberta on the directional drilling program and, if they have not, would they be prepared to look at through negotiation and Board work the possibility of using that as an alternative as to moving directly on to some of these farms that is going to disrupt that present way of life?

MR. R. HOWARD: I can only say that in terms of the joint industry effort, which is CPA, CAPL and IPACT, I am not aware of directional drilling studies under way under a joint effort, but I can say that on behalf of Roxy and other companies that I am aware of, we've addressed the issue as soon as it was brought to our attention. We're in-house in my own company, just completing a study now on that very topic.

Directional drilling, in theory. sounds very nice - you know - you sit in one place, you drill from one surface location into formations that normally would require 8 or 10 or 12 holes; it's good in theory. Unfortunately, it's been proven in practice that the cost element is something in the area of five times greater than drilling a regular hole. There is an extreme lack of expertise in the oil industry, not with regard to drilling the well itself - the only problems in drilling the well itself generally are associated in the first couple hundred feet with gravel - but in completing and producing the well. The bottom hole apparatus, pumps, and what not, the problems facing engineering in that regard have not been solved and they are considerable. I think it's unreasonable at this time to impose upon any operator that sort of risk element not only in terms of capital outlay, but in terms of chances of production for the sake of aesthetics or two or three less drilling locations.

MR. J. DOWNEY: I don't want to delay the particular thing. What I'm saying, Mr. Chairman, is asking the individual who is presenting the brief, if there was no alternative in specific situations where this was the other option that the Board gave the individuals, is he saying that it would stop the industry from proceeding or, in fact, it would be looked at a lot more carefully before they proceeded?

MR. R. HOWARD: What I would say is if the reasons for that necessity for directional drill were such that any particular company felt that the rewards were worth the additional risk we would certainly look at directional drilling. For instance, spacing in under a lake or something that we couldn't get at with an offshore rig in the middle of Manitoba. We'd have to drill from the shore, that we'd have to look at. But the rewards would have to be there and they'd have to be pretty evident. It would have to be almost a certainty to have significant rewards in order to substantiate the considerably higher capital investment and risk.

MR. J. DOWNEY: Mr. Chairman, I would suggest that the rewards could be on both sides, a reward for the landowner to not have the kind of inconvenience and the difficulties that the current type of well drilling and programs of development could create for the farm community and, as well, I am a believer in changing technology and the ability for engineers as well as for farmers to develop new technology to develop new processes. I would, therefore, ask through you, Mr. Chairman, to the individual if, in fact, he and his association would be prepared to work along with, hopefully, the newly appointed Surface Rights Board to develop as much information from other jurisdictions as possible, so that, in fact, it would be an alternative for those individuals who can make a substantial case to the Board and, in fact, would be an alternative that could be worked on, not necessarily immediately but in the longer term. I would ask the member if that would not be a proper direction to proceed to.

MR. R. HOWARD: I think I can speak for all of industry in saying that we would extend every co-operation as long as we're not dealing with any confidential information, in terms of reserves, that is required in order to promote the idea of directional drilling. But again, only to reiterate that there are significant theoretical difficulties with the idea over and above the practical difficulties.

MR. CHAIRMAN: Mr. Graham.

MR. H. GRAHAM: Thank you, Mr. Chairman, and I would like to ask Mr. Howard probably one or two further questions with respect to the time frame on Right of Entry. Your association has no difficulty with a suggestion, perhaps, that where there is any dispute in Right of Entry you have no difficulty with paying money into the Board immediately and having that adjudicated at a later date, is that . . . ?

MR. R. HOWARD: None, whatsoever, that's a common practice both in Alberta and Saskatchewan as well.

MR. H. GRAHAM: The second question is, you don't have the same concern about time frame when it comes to compensation. Once it goes to adjudication for the proper compensation if the Board takes several months to decide the compensation that is not a concern of yours is it?

MR. R. HOWARD: I wouldn't agree that it isn't a concern of ours. We'd like to see all issues dealt with as quickly as possible and basically the public is an important factor in any of our operations and if they're happy then we're happy.

MR. H. GRAHAM: Thank you.

MR. CHAIRMAN: Are there any further questions for Mr. Howard? Seeing none, I'd like to thank you on behalf of the Committee for your presentation today.

MR. R. HOWARD: Thank you for the experience.

MR. CHAIRMAN: Mr. Vanbeselaere.

MR. L. VANBESELAERE: I'm Larry Vanbeselaere, I'm a farmer from the Waskada area and I've got one well on my property and I've dealt with Mr. Bob Howard through Roxy Petroleum and Canadian Landmasters. They acted as the landmen for Roxy Petroleum and couldn't come to any agreement with them and then went on to accept a Board order from Mr. Ian Haugh who is presently working with the Mines Board.

I think the Act, I haven't really looked at it too fully but, in looking through it briefly, I think it's very good. I think the power of the Board is quite high, I think you want to remember that the Act is designed to protect the landowner or the farmer, it's not designed to protect the petroleum industry, that's why you're having the surface legislation, to protect the farmer and not the oil industry. The oil industry is quite capable of protecting themselves, I think, they have a lot of knowledgeable people who are experienced in dealing with the type of situation in negotiating with farmers and are quite capable of looking after themselves.

I think the Right of Entry is quite important as has been brought out previously. What seems to happen when the landman comes around to deal with you is that you get a contract for a term of 25 years which is renegotiable for another 25 year period which means that it lasts forever and you're given a sum of money that you're supposed to accept. If you don't agree to these terms the only alternative is that they will go to the Board and get a Right of Entry which takes away your negotiating power. So really as the Board now stands, and I don't know how the Board will operate in the future, it's actually used against the landowner to intimidate him to sign a contract and accept the sum of money that they're being offered.

I think also that the surface legislation should be presented before an agricultural committee. I don't know whether it's going to be or not but I think there's a lot of things with the environment and the spills and the rooting up of the soil and everything else that an agriculture committee should look at also, besides just the legal aspects of it.

I've got a few points here but I think I've gone through most of them. I didn't really prepare anything in particular I'd appreciate if I could have some questions from you people, that may be on your mind. Thank you.

MR. CHAIRMAN: Are there any questions for Mr. Vanbesalaere?

Mr. Parasiuk.

HON. W. PARASIUK: Yes, Mr. Vanbesalaere, the name Law Amendments Committee might throw you. It's a committee where legislation is referred to after second reading. It could be referred to an agricultural committee, it could be referred to another committee. We referred it to Law Amendments Committee but everyone is welcome to make representation on every aspect of the bill that they would like to. So if you had wanted to make comments about spills or environment or anything like that you could feel free to do so. We aren't restricting the discussion in this committee's review just to legal points, in fact, we are here to hear the public's comments on all aspects.

MR. L. VANBESELAERE: So there are agricultural people on the committee now that understand the agricultural aspects of the bill.

HON. W. PARASIUK: Mr. Vanbeselaere, there are a number of active farmers and a number of former farmers on this committee.

MR. L. VANBESELAERE: Well, that's encouraging anyway. I think that's very important because you'd have to be aware that the Act as setup, at least in my feeling, to protect the farmer and that should be the main thrust of the Act, not to protect the oil industry and the oil industry, it seems to me, is trying to slant it as though they are the ones that want to be protected. Why not call it a Petroleum Protection Act then, if that's what it's supposed to be?

MR. CHAIRMAN: Mr. Downey.

MR. J. DOWNEY: Mr. Chairman, to Mr. Vanbeselaere, through you, the opening comments that he made that it was basically good legislation, I would like Mr. Vanbeselaere's response to the placement of individuals or the appointments to the Board, and how important he feels to make sure that agriculture is truly represented and particular people, who come from experience with the Surface Rights Association, who have been doing a lot of work not only on the current difficulties that the landowners have had with the current developments that have taken place, but some of the previous problems that have been brought to the attention of the public through the Nugent Report, the salt-water spills and the past difficulties that the oil industry has developed. The experience of those individuals, I'd like Mr. Vanbeselaere to point out one or two of the reasons why he feels that agricultural people do have to be on there, whether it be increases in land costs versus the updating of the compensation that they're getting and the discrepancy there. Maybe he would like to address that particular issue.

MR. L. VANBESELAERE: I think the idea that it is an Act to protect agricultural people, it would only stand to reason that there should be agricultural people on the Board. That's the whole idea of the Act. As far as the compensation, I think if the farmer and the oil company was allowed to negotiate unhampered, with just the natural course of negotiation the farmer and the oil company would be happy. But the oil company does not really want to do that. They want to say here's the contract and here's the amount of money we want to pay and if you don't co-operate, we want to get on there and drill right now; and if you don't agree to this, we want to use The Surface Rights Act to expedite that and to get what we want and to go on your property. Also, if The Surface Rights Act or the government does

not go along with this idea, then we will pull out of Manitoba and we won't drill any more, which I think is blackmail. That's what it boils down to.

MR. J. DOWNEY: I guess the specific question would be easier to be answered if I were to ask the question of the individual, if the current Mining Board is in this farmer's interpretation - and the current Mining Board I believe is made up totally of government employees and has been for many many years - what the witness is telling us, or the farmer is telling us is that is not a situation which is desirable and would like to feel the support of government by making sure there is a pretty strong representation from the farm community, that the current make-up of the Board is not satisfactory, and to date the judgments that have been made and the decisions that have been made have not been in the best interests of the farm community.

MR. L. VANBESELAERE: From what I've been told by landmen, and maybe it's kind of an outspoken statement, but what they say is that the government is on our side. If the people do not give the right of entries and co-operate with us, we will stop drilling, the government will stop getting money and so we'll just move out. So actually not only are they blackmailing the farmer, they're also blackmailing your government, because either they get their way or they're moving out. If you read what they're telling you, that's basically what's involved, and as a landowner you kind of feel that you're stuck in the middle somewhere and really don't count for much of anything.

MR. J. DOWNEY: Thank you.

MR. CHAIRMAN: Mr. Storie.

HON. J. STORIE: Mr. Vanbeselaere, I wanted to just comment. The Canadian Association of Petroleum Landmen indicated in their brief, that they would like some amendments to the Act to ensure that there is no standardized agreement between an oil company and the farmers, indicating that they wanted some flexibility, implying that they wanted the landowner and the company to be able to negotiate without confines of an agreement. What is your view on that?

MR. CHAIRMAN: Mr. Vanbeselaere.

MR. L. VANBESELAERE: I'm not in agreement with that at all because what happens is that the land people are highly qualified, highly skilled and they find older people, maybe 60 years old, a widow or an older person, they find people that are not trained in negotiating. I'd like to say they use the "MIC" technique. They use manipulation, intimidation and coercion to intimidate these people to sign, and if there's a standard contract, they won't be able to do that, and because they have the upper hand and they have the skill in this area, it's against their interests to have a standard contract.

I think, where it states in the Act, that all contracts or agreements will come into the Board and be recorded and looked at is a very good one so at least you know what's going on. I have looked into the industry in trying to find what there should be in an agreement or what is standard and you can't find any record of it. It's all kept hush hush, so when you're negotiating with these people, there's no way to go to find out what the basics are or the parameters are that you should be working in.

HON. G. STORIE: You're not concerned then that, as they suggest, that standardization will limit the individual's rights to freely market access to his property.

MR. L. VANBESELAERE: I believe in the free negotiating. If someone wants to give up their rights and sign something that's going to last for 25 years renewable and their children and their children are going to have to abide by it, and they're satisfied with taking $3,000 at maybe $1,000 a year, giving up their rights, then I suppose they should be allowed to do that. But if there's going to be a surface legislation and there's going to be some controls put on it, then I think there should be something done both ways.

If the idea of the Act is to protect the landowner, then you have to protect them in that agreement and I'm completely against the idea of these agreements lasting forever. Who wants to sign something that goes on forever and that you have to abide with, your children have to abide with and their children? Mind you, the oil companies say, "If we have a producing well there, we want to protect our interests," but then I say, specify what is a producing well and how many barrels of oil are they taking. Are they just sitting on the hole or are they producing or what, and also, that the remuneration should be adjusted every year, automatically.

Maybe carrying this a little further, I feel that a percentage of the royalty is fair. Now I know the oil industry does not agree with that at all but, the way I look at it, if we have to give up a percentage of our farm land, then they should have to give up a percentage of their minerals. This is not like when a government comes in to build a road where it's for the public benefit of everyone. The oil industry works for high profit and they work for themselves, so the remuneration should be equitable both ways. If there's no money - go ahead.

MR. CHAIRMAN: Mr. Storie.

HON. J. STORIE: Just one further question, the brief that was presented by industry made some recommendations with respect to the kind of people they would like to see on the Board. Would you have any feelings about the kind of people that should be represented on the Board, what their background should be like, what kind of experience they should be drawing on?

MR. L. VANBESELAERE: As I mentioned to Mr. Downey, I think they should be definitely agricultural people. I think they should be agricultural people who have some experience in the oil industry because if you talk to a farmer or an agricultural person who hasn't had experience in dealing with petroleum people, they get an entirely different idea. They think that - well, up until a year ago, I thought if you had an oil well on your property that you were set, that you were a rich man, but you get a rude awakening. They tell you right

off the bat. They say, we want to go on your property and we're not going to pay you one nickel more than we absolutely have to. We're going to do it whether you like or not, and then they go through all the motions and you're stuck with it.

MR. CHAIRMAN: Mr. Graham.

MR. H. GRAHAM: Thank you, Mr. Chairman. To Mr. Vanbeselaere, first of all, I don't think maybe we should be getting involved in the difference between - the actual oil production, I think, is a secondary issue. I say to you, if you think that the oilmen or the landmen are tough when it comes to compensation for the oil, wait until the government gets finished with you on taxation. But that's another issue.

We are dealing here only with surface rights. I can tell you that I am a farmer and several members of this committee are farmers, but the entire committee is here charged with the responsibility to look at an Act that is before us, a bill that is before us, to make suggestions for change that would improve what has already been drafted and, in essence, to hopefully bring forward a piece of legislation that suits the needs of all the people concerned.

It has to be reasonably fair to the farmer; it has to be reasonably fair to the oil people, because the industry must be able to operate or else the farmer gets no compensation at all. What the compensation is, what the objections are of the farmer, are things that this Surface Rights Board will be dealing with. We had the landmen say earlier, I think - I'll refer to it - that there were basically three concerns on the Right of Entry. One was what it would do to the operation of the farmer, the disruption that would occur to his business, or the compensation. Of those three fields that they suggested, in your opinion, which is the most important or are they all very important?

MR. L. VANBESELAERE: To be truthful, I don't know where the question - I was picking out all the other questions that you could ask and then, at the very last, you say, this is the one I want. I was thinking all the time . . .

MR. H. GRAHAM: You don't have to answer any question, if it's . . .

MR. L. VANBESELAERE: I'll answer the one I had first. The first one you asked was the one on splitting out the royalty payment and not using it as a means of compensation which is a thing that's been kind of around, and I think the oil company has been promoting this idea, but it's not all completely kosher. It is not all true. Because, in North Dakota right now, there is a bill being presented that would give the landowner 1 percent. I don't think that's enough. There have been numerous bills presented over the years in North Dakota that would give the landowner a percentage. Also, there are some oil companies, not Roxy Petroleum that I know of, that do give out a percentage of the oil rights for surface rights, usually around 2 percent or 2.5 percent, so it's not unheard of. If you were in the industry and familiar with that, I think you could find that and find these agreements where this percentage has been given out for surface rights. Now that's the one, but go ahead. If you would repeat the last portion there, I would answer that.

MR. H. GRAHAM: No, I would like to go back and deal with the one that you are putting forward that would basically tie compensation for the mineral rights to the surface rights. You are the first one that I have heard of that has put forward that real suggestion. Most of the people I have talked to in surface rights who have concerns about surface rights, are very careful to say, they are concerned only with the surface activities. The mineral activities are a separate and distinct field. But perhaps you have a different view on this.

MR. L. VANBESELAERE: I have a different view, and I know that's prevalent among lawyers and other people. I think it could be that it gets into the Charter of Rights. As I understand now, there is really no Charter of Rights guaranteeing landowners anything, really. If that Charter was there, I think you could very easily say, well, you know, they're taking away a portion of my property, then I'm entitled to something from theirs and I don't know why it was never put in. When Mr. Trudeau brought in the new Constitution, I think that property rights should have been included and I think that would have helped. As well as Indian rights and everything else, I think the property owner . . .

I think there's quite a difference there between expropriating or taking over land for the public benefit of the whole population, rather than someone that's coming in to make a good profit, to make a lot of money at someone else's expense. I mean, there are numerous things. There is the ecological, the environmental and the psychological impact. Yet, when they talk about compensation, they say, well, what are the dollars? Or when an oil company drives across the field and they say, you're trespassing, is there no legal thing? They say, no. How wide was the track and how much crop did we run down? But if you broke into your local grocery store and took a loaf of bread, you could be charged, but not so an oil company. I mean, even if they go on your property and destroy what you are using to make your livelihood, all they are required to do is pay for that particular amount of crop that they destroyed - nothing to do with trespassing on your property or anything like that. Maybe I've gone a little too far.

MR. H. GRAHAM: No, I don't think you have at all. Well, Mr. Chairman, I don't think we want to get into the issue of why the property rights were not entrenched in the Charter. I think we're getting into a political field here and there are wide differences of opinion sitting right at this table on that particular matter. Mr. Chairman, we won't get into that at this time.

The other thing that does interest me is where you have stated they can go into your field and just pay you for the compensation for whatever they tramp down. I was under the impression that in a lease, the area of their activity was pretty well identified and they were confined to that particular area. What you're telling me is not the case, am I correct in that?

MR. L. VANBESELAERE: Really there's two areas there. There is the particular area that is leased that

is supposed to be marked but, in essence, usually is not. There's a marker placed under the soil at one point as a reference point and in most cases that I'm familiar with, the exact area or the boundaries of the site are not marked or if they are initially, they may have a fir stake that's placed on each corner but that usually gets destroyed or moved or stolen.

That is another problem, that you do not know where the boundaries of the site are, to know whether they have trespassed but, in essence, that really doesn't make that much difference because they really don't seem to consider where the boundaries really are. If they want to drive out on your property and it's more convenient for them they usually do because they know that all they're going to be liable for is the damages done. In the Board order that I was served with it did say that, if you wish, you could have a fence put around the boundaries of the site so you would know when they went off the site and I did write Mr. Haugh and told him that I would like to have this fence. I specified that I wanted a security fence so that if children or any animals or anything came by and happened to fall in the pit they wouldn't be harmed. That was last fall or even in the middle of summer and I haven't had any action on that so far. I think that was a legitimate request.

MR. H. GRAHAM: Mr. Chairman, then your experience is one that has shown that you aren't too happy with the current Mining Board route and you're basically in favour of going to a Surface Rights Board rather than carrying on under the present Mining Act.

MR. L. VANBESELAERE: To answer the first question. No, I've had poor relationship and bad experience with the present Board and I think that maybe they are civil servants; they're not farmers; they're not familiar with the area or what's involved. A number of people out there have asked them to come out and see what's going on and as far as I know none of them showed up. I think they're giving out the Rights of Entry much too quickly.

In my case the initial Right of Entry was applied for in the spring before seeding, and I was assured that there wouldn't be any action done until I was finished putting in the crop. Well, I had about two more days left and I was phoned on a Friday that they were going to give the Right of Entry. I asked, well, how soon? Very soon, I was told. Actually, Bob Howard, in particular had been phoning every other day for a solid month requesting this Right of Entry. Being Friday evening, I couldn't do anything about it but on Monday morning I did phone in to Mr. Parasiuk's office and I got one of his assistants and I explained the situation and he said that he would phone Mr. Haugh and find out why this Right of Entry had to be given right away. So I did phone Mr. Haugh that same day and I was informed that he had given the Right of Entry the day before, which was on a Sunday. What I assumed was that he had already decided to give the Right of Entry on the initial call.

I don't think that was done fairly and as a consequence now, one of my neighbours has filed an injunction against the Right of Entry and there hasn't been any word on what the outcome will be yet, but I think it's a very legitimate thing to do.

MR. H. GRAHAM: Well, Mr. Chairman, I think this type of information is very valuable to every member of the committee because we realize how important the oil industry is, but also how important the agricultural industry in the Province of Manitoba. It's still the number one factor in Manitoba's economy and if we are having difficulties, it's very helpful to this committee to have those difficulties identified. The experience of one person, I'm sure is very valuable to all of us and I thank you very much.

MR. L. VANBESELAERE: Thank you for your time.

MR. CHAIRMAN: Any further questions? Seeing none, I'd like to thank you on behalf of the committee for taking the trouble to come here today, Mr. Vanbeselaere.

Mr. Downey.

MR. J. DOWNEY: Yes, I have one point that I'd like to bring to the attention of the committee, if I could, at this particular time. I'll be very brief if I can. It might be helpful not only to all the committee members but to the media and the public at large.

The Deloraine Collegiate English Class 300 put out a newspaper called "Graduate." They have done a very good story and I just received it this morning and that's why I haven't put it forward earlier when the committee opened. They have put forward an excellent paper explaining a lot of what is happening in the oil industry in the southwest, the full story, some of the buzz words and the activities. I would recommend that the committee either make available to the committee members the address or if we have the capability as a committee, there is a cost of $1 to support the collegiate that they be purchased by — (Interjection) — I'm serious - it is a good document and fully informative of what is happening, purchase this for the committee members or for the Legislative Assembly and make it available. It would help a lot of people who want a little broader understanding of precisely what is happening. It's probably not the total picture but I think would add to the workings of the committee and I want to compliment the Deloraine students for the work they did, Mr. Chairman. I would ask for comments on this.

HON. W. PARASIUK: I just wanted to point out to Mr. Downey that I did, in fact, get one of those copies. I wrote to the school about three weeks ago; I complimented them on their effort. They, in fact, sent me a copy of that edition about two weeks ago. I'm surprised that you only got it yesterday but I'll certainly look to see if I can make some copies available to other members of the committee if they'd be interested.

MR. CHAIRMAN: Order please. The next presentation on my list is from the Manitoba Surface Rights Association. I understand that there are about eight people who want to speak on behalf of this association. Could you state your name for the record please.

MR. B. ANDREW: My name is Bob Andrew.

Mr. Chairman, honourable members, ladies and gentlemen. I speak to you today as President of the Manitoba Surface Rights Association, as a landowner

in the Virden area, and as a third generation resident of the Virden area. The land which I refer to is influenced very strongly by the petroleum industry.

Accompanying me are some eight or nine members of our association, along with a larger contingent of our membership that are keenly interested in this bill and are in the audience today. Subject, naturally, to the approval of the Chairman and your committee, these eight or nine persons that I referred to a moment ago, will address a particular section of Bill No. 5 during our presentation.

These eight or nine persons I refer to are as follows: Adam Turbak, Kirkella; Jim Truan, Waskada: Wallace Gabrielle, Virden; Philip Francis of Virden; Doug Leslie of Virden; Florian Eilers of Virden; Jack Griffith of Waskada; and Don Temple of Waskada.

In addition to the foregoing, we have Mr. Rene McNeill of Virden who is representing the Manitoba Surface Rights Association in capacity of solicitor. We also have Mr. Robert Kohaly, Q.C., acting as our technical advisor. We shall be calling on Mr. Kohaly from time to time on various points discussed regarding this bill. Due to Mr. Kohaly's 30-some-odd years of experience with surface rights matters, surface rights Legislation, and on both these points in the areas of Saskatchewan and Alberta, I would encourage, Mr. Chairman, your committee to avail themselves of any information that they may be able to obtain from this gentlemen due to his vast experience in this area.

For the benefit of those persons that are not familiar with the background to these developments, with respect to the Manitoba Surface Rights and the development of Bill No. 5, I would like to do a brief review. Originally in 1977, two or three of the executive present here today, attended in the Virden area, on an individual and private basis with the then Minister of Energy and Mines. A review of the current situation with respect to the physical installations and legal documentation was discussed. Subsequently those same individuals had a number of private interviews with government in an effort to encourage the government to put legislation into place as had been in the case in Saskatchewan in 1968 and in Alberta in 1972.

In the interval from the time of our private discussions to the formation of the Manitoba Surface Rights Association, some number of months, we were encouraged by numerous individuals in the area to continue to proceed with our efforts. On January 10, 1980, the Manitoba Surface Rights Association was formed at the request of some 100-plus persons at a general open meeting in Virden. Today, that membership is approximately 260. The executive was instructed to pursue the acquisition of a comprehensive and separate act of legislation pertaining to surface rights as it relates to the two industries, namely agriculture and petroleum. In mid-1980, the government offered to amend The Mines Act, under Bill 109-80 endeavouring to accommodate the needs of the landowners. We expressed our appreciation to the government. However we still felt that it was imperative to have an all-encompassing piece of legislation to deal with the complex situation. As a result, the government set up the Nugent Commission to review this entire matter. Mr. Nugent's report came down in January of 1982, as you are aware. As a result of this report, which we generally accepted, the Manitoba Surface Rights Association, submitted a formal response to the government with respect to the Nugent Report.

The Minister gave the Manitoba Surface Rights Association a commitment at that time, that legislation would be forthcoming, which in fact has taken place, and for which we are most grateful. Subsequent to Bill 5, the Surface Rights Act, having been tabled in the Legislature, the Manitoba Surface Rights has filed a written response with the Clerk of Committee.

Mr. Chairman, due to a lack of knowledge on my part in that area, and possibly an error on my part, I did not ask the Clerk whether that document would be duplicated in numbers and circulated. So, I do not know whether your members have it before them or not. It appears in one or two cases to be the case. Thank you.

The Manitoba Surface Rights Association is generally pleased with the bill. We feel that with the exception of two or three areas of major concern to the landowners, this bill, when enacted will be in the best interests of all concerned, bringing a considerable degree of quiet contentment to both the agricultural industry and the petroleum industry, in that area where there is competition by both industries for the same portion of surface area.

I suggest to you that the areas of greatest concern are those of firstly, the Board. This Board must be comprised of persons that can relate to agricultural matters. It must be a form in which an applicant and the Board members or member are extremely conversant and fluent in the area of agriculture. This approach has been supported by one of our major operators. We will address the matter of appeals at a later point, and in so doing, how it relates to experience gained in other jurisdictions which originally followed the same route as the proposed Bill 5 on appeals.

As we've done previously, we commend the Department of Energy and Mines for their efforts in establishing this bill and if enacted bringing a high degree of protection in for landowners, where little or no protection has existed to date. However, the rights of the mineral owners have always been protected.

We repeat, as we have in the past, that this Act be placed in the Department of Agriculture, as we are dealing with nothing more or less than an agricultural matter. In the Province of Alberta, the Act is dealt with by the Department of Agriculture. With the Act, under the Department of Agriculture, the landowner would be dealing with people of agricultural backgrounds and people that are conversant in the landowners profession.

The personnel of the Department of Energy and Mines would be left free to deal with matters of a technical nature, peculiar to the petroleum industry which the department fosters, nurtures and supports, to fulfill the energy needs of the province. To expect these personnel of the Energy and Mines Department to handle both would be asking them in many cases, to become educated and knowledgeable to a large extent in agriculture and in effect, endeavour to wear two hats depending on whether they were dealing with a landowner or an operator. For the petroleum industry to have any hesitation in this regard would be questionable. The agricultural industry has operated without benefit of any effective legislation as it relates to the oil industry for the past 33 years.

We have previously referred to Saskatchewan and Alberta Legislation. We do so because of the vast experience of some 15 years of legislation and a vastly greater number of wells over a longer period of time.

In closing, we would again extend to the government an invitation to invite people knowledgeable and with expertise from both industries to sit down with government to assist in expediting matters pertaining to this legislation.

Thank you, Mr. Chairman.

MR. CHAIRMAN: Are there any questions for Mr. Andrew?

Mr. Parasiuk.

HON. W. PARASIUK: Mr. Andrew, in your presentation, you indicate that in both Saskatchewan and Alberta, the Boards are selected from individuals with agricultural experience. Is it true that in neither instance is this specified in the Act, however? It's the way in which the Boards are appointed; it's a matter of the government making judicious judgments in appointing members to the Board. But it is not specifically called for in the legislation in both Saskatchewan and Alberta, that members must be appointed exclusively from the agricultural community.

MR. B. ANDREW: I'm sorry, Mr. Chairman. I didn't quite catch all the question. My apologies to Mr. Parasiuk.

HON. W. PARASIUK: In your report, in your presentation to us you indicate that in both Saskatchewan and Alberta, people are selected with agricultural experience, but is that called for in the Act itself or is it a matter of the government exercising judgment in appointing individuals to the Board.

MR. B. ANDREW: Mr. Parasiuk, if I might, I would ask Mr. Kohaly to comment on that because he is familiar with that area. I am advised, Mr. Parasiuk, that it's just practice. Thank you.

MR. CHAIRMAN: Are there any further questions?

Mr. Graham.

MR. H. GRAHAM: Mr. Chairman, I notice you circulated a paper here, your response to the Surface Rights Association. We have not had the opportunity of seeing this until it was put in front of me about five minutes ago. I was hoping that you would go through that response item-by-item, so that members of the committee would have the opportunity - maybe some of them did receive it previously, but I just received mine now. I would suggest that that would probably be a better way to proceed than to just throw it out for blanket questioning.

MR. CHAIRMAN: Was it your intention, Mr. Andrew, that the other people in your delegation would speak on the individual items?

MR. B. ANDREW: Mr. Chairman, it was our intention to go through the Act, dealing with items from beginning to end, not each and every one, but in general each section of the Act, yes.

MR. H. GRAHAM: I just asked that the committee be given the opportunity to hear the benefit of their wisdom with that. I would ask them if they would care to proceed in that manner. Is that agreeable with the committee?

MR. CHAIRMAN: Any further questions for Mr. Andrew then, before proceeding on a . . .

MR. H. GRAHAM: I was wondering if Mr. Andrew would like to do that, or whether he would prefer maybe to have the various members that he had chosen take the items that they were most familiar with.

MR. B. ANDREW: Mr. Chairman, as I mentioned in my address, we have eight or nine members to address certain sections of the Act, the Board abandonment, that type of thing. Now if it is your wish, we can follow that procedure or possibly, in consultation with our people, we could go through the brief that we have submitted depending on what you people so choose.

MR. CHAIRMAN: I think that it sounds like what the plans for the delegation are closely parallel the suggestions of Mr. Graham. I think, ultimately, we have to let the presentation methods up to the people who plan to make those presentations.

MR. H. GRAHAM: You go ahead, whatever way you want to do it.

MR. B. ANDREW: Mr. Chairman, if I could beg your indulgence for a moment, then I will consult with our people for a second.

Mr. Chairman, we would commence with the bill and I'll just mention briefly under "Definitions" and then into "Purposes" and "Board." We were just going to step through it that way when you have a speaker for each one of those items, if that's acceptable.

MR. CHAIRMAN: Fine.

MR. B. ANDREW: With regards to Definitions, I would call on Mr. Kohaly. Thank you.

MR. CHAIRMAN: Could you state your name for the record, please?

MR. R. KOHALY: My name is Robert Kohaly and I appreciate the opportunity to be here, Mr. Chairman, and Members of the Legislature. I have had previous opportunities in other jurisdictions to appear in front of the committees of this nature, particularly the Saskatchewan legislation in 1968 which is the forerunner of specialized, comprehensive surface legislation in the entire country. Alberta followed that in 1972 and Manitoba is following it, by and large, to produce comprehensive legislation this year.

There have been relatively few amendments in the original Saskatchewan Act and even less amendments in the Alberta Act, which speaks well for the legislation that you are, by and large, following with the aid and assistance of some additional up-to-date points raised by Mr. Nugent. Mr. Nugent followed the Friesen Commission of Saskatchewan by many years, but did the same kind of a job. He did an excellent job. This

Legislature, in presenting Bill No. 5, has done an excellent job.

I might say, there are one or two areas, in which I certainly join with my friends in the Landmasters Association, would require some changes and I welcome the opportunity to make those in detail to you, and specifically. I think you will assist your owners and assist the oil industry greatly if you would, as a committee, seriously consider these changes.

I must say, having considerable to do with legislation both as a legislator, from which I withdrew with the almost unanimous approval of my constituency many years ago, and as a lawyer attempting to interpret my own legislation and as a lawyer dealing with farmers almost exclusively for 30 years, that these are perplexing problems. There is no easy answer to it. The legislation must, of course, be technical because it must be interpreted by courts who indeed insist on technicalities and lawyers who seem to perpetuate them.

But it is a horrendous problem, ladies and gentlemen, for landowners who, first of all, don't have the legislation in their home. It's not normal reading, any legislation. It becomes a greater problem when they know little or nothing of the implications that will occur when they become host to an industry that has an entirely different approach to matters and an entirely different attitude towards the use of land.

I think Manitoba farmers join all farmers in Western Canada, held in high regard throughout the world, and properly so, as very competent, hard-working dedicated people. But having said that, they are preoccupied with the quality of their farming and the quality of their land in the hopes that they can pass on even a better way of life, not just a business, if they were in it for a business they would soon get out of it because it is a losing cause.

They have no control over any part of their operation. Somebody else sets the price and we've all been reading about that. Senator Argue has just set the price for their revenue and someone else sets the cost and along comes another industry, very viable, very essential, and says, I want to become a partner with you and I want some of your property.

They come with an entirely different approach to the use of land and this is where the disputes occur, right from the very beginning. They present a four-page, foolscap page, closely printed document which has to scare the best of Philadelphia lawyers, never mind country lawyers which we have in this part of the world where oil is prevalent.

It's just a horror story, ladies and gentlemen, to read the document. I would just love to pass it around, you're the legislators, you produce this type of thing but you'd have a great deal of difficulty finding out what it means, never mind, an elderly farmer and his wife sitting around the kitchen table when the chap just comes in from Calgary, always has to get right back, there is absolutely no time whatsoever to deal with these matters let alone the intricacies of them. They are totally beyond understanding of the average common-sense competent - Mr. Vanbeselaere, obviously should have impressed you as a very knowledgeable, dedicated, sincere man tackling a subject but he couldn't answer your technical questions although he has actual experience with this.

We find that the first oil well and the first landman is welcomed. The way it was said before, I'm going to be rich overnight. The second one is when they stop cold in their tracks. They have now had some experience, they still haven't read the four-page, foolscap page, of legal niceties but they know somewhere there is a bad hitch in here from their very experience on the field. This is where farmers get their experience and their knowledge and their approach, when they actually are working around these installations and live with them. Some of the problems and again, I repeat, that I want my address to you will be specific and will be short. I will be glad to support them, I will tell you where the support evidence is, I have it here, I'm glad to show it to you and read it or present it to you, pass it around.

Our approach and the approach of the association was that we should start with Clause 1 and go right through it, that's how we are approaching it, so in the course of time, Mr. Graham, we will have touched every one of the items that are on the initial response that was sent in sometime ago. The first one that I would like you to look at in your bill, if you will, in definitions, Section 1, if you will move down to power line. You have a problem here, ladies and gentlemen, I have a suspicion that the draftsman was following in your Act not only the Saskatchewan-Alberta and the Nugent recommendations and together with those references in The Mines Act, but he was also aware of, as yet, unpublished amendments to the Saskatchewan Act which is the model Act, the one that people are following - not because Saskatchewan is better but because it was in place first.

But they overlooked one section in your power line definition. There is, indeed, an amendment to provide for compensation for power lines and to bring power poles into a surface right. Yes, there is. But there were two amendments. The definition has to be amended by removing the phrase, "by an operator", or it will have absolutely no meaning.

As I would suspect and you would know better, the vast majority of power poles installed in the Province of Manitoba are installed by Hydro as they are by SPC in Saskatchewan and by various people in the Province of Alberta. Now, "by an operator", operator is defined as the oil company in your definitions and you surely couldn't mean that because the operators never install, in my experience, a power line. They often requisition power lines to Hydro and SPC and the Alberta utility. This one says, "is constructed or is to be constructed by an operator" and there's no way. The remedy is very simple, it's a remedy that is in the Saskatchewan amendments yet unpublished although it is on the Order Paper in Saskatchewan to remove the phrase "by an operator".

You have some serious problems in service line. I take note that you include a service line with a flow line and I'm not going to trouble you with technicalities but you will have some. You have a Pipeline Act being Chapter P70. It addresses itself, including a definition of a pipeline which is extremely similar to your service line but the results are quite different and Section 4 of your Bill, which is the conflict section with other legislation, does not help. You will have to take note and should direct your draftsmen and legislative law clerks, whoever is preparing this to take a good long look at your Pipeline Act, Chapter P70, especially Section 16 and you will find that there is a conflict,

and you will not be resolving disputes because they will either put the flowline service lines in under The Pipelines Act, which is quite permissible, or they will put it in here and the Board, then, will not have any idea. Their jurisdiction does not include The Pipelines Act. You will have a big problem.

I would commend to you that I'm sure that what you are attempting to do and doing it rather successfully is to remove disputes and to minimize misinterpretations and misunderstandings and if you don't take a look at that one you are going to have a lot of trouble. Service lines, flow lines, gathering lines, not pipelines, that is the major systems, are very prevalent in the industry. There are more prevalent than well sites. So it is not a small matter, it is a very significant matter and you should watch that. Again, my purpose, ladies and gentlemen, is to draw to your attention problems which you will have if you do not address yourself to it and you will simply be faced with amendments in the future.

Under Surface Rights you have a modest difficulty with that and the Section (ii), the right to establish, install, or operate any machinery equipment or apparatus, this is much too wide. It is a paragraph similar in nature to Saskatchewan's 1981 amendment so we have had almost two years now experience that Saskatchewan made a mistake in making it so wide. It should be defined much more narrowly and it should be done by purposes rather than by details. You have done this very well in the drilling, completion or producing operation, that is really all it requires, leave it to the Board.

I have with me, if you care to see it, a three-page foolscap close print of all of the installations, equipment and machinery which is installed on well sites for the purpose of either exploring for or drilling. It is much too long a list; it's just startling how much can go on to an installation. Now you don't see it all on every one, but you do see all of it, sooner or later, on one installation or another depending upon the technological requirements.

I wish you would take a look at your definition of "well". Remember that "well" appears time after time after time throughout the legislation and quite appropriately you've defined these words so that they will be - but remember the Board has to use your definition.

I don't know why Bill 5 contains a clear statement of principle that this Surface Rights Act shall be a comprehensive, all-embracing Act covering surface rights. In Sections 4 and 5, you say, if there's a conflict in documents as against these provisions, in one Act against another, except for where The Mines Act is concerned or any other Act that the Lieutenant-Governor-in-Council designates, that this will be comprehensive. Right off the bat, in the most critical one of all, the well site, a well, you immediately revert to The Mines Act. I hope you intend to amend The Mines Act in its definition.

Your M 160, 1(40) is exactly what you're talking about here, a well. It means a well defined in The Mines Act. The Mines Act defines a well, quite appropriately for The Mines Act, in the widest possible petroleum sense, nothing whatsoever to do with the surface sense in which it should be used. You'll find that if you are going to put all of this, that is, the definition from The Mines Act of a well, in this surface Act, then you have to address yourself to an awful lot more matters of technical nature to cover a well.

You see, The Mines Act says that a well is not only for the purpose of drilling, boring and obtaining gas and oil. That's fine, but it goes on then to a second, third and fourth purpose. I don't need to read this to you, I'm sure, because your legislation is available to you. It goes on then to talk about the injector systems and the secondary recovery systems, all very intricate and having nothing whatsoever really to do with the surface. It goes on and deals with disposing of, which is the disposal system, nothing whatsoever to do with the surface other than the original well site is there and all those details, then for storage of gas, which is certainly appropriate in The Mines Act for a well, absolutely. But it has no appropriation here.

The solution, of course, with apologies, is to accept the definition for the purposes of The Surface Act contained in the Saskatchewan Act which is 2(n) and similar language is in the Alberta Act. I apologize because I have to refer to the Alberta and Saskatchewan Acts but they have been in place for a long time and they have addressed themselves to the problem and they have solved the disputes. There are literally tens of thousands of wells being drilled in these provinces as against a relative modest drilling that there is, and therefore installations, that you have in Manitoba so far. Let us hope you will have more, but if you have more then you want to have this legislation to handle more. I would strongly recommend that this committee ask your Legislative Counsel to review the definition of well site.

The manner in which the association, so as to involve as many of the owners as possible, at approaching this subject has been that we will take turns back and forth. I would be quite happy to answer any questions, Mr. Chairman. I will be sitting down and standing up again dealing with it from page to page all the way through every section. My duty will be to draw to your attention any technical problems and to try to suggest a specific remedy for you. But the others will be talking in general principles because they have that type of knowledge. They are all farmers. Unfortunately I have never been able to get enough money together as a lawyer to be able to buy a farm so that I would have those privileges.

Mr. Chairman, thank you. I am not closing my comments. I am going to try to be of assistance. I will try to be more brief from now on, but I wanted to get started and tell you what my role is in the sum and total of eight or nine people on behalf of the Manitoba Surface Association and I'll try to stay to that role. But I would be glad to answer questions if there's anything on this section.

MR. CHAIRMAN: Are there any questions for Mr. Kohaly at this time?

Mr. Graham.

MR. H. GRAHAM: Thank you, Mr. Chairman. So far we're dealing just with definitions, Mr. Kohaly, and I take a look further on in the Act in Section 56, and the section says, "The operator shall remove, preserve and replace all topsoil . . . " Could you tell me what topsoil is? Apparently there isn't a definition in here.

MR. R. KOHALY: It's not defined by any of the Acts. "Topsoil" means the street language for topsoil and that is simply the top growing portion and I don't think it creates a problem. Topsoil seems to be well understood by both industries as to what it is. Now there is a problem with Section 56, of course, if you have a producing well. What value is there in having the topsoil piled for 25 years, multiplied by a further 25 years? By that time the weeds have taken over, it's a great problem; the wind has blown it from here to somebody else's quarter-section. This is unique; you're on the cutting edge here and you're trying to establish something new but nobody else has been able to handle this.

On a dry well there's no problem and it's a great idea on a dry well, a marvellous idea, but it doesn't work for 25 years, 50 years, 75 years, and oil wells in Alberta have been in existence for over 50 years.

MR. CHAIRMAN: Any further questions? Seeing none, we'll go back to Mr. Andrew.

MR. B. ANDREW: Mr. Chairman, if it meets with your approval, I will introduce each one of the speakers as their turn arrives.

Our next area that we wish to deal with is "Purposes," and Mr. Adam Turbak will deal with that.

MR. A. TURBAK: My name is Mr. Adam Turbak, Mr. Chairman, ladies and gentlemen. I farm 10 quarters in the Kirkella district. I took the farm over from my father in 1966 and oil wells were drilled there in 1957. There's a tank battery and six wells still producing there.

The purpose of this Act is to spell out in detail the procedure for acquiring and utilizing surface rights; to provide for the payment of equitable compensation for acquisition and utilization of surface rights; to provide for the maintenance and preservation and restoration of surface rights; to provide for the resolution of disputes between operators, occupants and owners arising out of entry, use or restoration of the surface of the land.

This is a separate Act dealing strictly with problems arising from the operation of an oil company and the landowners on a surface. Therefore all reference to The Mines Act should be removed. The drilling, producing and operating of the oil well is looked after by The Mines Act.

I feel that an excellent job has been done on putting the Act together and we will support it. It will work good as long as the Act stays consistent and deals only with the problems that arise from the introduction of the oil industry on agriculture.

Thank you.

MR. CHAIRMAN: Are there any questions for Mr. Turbak? Seeing none, Mr. Andrew.

MR. B. ANDREW: Mr. Chairman, our next item is dealing with the Board under the Act and I would ask Mr. Kohaly to speak on the item.

MR. CHAIRMAN: Mr. Kohaly.

MR. R. KOHALY: My jumping up and down will not be as prevalent later on here. Part II of your proposed legislation which deals with the most critical element in the entire bill, and that is, the establishment of the Board. There is such a Board in both Alberta and Saskatchewan; they are known similarly. Alberta decided to separate many years ago their legislation and to have matters of reclamation, as they call it - we would call it abandonment and restoration, as you do - they decided to have two Boards. That works very well, it permits having people on the one Board, Reclamation Board, with different qualifications, abilities and approaches to that of Rights of Entry and Compensation which really stand by themselves. So it's are the only three areas there are.

The Surface Rights Board in Saskatchewan, of course, has abandonment and restoration procedures and they handle it all, doing very well, but it does create some problem in the appointments of people that are competent and capable in the two directions because they really are quite different.

The number of people that you have on the Board are quite realistic. Both Saskatchewan and Alberta have found that it's necessary to have more people than three, I can assure you. I join with those who said earlier that, initially, there will be a lot of work for the Board. That is quite correct, you have an enormous backlog having regard to a modest number of well sites, but the matters have not been addressed since as far back, really, as 1953. With your enlightened approach, similar in nature to Saskatchewan some years ago, of reviewing all installations so that there wouldn't be two types of citizen in your community; ones who came under the new enlightened legislation and the old ones who had been neglected for so many years. So you will have a very large number for the first, probably, two or three years. You may be able, thereafter, to get along with what you have termed part-time members. They are simply called up when they are needed for various parts of the province.

In Alberta, because of the numerous installations there, many many times more than you have, they have the Board divided, the north half and the south and, in effect, two Boards, it's that busy. But, compared to the number of wells you spud in, 200, as against the number they spud in, somewhere's in an order of 5,000 in recent years - there has been a little drop in the activity and an upgrade in Manitoba, so they're not really comparable this last little while - they need two Boards and they keep both Boards busy.

If you address yourself to these short time frames, and there's some measure of reason to that, then of course you need the members sitting on a regular basis to get them out that quickly. By that quickly, you are certainly talking about 30 to 45 days unless you are going to hold up either or both industries. So you do need the people and you will find that three is a very modest number.

You will minimize your problems if you will follow the Minister's presentation in your House, as I read the report, that the Board was intended to be established at Virden which is right in the area, therefore, the travel time for all parties, including Board members, is going to be minimized. Therefore, they should be able to handle more and you would get away with fewer members, even part-time members, because your oil at the moment is concentrated in just the west side of your province and the south portion at that.

The question of qualification of the Board members, your Section 6(2), I'm sure that you recognize that there is a vast difference of opinion between the members of the Surface Association, the farmers, and the draftsmen of the current bill. I can understand, as a lawyer and sometimes legislator, the attempt to be fair and to create an arbitration Board that would have experts on all sides of the issue. I think what the draftsmen overlooked - and I draw to your attention that the qualifications are not spelled out in any other of the legislations, but there was a request for it. Following discussions in Saskatchewan, and in Alberta, that paragraph was removed and all parties decided to rely on the good judgment of the Minister making the appointments. We are not unmindful how appointments are made and there is nothing wrong with the procedures that were suggested by members that the association might make some recommendations, not that they would be appointed necessarily, but might be considered. Certainly if you're going to have qualified people that's where you will find qualified people, in the associations, be it Landmasters, operator or farmer industry, are people that know who they are. This is a good approach.

The problem with it is, of course, that if the Surface Rights Board is going to deal only with the question of Right of Entry and compensation and reclamation - and that is what you are dealing with; your purposes say so - then there is no need in any way, shape or form for any expertise of any description from any other industry, except the people whose rights are being dealt with and those rights are only farm rights; they are no one else at all.

This sensible approach that you have was tried in both of the other two provinces with disastrous effect. The disaster was that the owners would not go to the Board at all, being very suspicious of the attitudes that they would receive, and their suspicions were fulfilled when they got there. They were faced with technical discussions from the representative of the petroleum industry as to, do you understand the need and the crate cost and the rig is just coming over the hill now and you're holding this thing up. You should capitulate and get out of there.

So the farmer wouldn't come back. The farmer would try to tell them about his great problems of getting a 34-foot cultivator through a 20-foot hole that was left between the well site selected and the adjacent slough or the adjacent woodlot, or whatever it was. Of course they said, well, that's your problem, was the answer from the petroleum industry representative on the Board. Well, it's not his problem and he couldn't do anything about it, so they quit going.

In Saskatchewan, the situation became so bad that the entire Board was just simply not reappointed, that was all and they had to do away with it. It just wouldn't work.

Now the operators will go. The only thing the operator wants out of this whole Board is his Right of Entry. Once he's got his Right of Entry, the second point is of no concern to him at all as to when the compensation will be set and/or, if ever, paid. He won't bring a second application and there has never been one brought by an operator in either province, to my knowledge, to establish the compensation. Well, that's quite common sense and understandable. The guy that's got the compensation coming to him is the only man that is going to activate the Board on that subject.

So Saskatchewan experience, followed by Alberta in practice, it works well, settles disputes, is that they shall be people who are familiar with the agricultural industry because that's the only problems that are going to be in front of them. There's no question about your Mines Board which does deal with the technicalities of petroleum, producing and the spacings, the methods and all those things. Yes, they certainly should have petroleum people in. There would be no reason why there should be a farmer on it or a lawyer or anybody else. It should be technical people because it is a technical subject. But this has nothing to do with any - you can look from now till kingdom come in this bill and there's nothing in there to deal with the technicalities of the petroleum industry, only the technicalities of the farming industry. Therefore, it should only be farmers.

These points were made by numerous farmers to Mr. Nugent. Again, I commend him for his report. I commend to you to look on his Page 27 under his recommendations 2.02. It's short. This is what he says:

"Personnel of the Board. That the Surface Right Board consists of persons appointed by Lieutenant-Governor-in-council selected for their experience in or familiarity with the agricultural industry."

Really, the man did a study. He did a good job. He was on the job night and day, and he listened to a lot of people and he went out and looked and he studied this matter and he heard the member say what the problems were. This was his considered decision and I would encourage you for that and the other reasons, to accept Mr. Nugent.

One of the briefs that Mr. Nugent received was from the largest, as I understand it, operator in the area, Chevron, I believe they are represented here. In their brief on this subject to Mr. Nugent, on Page 7, Independent Board of Arbritration, they addressed themselves to the subject too. The largest operator in your Manitoba field, this is what they said in total. There is no more but this: "Our experience indicates that the major requirement for a Board member is knowledge of the farming industry and impartiality." So, you have the surface owners saying to you, agriculturally minded and knowledgeable people. Period. You have Nugent saying to you, members shall be those familiar with agriculture. Period. And impartiality. Finally, Chevron, the largest operator over the years in your province saying, familiarity with agriculture. Period.

I would commend to you if you wish to solve your problems, that you will have to address yourself to some changes here. You're probably better off to follow the example of the other provinces with their longer experience, greater number of wells, simply remove 6(2) and leave it to the tender mercies of the Minister to indeed follow what he has already started, an excellent job here and to establish the qualifications through the appointment and the proof of the pudding will be indeed in the eating and it won't take long to find out.

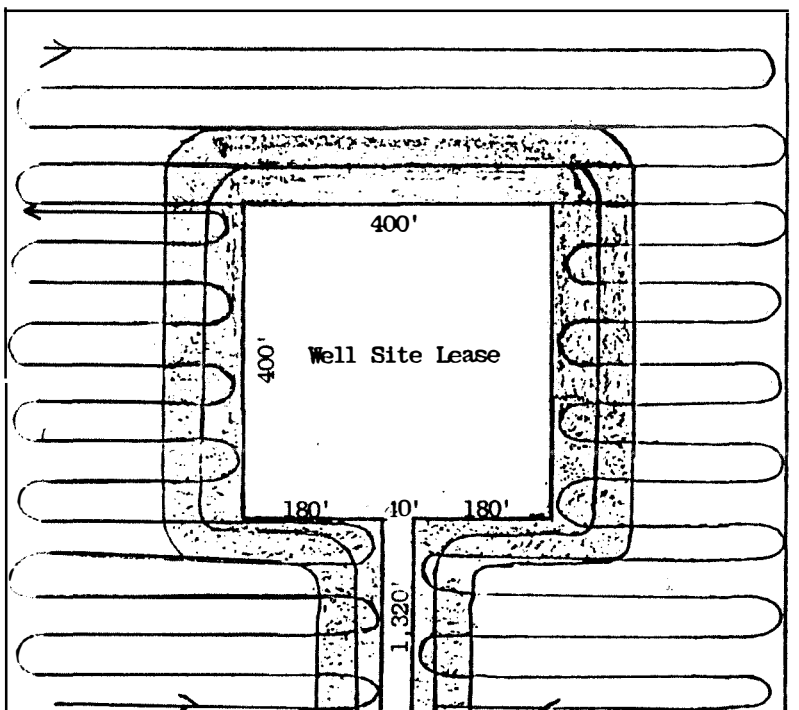
On Section 6(6), if you establish the Board at Virden, which is common sense and supported by the Minister, — (Interjection) — having had a modest experience with legislators, Mr. Chairman, I really shouldn't lead

TABLE #1

FIELD OPERATION	WORKING WIDTH OF IMPLEMENT (ft)	AVE. OPERATING SPEED (M.P.H.)	AVE. FIELD EFFICIENCY %	AREA OF HEADLAND ACRES	TIME TO WORK HEADLAND HRS.	TIME TO WORK HEADLAND MIN.	TURNING TIME HRS.	TURNING TIME MINS.	TOTAL TIME HRS.	TOTAL TIME MIN.
1. Cultivator (Diagonal)	40	5.5	80	6.56	.34	20.4	.62	37.2	.96	57.6
2. Harrow (perpendicular)	80	5.5	80	9.04	.24	14.4	.21	12.6	.45	27.0
3. Cultivator (diagonal)	40	5.5	80	6.56	.34	20.4	.62	37.2	.96	57.6
4. Seeding (perpendicular)	40	5.5	80	7.08	.37	22.2	.42	25.2	.79	47.4
5. Harrow (diagonal)	80	5.5	80	9.04	.24	14.4	.41	24.6	.65	39.0
6. Harrow (diagonal)	80	5.5	80	9.04	.24	14.4	.41	24.6	.65	39.0
7. Spraying (perpendicular)	70	5	75	7.78	.27	16.2	.23	13.8	.50	30.0
8. Swathing (perpendicular)	24	5.5	80	5.14	.45	27.0	.42	25.2	.87	52.2
9. Combining (Perpendicular)	24	5.5	75	5.14	.48	28.8	.42	25.2	.90	54.0
10. Cultivation (diagonal)	40	5.5	80%	6.56	.34	20.4	.62	37.2	.96	57.6
11. Fertilize with air seeded	40	5.5	80%	6.56	.34	20.4	.62	37.2	.96	57.6
Average all Operations	50.73	5.45	79.09	7.14	—	—	—	—	—	—
				TOTAL TIME	3.65	219	5.0	300	8.65Hrs.	519

FIGURE 1

A PERPENDICULAR PATTERN OF WORKING AROUND A WELL SITE AND AN ACCESS ROAD



LEGEND:

| | Headland, wide 2 widths of the implement

w Width of the implement

⟶ Pattern of field operation

Area of Headland (acres) =

(perimeter of the access road and the well site lease (ft.) X width of the headland (ft.) + correction factor*) ÷ 43560

Time to Work the Headland (hours) =

(area of headland (acres) X 8.25) ÷ (width of implement (ft.) X speed (m.p.h.) X field efficiency X 0.9)(reduction in field efficiency of 10%)

Turning Time (hrs.) While working the land adjoining the lease:

Number of turns = (length of the access road (ft.) + width of the well site lease (ft.)) ÷ width of the implement in use

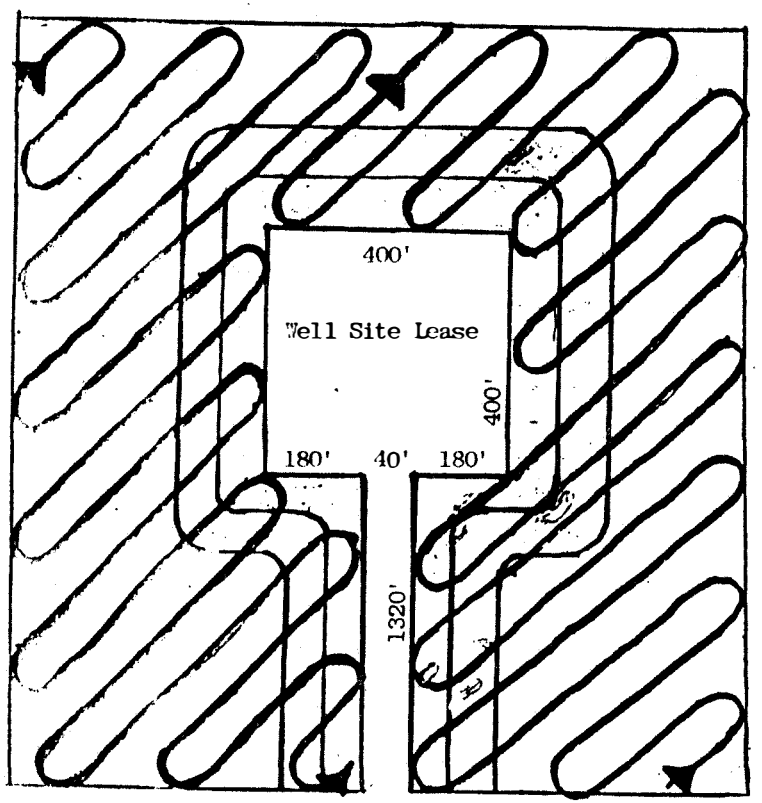
Distance travelled (miles) = number of turns X width of headland X 2 ÷ 5280

Turning time (hrs.) = distance travelled (miles) ÷(working speed (mph) X 0.5)

* correction factor for width of headland of 1w = $2w^2$
correction factor for width of headland of 2w = $8w^2$
correction factor for width of headland of 3w = $18w^2$
correction factor for width of headland of 4w = $32w^2$
correction factor for width of headland of 5w = $50w^2$

FIGURE 2

A DIAGONAL (45°) PATTERN OF WORKING AROUND A WELL SITE AND AN ACCESS ROAD



LEGEND:

H Headland, wide 2 widths of the implement

W Width of the implement in use

→ Pattern of field operations

Area of Headland (acres) =

(perimeter of the access road and the well site lease (ft.) x width of the headland (ft.) + correction factor*) ÷ 43,560

Time to Work the Headland (hrs.) =

(area of headland (ac.) x 8.25) ÷ (width of the implement in use (ft.) x working speed (mph) x field efficiency ratio x 0.9)

Turning Time (hrs.) while working the land adjoining the lease:

Number of Turns = (perimeter of the access road and the well site lease (ft.) ÷ width of the implement in use (ft.)) + 2

Distance travelled (miles) = number of turns x width of the headland x 1.4 x 2 ÷ 5,280

Turning Time (hrs.) = distance travelled (miles) ÷ (working speed (mph) x 0.5)

*correction factor, see Figure 1

like that. I should know better. I am just displaying my lack of memory, but it is being rapidly brought back to my attention as I was in the Legislature during the days of Mr. Tommy Douglas, who was very good at those types of things.

Under Section 6(6), the Board shall meet at the call of the presiding member or at the direction of the Minister. There are two or three places where this occurs, or at the direction of the Minister, this is the only Act that contains that phrasing. I will not object to it because I don't understand at what point he would be involved that the Board wasn't involved, and why the Minister would become involved individually. I think it's just language that goes in common to maybe the legislators of this province. It appears in three or four places for which - I see nothing out of experience in either legislation or on the ground that would be of any assistance, but I take note it's there, and that the Minister could somehow or other direct the Board to meet when the Board didn't want to or the parties didn't want it and I don't know what it would be for, but not knowing I better cease and desist any further comment.

I would hope that although this is not in the Saskatchewan Act and not in Alberta, but in practice, the Board members receive admonition that they should recognize the importance of the food industry in the spring, in the fall, in the calving season, when you can hardly get the attention of any farmer who is worth his salt. We can understand why. It is extremely critical. We're doing a good job of producing food for an awful lot of people in the world and that's important. So is energy, that's right. There's not much sense in having them warm if they're hungry.

In those three critical seasons, someone should ensure that if you wish it would be useful to have in your legislation, but it has not been put in because it wasn't necessary in the other provinces, that there would be no, other than Right of Entry matters, there would be no other matters the Board would set down during that period of time.

There was a period when this was done and a few people had to learn very rapidly that they just won't show up. You had nobody there. You simply have to adjourn and you are very embarrassed. So it could be useful if you could find a way, except for the Right of Entry to provide there would be no hearings during the calving, seeding, or harvesting season and we all know what that season is.

Section 6(11), Mr. Chairman, would be useful. The principle is great. It will solve some of the problems that were mentioned and there are times, particularly early in your Board meetings at which you will need extra people, but they should have similar qualifications if you were going to put qualifications in - similar qualifications to 6(2) or some problem could be anticipated there. That's equally true in 6(12).

I would like to deal with a delicate one, 7(3). When I pass over these, I have no objections to them. I think they are good and I might tell you that you are on the leading edge of surface legislation in a number of places. You are not following Alberta and Saskatchewan at all. You are stepping out and you are doing an excellent job of it and you are to be commended, and I am acquainted with the fact that some of your ideas are now being adopted and talked about by legislators in the other two provinces.

You elect to face this question of evidence under oath and you do so in the manner common to legislators and lawyers and courts, that you become preoccupied with the oath. It gets in the road. It is done. As you know, it is not referred to in either of the Saskatchewan or Alberta Acts. This is unique that you put it in there and require it under oath. What is done is that, as soon as you put them under oath, it's not a question of getting truth or lies. It is putting them under a custom or a feeling. That's really what happens. A liar under oath can be just as much a liar, as a liar not under oath and those of you who practise law and there must be some of you, have often wondered just what value, but it is that, as Mr. Downey says, sort of a halo that gets over you and it does get the truth out. It does it, because of custom and feeling and formality and things like that. But you are trying to set up a Board where you are minimizing all of these things, quite properly so, and there is a great repartee that goes back and forth between Board members, operators, owner, and you really don't have evidence given in the same sense as at court in a chronological order. That's not how it works best, how it works best in Alberta or Saskatchewan or in Manitoba.

It works best when there is simply three, four people around a table and they're exchanging views and, "Yes, Tom, no Bill", and things like that. Very difficult to operate under oath under those circumstances. What you may, what you certainly can do, the Board is not bound by the technical rules of evidence, which is good, and that's found in Alberta and Saskatchewan, of course, that they do put them under oath when you get a critical diametrically opposite statement of facts, and then the chairman will say, hold it, you're saying that he did this and he says that he didn't do it. Now I've got to get it down on the transcript and then all this informality stops for a few minutes, and the owner stands up and he gives his statement of fact, and the operator gives a statement of fact that is in contest. It's rather impressive that each of them change their position just slightly under oath and the slightness is just sufficient to coincide it. And now, there isn't a problem. But you would have had a problem. And I would commend to you, that what you say if you must here, is that the chairman shall have authority when necessary to place any or all witnesses under oath for all or any part of their testimony.

If you put them under oath notwithstanding your 7(2) - with the oath come some other rules of law; such as, under oath you can't give an opinion, that's not a statement of fact, it's an opinion, and you can't give opinion evidence according to the self-same rules of oath, unless you are established as an expert and there ares certain expertise rules and regulations. So when you get the hide you also get the tail and you've got to have something to do with it. You've got a problem here if you continue this.

There is nothing wrong with your principle that everybody shall tell the truth and we're all for it and an oath does help, but only if there is a conflict and only on questions of fact. When the owner comes in he has to really talk about opinion, and the opinion of himself, and his father before him, and his neighbour, and everybody else, as to what the problems will be and how they are solved and what the cost is going to be and the compensation.

Under oath it would be extremely difficult. You attract lawyers like flies to this kind of a thing - you don't help yourself at all, you create some problems. I commend to you to reconsider that one and to make some changes. It's a delicate one to touch because it looks like you're saying we don't want farmers under oath because they want to tell lies. A farmer isn't nearly as good at lie telling as some other members of the citizenry and certain professions shall not be mentioned by me.

Mr. Chairman, if I might refer you on this subject to your Section 9. There's nothing wrong with the form of your idea. It is followed by the other two provinces and it says, such information as may be prescribed, you will find the form is really set out on your Section 23(2) further on. Some care has to be taken here and I draw your attention to Commissioner Nugent's report on the same subject on Page 28, Section 2.04.02, that the offers and counter-offers ought not to be included in the form of notice. Your current form of notice on 23(2) would permit this. It certainly doesn't dictate it, but it would permit it.

There is a good reason to leave those - if you want most of your settlements to be made in the field, you'd better not have them hampered, by knowing in advance that if I make an offer, it's going to be mentioned to the Board and neither one will make an offer, so the two of them stand mute, all scared stiff of making any effort towards negotiating and regrettably, it just simply results in that. Nothing happens and nobody will make an offer.

More than 90 percent of all installations are taken without the assistance of the Board in either Saskatchewan or Alberta; therefore, more than 90 percent of them are settled by negotiations and offers are given back and forth. Some of them are ridiculously high and others ridiculously low, but that doesn't startle anybody in our economy, that's what happens in every case. I always ask for the highest price because then I can work down. He always offers the lowest because then he can work up. This doesn't startle anybody, this is the way we do business in all fields of activity.

But if those offers have to go in front of the Board, then the Board has some unnecessary targets and they should not be referred to. Your solution, of course, is to make sure that when your notice is prescribed by the Board, or made up by your staff, it does not include that, and so you'll have to watch 23(2) when you do it. It's caused enormous problems in the other two jurisdictions and it'll certainly do it here. Nobody will give an offer at all.

Now, Section 12(1), and once again, the last phrase "or by the Minister". The rest of the general powers, excellent. They're paraphrasing that which is found in the other two jurisdictions. It works well, a great idea, "or by the Minister", I've made my comments. I don't understand why and it is not in either of the other two and I have never heard of a case where the Minister ought to have interfered over and above the decision of the Board. You might like to take a look at it.

The 14 - no big point. There's some fear, particularly if the qualifications consist of people that are not agriculturally familiar necessarily, but are oil-industry oriented, that the oil industry member would, of course be this one member and there would be a fear. I'm taking the most ridiculous possibilities here and I'm sure it wouldn't occur that way, but it could, in the agony of trying to get members out, looking into situations, You will get a farmer just absolutely drying up because he knows who this fellow is, so if you clean the qualifications up, you have no problem with this and it's done in both of the other jurisdictions and it works out very well. But if you leave in the qualifications and create an antagonist Board, Arbitration Board, then, of course, you've got a real problem with this one.

Section 9(2) permits this type of thing in Saskatchewan, provided all parties consent. So if you leave this wide qualification in, then you might amend 14 by saying, "providing all parties consent". Now you haven't a problem at all.

That is the whole of our comments on detail on the Board, Mr. Chairman. There might be some who wish to ask questions on the Board. Again, I'm quite willing to answer any of them from one end to the other, but we'd appreciate it being confined to the Board as we go through the whole Act.

MR. CHAIRMAN: Mr. Graham.

MR. H. GRAHAM: Thank you, Mr. Chairman. I would like to refer Mr. Kohaly to Section 11 dealing with deposits with the Board. It says: "In accordance with the Rules of the Board made under Section 7." Section 7 says, "the Board is not bound by the rules of technical evidence," do they mean Part VII, which deals with appeals? Is that probably a misprint there?

MR. R. KOHALY: It's a misprint, sir. There are a number of those, we didn't bother drawing that. We knew your Legislative Counsel would catch it.

MR. H. GRAHAM: The other thing that I just raise, because I know that Mr. Kohaly is a lawyer, in your business quite often you keep large sums of money on deposit at times under pretty strict rules; should those rules not apply to the Board here, too?

MR. R. KOHALY: Well sums of money in this day and age are not really that large, Mr. Graham, unless you think of $7,000 and $8,000 times 10 or 20 as large. I have seen no problem with this, Sir, none whatsoever. You have some normal accounting procedures, I'm sure, in place here that would be applicable to this Board, as to all Boards who handle money. I would anticipate that's in place.

MR. CHAIRMAN: This seems like an appropriate time to interrupt. It's 12:30, the usual hour of adjournment. What is the will of the committee?

Mr. Graham.

MR. H. GRAHAM: Before the committee rises, can the Chair give any indication of when this committee will meet again?

MR. CHAIRMAN: Yes, it would not be committee rise, I would merely be leaving the Chair until 8:00 o'clock tonight. (Agreed)

I might note that people who are waiting to give their presentations, we do hope to finish them all tonight. It may be a late session but we'll try to complete them after 8:00 o'clock.

WRITTEN BRIEFS SUBMITTED

Canadian Association of Petroleum Landmen Surface Rights Sub-Committee Response to Bill 5, The Surface Rights Act.

Opening Remarks, closing remarks and address regarding Surface Rights Board formation proposed in Bill 5, The Surface Rights Act, by Mervin Henkelman to the Honourable W. Parasiuk

HARMONY

We wish to congratulate your government for the introduction of Bill 5 at a time when surface rights activity is increasing. Commencing with the Commission of Enquiry into Surface Rights in Manitoba, as well as your dialogue with the agricultural community and our industry in creating an environment for co-operative legislation in Manitoba today, we recognize it is necessary to promote harmoney between the industries of agriculture and petroleum.

We attribute a lack of harmony in surface rights today to the period of relative inactivity Manitoba experienced in the 1970's compared to certain other areas of Canada. The past three years, though, in Manitoba, has produced a flurry of exploration and development drilling activity. Given some consistency in Lessor's Royalty rates, there is optimism in our industry that this trend will provide long-term growth.

You have recognized and proposed the two key ingredients we feel are necessary to provide harmony in surface rights. Bill 5 proposes:

1) a new Surface Rights Act and
2) the formation of a Surface Rights Board.

SURFACE RIGHTS ACT

It is our experience that a surface rights act, in order to be successful, must accomplish the following:

A. It must provide a fair formula for determining the compensation to be paid to a landowner in acquiring Right of Entry. If such a formula is realistic, it will serve as a guideline to industry that will be accepted by landowners and result in settlement of more than 90 percent of all such dealings. In determining this formula, one must always be conscious of the relatively small profit margin available to our industry in developing Manitoba's reserves. The pools found to date in Manitoba are shallow sands of lower pressure that hold small volumes of oil and gas per acre foot when compared to reef developments, and other deeper reserves that have traditionally provided the necessary income for companies to grow in Canada.

One must also take into consideration that the industry's share of every barrel of oil produced in Canada has recently been reduced by the Federal Government's National Energy Program. In determining compensation we have suggested certain clarifications and amendments be made to Bill 5.

B. The Act must provide a mechanism of arbitration to settle those unique situations where the normal bargaining process breaks down. This occurs when a landowner and energy company cannot agree on a price for the Right of Entry. The arbitration process must work fairly, efficiently and without prejudice. We have certain recommendations for clarification and further definition regarding the establishment of the Surface Rights Board that we feel will help accomplish this goal.

C. The Act must provide guidelines for abandonment of our industry's operations that limit the negative effects on the environment. These guidelines must provide for stringent reclamation policies that our industry will responsibly and eagerly follow providing such guidelines are realistic and do not handicap our ongoing activity without providing real benefit to a landowner. We have suggested minor clarifications in this section of Bill 5.

D. The final criteria of an effective surface rights Act is that it must provide our industry a Right of Entry in a time frame that enables us to continue to operate efficiently. In this area, the industry must effectively communicate the many varied and limiting time frames that affect our day-to-day operations. We will discuss these time restraint requirements before outlining a series of amendments to Bill 5 to restructure the Bill's Right of Entry process.

BOARD JURISDICTION

If a good Surface Rights Act is to provide a fair and expedient means of arbitration, then the jurisdiction of this Board must be autonomous and free from the departmental influences of agriculture and mining. We commend you on the process for making appointments outlined in Part 2, section 6(1). However, we strongly recommend that the Surface Rights Board report directly to the Department of the Attorney-General as the most impartial body.

BOARD MEMBERSHIP AND QUALIFICATIONS

The effectiveness of this Board depends greatly upon the selection of its membership. Based on our past experience, we wish to set forth the following criteria for membership on the Board:

A. Full-time members only

All members should be full-time members whose primary source of income is derived from this endeavour. Such a membership will provide continuity of arbitration decisions from one district of Manitoba to the next. These members who will derive their income solely from this source will not suffer conflicts of business interests, leaving the members free to consider only the evidence before them.

B. Varied backgrounds

To assure proper consideration of each party, the Surface Rights Board should contain a reasonable mix of experience and background amongst its members. Certainly one member should be chosen for his agricultural understanding and another for his familiarity with petroleum operations.

C. Expertise

If experienced individuals with this mix of backgrounds can be hired, some criteria for expertise will be met. It's our experience that membership must

exhibit highly developed communication skills and the ability to learn the legal process to take place in a hearing. Members must be also able to control the ambitions and moods of the parties in a surface rights hearing and in some cases, the maneuverings of their legal counsel.

D. Neutrality

The process for selecting members of the Board should be based upon qualifications rather than political, social or other affiliations.

TIME CONSTRAINTS

With reference to 16(2) and 16(3) of Bill 5, "Waiting Period" and "No Waiver" respectively, it has been the committee's recognition that a two-day waiting period (excluding Sundays) is an acceptable time frame for both parties to reopen negotiations.

The individual who has previously dealt in similar land negotiations, may or may not require the two-day decision period, therefore, the individual should have the option of signing a waiver, as a right of the individual's freedom of choice. Considering the complexity of the time restraints, we propose the redrafting of the Right of Entry portions of Bill 5 and with an explanation of this process, I wish to introduce Bob Howard.

RIGHT OF ENTRY

(Bob Howard on Right of Entry).

COMPENSATION

Thank you, Bob. Gentlemen, we mentioned that to be effective, a Surface Rights Act must provide guidelines for determining compensation that are fair to both parties so they will be adopted in every day negotiations and limit the cases appearing before the Surface Rights Board. In determining compensation, one must consider the legal rights of each party by virtue of its interest in land or mineral rights.

I call upon John Kanderka to discuss the clarifications and amendments we think necessary to obtain this end.

(John Kanderka on compensation).

CLOSING

Some of the changes we have just outlined, coupled with some less complex changes proposed in our comments, will require the redrafting of certain sections. We believe these changes will aid us in performing our day-to-day jobs without reducing the rights of the landowner. We also feel they are critical to the harmony that Surface Rights demands.

Without these changes, our industry cannot function at the high level of efficiency necessary for profitability in Manitoba. We are certain that no landowner will begrudge another industry its right to compete in world markets, as petroleum always has. In so doing, petroleum will be able to provide future employment opportunities for young Manitobans.

We are sympathetic to the strong lobby by your rural voters and encourage their participation. There are, however, other professions and individuals who are active within the legal process who stand to benefit from, without making any investment in, the Surface Rights process. This should be considered.

There may be pressure upon you to make certain retroactive changes to Surface Rights legislation. We feel you must resist this, as retroactive legislation is unfair to the investor. Other Canadian legislation such as the National Energy Policy has resulted in the loss of most foreign and many Canadian investors, who must now add to their considerable investment risks the uncertainty of governmental changes prior to payout of the investment.

Furthermore, the Bill delivers a great deal of authority to a single office that should be carefully monitored. This will be assured if our recommendations for jurisdiction of the Board are followed. The energy company will be able to lobby interpretation problems through the Mines Department and landowners through the Department of Agriculture. All debate can then be considered freely by the neutrality of the Attorney-General's Department.

Should you require further discussion by all the vested interest groups on Surface Rights in Manitoba, please look to the Canadian Association of Petroleum Landmen as a catalyst to gather industry opinion. In Alberta, a joint committee, with membership from the Canadian Association of Petroleum Landmen, the Independent Petroleum Assocation of Canada and the Canadian Petroleum Association, represents nearly every Canadian oil company, and was formed for this purpose.

M. Henkelman
Assistant Chairman
C.A.P.L. Sub-Committee
(Manitoba)

Address of R. K. Howard to the Honourable W. Parasiuk on the subject of Right of Entry legislation contained in Bill 5, The Surface Rights Act.

The subject of the Right of Entry itself is one of the most critical aspects of any surface rights legislation, as it must be infused into any operator's exploratory or development plans. Without a predictable time frame within which to operate, opportunities for economic growth diminish considerably, and are, at times, lost entirely. The act of drilling a well involves a great deal of planning in order to justify expenses usually exceeding one-quarter of a million dollars. Geophysics must be studied at length and geology must be made reasonably predictable. Engineers must be able to provide justifiable economic recovery from all expenses and contractual landmen must complete often complex negotiations with surrounding mineral interests. To set up a comprehensive drilling program then, is a formidable task.

This bring us back to the critical facet of the subject - time. The effect of leaving a non-predictable time frame in a critical area is extremely disruptive, often with regrettable result - a decrease in activity; lost revenue to the operator involved, the Government of Manitoba, and the citizens of Manitoba; and a lack of confidence with which to pursue new opportunities.

To be able to properly comprehend the aspect of a Right of Entry, we believe an examination of its origins is essential.

When an operator invests the time, energy and capital required to acquire legal rights to explore, and then invests the same in choosing an economical place to drill, negotiations to make fair allowance for surface rights begin. The goal of any operator must be to provide ample consideration and equitable compensation for those rights - to do otherwise would definitely be contrary to the operator's best future interests. When an operator is unable to arrive at a reasonable agreement which is in the best interests of both parties, it is always for one of three basic reasons: location chosen, undue hardship caused, or compensation.

If undue hardship will be created by activity, or the location of that activity is onerous, the problem must obviously be addressed prior to the Right of Entry; failure to do so could cause irreparable harm. When compensation is the reason for a dispute no irreparable harm comes from immediate Right of Entry.

There exist those who would have people believe that some operators show disregard for landowner's rights and those who say that most landowners are unreasonable. We believe that each example is a rarity - the exception rather than the rule. But the purpose of legislation should be in the public's best interest, to ensure that neither party's rights suffer undue hardship.

Taking the foregoing into consideration, it seems clear that when it is shown that one party's rights will not suffer undue hardship by the immediate exercising of the other's rights, that activity must be allowed to commence within a reasonable and predictable time frame. This would apply to a farmer requiring access to a severed portion of land at seeding time or an operator drilling to preserve his mineral interest.

Our proposed amendments to sections 25 & 27 of Bill 5 are composed in order to provide a reasonable and predictable time frame. The ramifications of leaving "loopholes" or delays for ulterior motives are far-reaching and dangerous. It is regrettable that legislation must be specifically designed to eliminate these practices, however, such is the case; the practices do exist. When, in negotiating an agreement, one party's rights are restricted by time and the other party's interests are not, that element, time, is a common weapon for non-restricted parties with grossly self-serving interests. To allow this to occur destroys the credibility of honest agreements, and, in our view, is contrary to the public interest. One example of this, in our experience, occurs when a surface owner also owns the mineral rights, and, for the purpose of obtaining a new mineral lease, utilizes any forestalling technique available.

Legislation and relevant regulations throughout the balance of western Canada take precautions against abuse of legislation and we urge the Government of Manitoba to consider the same. Indeterminate time frames for Right of Entry orders, allowance of absolutely unnecessary hearings prior to those orders, and automatic assessment of liability for costs, as part of legislation, are some areas we strongly believe would be subject to abuse.

Please consider carefully the suggestions and ideas we have learned through experience. We trust they will be considered with the same impartiality with which we have attempted to contruct them.

R.K. Howard
C.A.P.L. Sub-Committee
(Manitoba)

Address of J. Kanderka to the Honourable W. Parasiuk on the subject of Compensation Legislation contained in Bill 5, The Surface Rights Act.

With reference to section 26(1) of Bill 5, "Determination of Compensation," a review by this committee has condensed your reommendations into the following categories:

(a) Consideration to present use, fair market land value, reversionary and residual values as related to land value, and permanent or temporarily damaged land which may have reverted to the owner.
(b) Loss of use of land as it pertains to net revenue derived therefrom.
(c) Those nuisances and inconveniences peculiar to the first year of operations, which do not recur on annual basis.
(d) Those nuisances and inconveniences which occur on an annual basis.
(e) Where applicable in the opinions of the Board, interest at a rate prescribed by the regulations.
(f) Such other factors as the Board deems proper, relevant and applicable.

We feel that the above categories represent a fair and more workable format for all parties, with less repetition, but allowing the Board all necessary flexibility to determine fair compensation.

As the above categories are all self-explanatory, we would like to expand on the C.A.P.L. recommendation regarding "residual and reversionary" values as indicated in category (a). These terms should occur more commonly in daily negotiation between landowner and operator.

Residual interest is the right to continue enjoyment of the rights of ownership, as well as the right to receive payment, either once or annually, for rights temporarily relinquished (i.e. well site and access roadway).

Reversionary interest is the landowner's right to regain full title to, and possession of, the land, upon the termination of the operator's agreement.

These rights have historically held a significant value even though determination of that value is often difficult. Residual and reversionary interests have been tried and recognized in the Courts of Alberta (i.e. Cochin Pipelines Limited vs Rattray, November, 1980 Alberta Court of Appeal; Dome Petroleum Limited and Liivam Farms Ltd., Egbert, J.C.Q.B.A., August 3, 1982; Gulf Canada Resources Inc. and John Hodgins Moore et al, Holmes, J.C.Q.B.A., September 9, 1982), and we feel the concept of residual and reversionary rights cannot be ignored in the course of determining compensation.

J. Kanderka
C.A.P.L. Sub-Committee
(Manitoba)

List of Proposed Amendments, Bill No. 5 The Surface Rights Act

Definitions: "Minister"

Comment: We consider the Department of the Attorney-General as the most impartial body to be charged with "administration of this Act."

PART II SURFACE RIGHTS BOARD

Section 6(2) Qualifications

Proposed Wording: The members of the Board shall be appointed having regard to their expertise with agriculture or the petroleum industry of the province.

Comment: The criteria for members of the Board should include:

a) full-time members,
b) a reasonable mix of backgrounds (i.e. agriculture, oil)
c) sole occupation,
d) expertise,
e) neutrality (i.e. no vested interests)

Section 6(3) Term of office

Comment: We consider a meximum age of 70 years to be an acceptable limitation.

Section 7(2) Rules of evidence

Comment: We feel this section should be deleted from the bill as rules of evidence are properly covered under section 7(3) Evidence under oath.

Section 12(2)(f) Powers of Board

Comment: We feel this subsection should be deleted as it destroys the impartiality of the Board, is an unnecessary burden upon the Board, and provides opportunity for unnecessary delays in the negotiation process.

Section 15 Annual Report

Comment: The annual report should also include a Cash Flow Statement (i.e. budget, disbursements, statement of monies received, etc.).

PART III RIGHT OF ENTRY

Section 16(2) Form of surface rights agreement

Comment: Any attempt to standardize Surface Rights Agreements will limit flexibility in dealing with industry and landowner requirements. Standardization will also limit individual rights in a market transaction unless the document is acceptable to each party.

Section 16(3) Waiting Period

Proposed Wording: An agreement shall not be executed by an owner or occupant within two (2) days (excluding Sundays) of the day of delivery of the proposed agreement by an operator to the owner or occupant.

Comment: Two (2) days has always been a historically acceptable time frame within which to reopen negotiations.

Section 16(4) No waiver

Proposed Wording: The provision of subsection (3) may be waived by an owner or occupant in the form prescribed in the regulations.

Comment: The denial of an individual's right to sign private agreements is in direct contravention of his individual liberties.

Section 18(2) Order to specify rights granted

Proposed Wording: An order made under subsection (1) shall specify the rights granted and the purposes thereof. An accurate description of the land or a plan thereof shall be attached to the order for the purpose of clearly determining the area or portion of the land or the interest therein with respect to which the rights are granted.

Comment: The term required prior to entry is unascertainable and the provision for termination after Right of Entry is provided for in Part IV ABANDONMENT and in section 57(1) Termination of Right of Entry. Rights granted under this section should be consistent in allowing for operations to drill and produce mines and minerals.

Section 21(1) Operator to file agreement with Board.

Proposed Wording: Every agreement entered into after the coming into force of this Act between an operator and an owner or between an operator and the occupant, if any, with respect to compensation for any surface right shall be in writing and a copy of the agreement shall be filed by the operator with the Board within 60 days after the date of execution thereof.

Comment: Given that the date of execution is the date the registered owner signs, we feel a more reasonable time frame would allow for execution by the lessee, clearing title, caveating, payment and internal processing. We feel 60 days is more reasonable. We also seek clarification in the section regarding the acquisition and exercise of options and regarding other forms of agreements.

Section 23(1) Application to Board for hearing.

Proposed Wording: Where an operator and the owner or an operator and the occupant, as the case may be, are unable to agree upon the surface rights that may be required by the operator, or upon the compensation to be paid therefor, or where any dispute arises between them as to the interpretation of an agreement in the form prescribed or as to the exercise of any right or the performance of any obligation under any agreement in the form prescribed or under this Act, or where an applicaton may be made to the Board pursuant to any other provision of this Act, the operator, owner or occupant, as the case may be, may serve a notice of intention to have those matters determined by the Board, upon each of the parties involved and shall forthwith file a copy of the notice with the Board.

Comment: We feel the term "agreement in the form prescribed" provides consistency in the Act.

Section 25(1) Notice of Hearing

Proposed Wording: The Board shall fix a date and place for the hearing of the matters in dispute and shall serve the operator, owner and occupant, if any, with written notice thereof not less than 7 days before the date so fixed. On non-compensatory disputes the date of the hearing shall be within 7 days of the date of notice, and within 14 days of application for the hearing.

Comment: We refer you to the address of R.K. Howard to the Honourable W. Parasiuk, February 18, 1983, concerning Right of Entry and particularly concerning circumstances necessitating a hearing prior to Right of Entry.

Section 25(5) Restriction upon scope of order.

Proposed Wording: An order granting surface rights shall not grant any rights other than rights which the operator may reasonably propose to utilize within the 12-month period next following the date of the order.

Comment: We feel a one-year period is more acceptable in order to take into consideration events of an environmentally sensitive or seasonal nature. Reference may also be made to section 57(1) Termination of Right of Entry.

Section 25(7) Decision within 7 days

Proposed Wording: Unless the parties to a hearing otherwise agree, the Board shall render a decision upon any application regarding a non-compensatory dispute within 7 days of completion of the hearing.

Comment: We feel a decision for Right of Entry itself, within 7 days of hearing, represents a much more reasonable time frame. For compensatory disputes, we refer to section 27(1) Interim order.

Section 26(1) Determination of compensation.

Proposed Wording: For the purpose of determining the compensation to be paid for surface rights acquired by an operator, the Board shall consider the following matters:

(a) Consideration to present use, fair market land value, reversionary and residual values as related to land value, and permanent or temporarily damaged land which may have reverted to the owner.
(b) Loss of use of land as it pertains to net revenue derived therefrom.
(c) Those nuisances and inconveniences peculiar to the first year of operations, which do not recur on an annual basis.
(d) Those nuisances and inconveniences which occur on an annual basis.
(e) Where applicable in the opinion of the Board, interest at a rate prescribed by the regulations.
(f) Such other factors as the Board deems proper, relevant and applicable.

Comment: We feel our amendments represent a fair and concise method of approaching all matters of compensation and allow the Board all necessary flexibility to determine the same. Too many categories tend to encourage separate awards for each which may overlap.

Section 26(2) Cost of hearing

Proposed Wording: The Board may award the costs of and incidental to, participation in any of its proceedings, including awards where appropriate, to persons

(a) who effectively represent an interest which contributed to or could reasonably be expected to contribute substantially to a fair disposition of the proceeding, taking into account the need for representation of a fair balance of interests;
(b) who represent an economic interest which is small when applied to individual persons in comparison to the costs of effective participation in the proceeding, or who do not have sufficient resources available to participate effectively in the proceeding without undue curtailment of that person's other activities in the absence of a costs award; or
(c) who are permitted to participate in the Board's proceedings by law, Board practice or the exercise of the Board's discretion.

Comment: We feel the necessity and apportionment of awards is better determined at the proceedings and not prior to the proceedings. Should an award, in advance of proceedings, prove at those proceedings to have been too high, difficulties in repayment are consequential. It is common practice to invoice at completion of a job.

Section 26(3) Apportionment of costs

Proposed Wording:

(a) The reasonable costs of and incidental to the proceedings before the Board are in the discretion of the Board and may be fixed in any case at a sum certain or may be taxed.
(b) The Board may order by whom the costs are to be taxed and allowed.
(c) The costs may include all out-of-pocket costs of the respondent necessarily incurred in reaching a decision whether or not to accept the compensation offered by the operator.
(d) Where
    (i) the Board has granted a Right of Entry order, and
    (ii) the owner or occupant has refused to allow the operator to enter upon and use the lands to which the operator is entitled as described in the order,

the operator may apply to the Board to deduct from the compensation payable under the compensation order the costs incurred by the operator in and incidental to obtaining entry upon and use of the land pursuant to the provisions of the Right of Entry order.

(e) The amount of costs, if any, to be deducted under subsection (d) is in the discretion of the Board.

Comment: We feel the automatic onus of all costs being borne by the operator is unfair as the necessity

for a hearing may not always be the result of an operator's unwillingness to negotiate in good faith but may also be necessitated by the respondent's same unwillingness. This section as written lends itself to abuse by the owner or occupant and encourages recourse to the Board.

Section 27(1) Interim order

Proposed Wording: Notwithstanding anything in this Act or in the rules of practice and procedure of the Board, an operator may at any time after the filing of a notice with the Board and after having given to the owner, and occupant if any, 7 clear days notice in advance thereof, apply to the Board for an interim order granting surface rights, should such notice refer to a dispute of a compensatory nature.

Comment: We refer you to the address of R.K. Howard to the Honourable W. Parasiuk, February 18, 1983, concerning Right of Entry and particularly concerning circumstances necessitating a hearing prior to Right of Entry.

Section 27(2) Requirement for immediate Right of Entry

Proposed Wording: The Board shall not grant such interim order unless it is satisfied that the operator requires immediate Right of Entry and that the requirement outweighs any prejudice to the interests of the owner, or occupant if any. The Board shall nonetheless render a decision upon an application within 7 clear days of the application.

Comment: We feel a time frame of 7 clear days is ample provision for a decision of this nature.

PART IV ABANDONMENT

Section 37(1) Notice

Proposed Wording: Where an operator proposes to abandon or surrender part or all of any surface rights, the operator shall, at least one month prior to the date on which the abandonment or surrender is to be effective, serve a notice of intention on the owner and occupant, if any, stating the date on which the abandonment or surrender is to be effective.

Comment: We feel total reclamation in many instances can occur in the five-month interval between the proposed one-month period and the six-month period in the bill. The latter notice period may necessitate another annual rental payment being made on lands which are totally reclaimed and surrendered. We point out that the registered owner or occupant will still have recourse to any final assessment of damages necessary for a complete reclamation certificate.

Section 37(3) Deposit upon notice of abandonment

Comment: We feel that regulations should specify a maximum deposit in the form of a security bond or cash. We suggest a maximum of $50,000 to cover an operator's activities in the Province of Manitoba.

Section 40(1) Application where owner dissatisfied.

Proposed Wording: Where an owner or occupant, if any, who is served with a notice under section 37 is dissatisfied with the state or condition or restoration of land and the operator is not relieved of this obligation under section 39 to restore the surface of the land, the operator or the owner and occupant, if any, may within three years from the date on which the notice under section 37 was served, apply to the Board for determination of the matter.

Comment: We feel a three-year time frame is adequate to assess restoration of land. Evidence as to restoration efforts, land usage and productivity 10 years hence will be vague and unreliable. The proposed wording further provides consistency with section 41(2) Where no application under section 40.

Section 42 Removal of caveats

Proposed Wording: Subject to the provisions of section 40(1), the obligation of the operator with respect to compensation ordered or agreed to be paid shall continue unabated until application has been made to remove all caveats or other instruments registered by the operator against the land under The Real Propety Act and The Registry Act with respect to the rights to be abandoned, surrendered or quit claimed, as the case may be.

Comment: We feel the revised wording adequately protects an owner or occupant, while providing better protection for an operator. Should an operator feel that restoration is complete, an operator would be obliged to remove the caveat protecting his agreement in order to cease rental payments. A common clause under a surface lease is to allow an operator six months beyond termination to remove equipment. Caveat removal effectively eliminates that right. Should a land transfer immediately follow any caveat removal, an operator may also be put in a position in which he could not be allowed on land to complete extra restorative work later found necessary and forced to accept unreasonably priced work contracted by an owner or occupant.

PART V LIABILITY FOR TORTIOUS ACTS

Section 46(1) Determination of compensation where amount not agreed upon

Proposed Wording: Where an owner or occupant, as the case may be, and an operator are unable to agree upon the amount of loss or damage sustained by the owner or occupant as a result of a tortious act for which the operator is liable, the owner, occupant or operator may apply to the Board to determine the amount thereof; and upon receipt of the applicaton the Board shall hear and determine the merits of the claim and the amount of compensation or damages, if any, to be paid by the operator to the owner or occupant to a maximum of $5,000.00.

Comment: A limitation is necessary to protect the Board, the owner or occupant, and an operator in major cases best settled judicially.

Section 47 Prima facie evidence of tortious act

Comment: We feel this section must be deleted from the Act as it assumes guilt by association and there exists adequate remedy for the landowner under RES IPSA LOQUITOR.

PART VII GENERAL

Section 55(1) Operator's responsibility to cut down weeds

Proposed Wording: Unless the operator and the owner and occupant, if any, otherwise agree, it shall be the responsibility of every operator to cut down or otherwise control all weeds growing on the land on which the operations of the operator are being carried on and the operator shall cut down or root out and destroy the weeds each year before they have matured to seed.

Comment: Assessment of responsibility is preferable to direction to action which may not necessarily be in an owner's, occupant's, or operator's best interests.

Section 55(2) Failure to cut down weeds

Proposed Wording: Where an operator fails or neglects to comply with subsection (1), the owner or occupant may upon 7 days written notice to the operator, carry out the requirements of that subsection and for that purpose shall apply to the Board for an order requiring the operator to comply with that subsection.

Comment: The right of quiet enjoyment of demised premises is integral to all forms of lease agreements. This becomes especially true where confidential information may be obtained and where concerns of liabiilty are raised.

Section 68 Regulations

Comment: We would strongly request input into regulations proposed under this Act. We would also suggest the Lieutenant-Governor prescribe the availability and mailing at a nominal fee of Board decisions in geographical areas. This practice has worked extremely well in clearing doubt and ambiguity in the Province of Saskatchewan.

Section 70 Commencement of Act

Proposed Wording: This Act comes into force henceforth from the day assented to.

Comment: Retroactivity has great logistical problems and tends to encourage disputes. Practices carried out in compliance with previous Acts may prove in conflict with this bill and such disputes would provide an unnecessary burden on the Board, the operator and the owner or occupant.

PRESENTED BY: Manitoba Surface Association:

RESPONSE OF THE MANITOBA SURFACE RIGHTS ASSOCIATION TO BILL 5, THE SURFACE RIGHTS ACT

The Manitoba Surface Rights Association has consistently encouraged a comprehensive and separate piece of Legislation in respect to the Acquisition and Compensation for Surface Rights taken in respect to oilfield activity. The Association is a growing group of Owners and Occupants located throughout the oilfields of Manitoba having actual experience with the problems that develop where the oil industry and the farmer require the same land for the purpose of their collective and individual needs. The Association has consistently taken the position that while they would prefer to enjoy their ownership for the benefit of the agricultural industry, they recognize the public necessity to yield sufficient land so that the important energy industry may produce oil. With this in mind they expect the legislation to assist Owners and Operators to minimize the problems which occur where the two industries conflict in their needs. The bill goes a long way towards this objective. It is infinitely better than the previous provisions contained in The Mines Act.

With two major reservations, the association supports the provisions of the bill and encourages its early enactment. The first objection surrounds Section 6(2) respecting the qualifications of the members of the Surface Rights Board. The Association strongly objects to person being appointed to the Board who do not have relatively modern and current actual farming experience. The section should be changed so as to provide that this and this alone be the qualification for appointment. R.L.A. Nugent, Q.C. was appointed and spent some time to identify the problem and to make recommendations as to solutions in respect to the two industries. Upon hearing evidence from both sides, he properly concluded at Pages 27 and 28 of his Report, in paragraph 2.02, that the persons appointed be "selected for their experience or familiarity with the agricultural industry." It is obvious from reading the bill that it wisely and properly selected large portions of current legislation in Saskatchewn and Alberta to be applied in Manitoba. Both provinces have had a long experience with far greater numbers of installations to recommend selections at least of the general principle of qualifications in these provinces for Manitoba. In both provinces the Boards are selected from individuals with agricultural experience exclusively. Initially Saskatchewan attempted, like Manitoba, to place civil servants on the Board. This totally failed and the entire Board was withdrawn and replaced. Saskatchewan also attempted to place on the Board a person thoroughly familiar with the oil industry. This too failed and for the last ten years at least the Board has consisted only of those familiar with farming. When other efforts were made both industries found that the Board did not serve either of their purposes of quieting disputes. In both provinces for many years, both industries have found the Board useful and fair.

Having regard to the vast experience of the other two provinces, it seems unwise to revert to a composition that did not work and is unnecessary. It must be true that there are as many knowledgeable farmers in Manitoba who are just as fair and who understand these matters equally as well as their neighbours in either Saskatchewan or Alberta. There are only two major areas in which the Board operates. In respect to the Right of Entry there have been very few cases in either province in which a Right of Entry

has been denied outright and if so, the reasons were apparent and only temporary. On the question of compensation it is well-known that the awardS of both Sakatchewan and Alberta traditionally lag at least 15 percent behind the negotiated settlements for similar rights and privileges negotiated between the parties and therefore accepted by the Operators. These facts clearly demonstrate that farmers on the Board are knowledgeable, deal fairly, and recognize the rights of both parties.

The Board is neither authorized nor expected to deal with technical matters concerning exploration or production of oil. This matter is properly dealt with by The Mines Act and its Board, which of course, is composed of people having this type of knowledge and does not, quite properly, contain specific farmer experience. The technical problems of the oil industry are therefore well served by a separate Board.

The Right of Entry is primarily a question of meeting the technical requirements of location and then considering the physical features and the accommodation of the two industries on the same field, which is basically an agricultural consideration. The question of compensation is primarily reimbursement to the Owner for the additional expense incurred in farming by virtue of the injection of the oilfield installation into his farm field. It is critical therefore, that all of the people on the Board be themselves intimately aware of the farming procedures and have an ability to recognize the costs. Equally important, if the Board is to be accepted by both industries as the ultimate arbitrator, then it is necessary that farmers feel comfortable taking their case to the Board because they will be in front of people whom they immediately recognize as knowledgeable about their industry. If this is not the case then Owners will remain aloof from the Board or alternately and unfortunately it will turn into another forum for lawyers and other experts. In the final analysis it will not serve its purpose of quietly settling disputes in the community in which they occur.

It is not without some significance that Section 6(2) does not limit persons selected from the Petroleum Industry to even a minority position but permits the entire Board to be appointed from the Petroleum Industry. One would not expect this to be the result but it is possible. The alternate may well be that one of each of the named groups would be appointed whereupon divisions would develop and in fact you have an adversary Board which is not attractive.

The bill further provides that a single member may act on separate cases and that decision is the decision of the Board. The member from the Petroleum Industry could well be that person. Farmers would find such a Board totally unacceptable and in itself unfair. To those who say that the oil industry should have a representative on the Board or it would be unfair to them, it must be remembered that the Right of Entry itself is all that the Operator is interested in having from the Board, and that right is adequately protected, and in fact, tilted sharply in favor of the operation in Bill 5.

The second feature of the bill which is unacceptable and unwise is the provision for Appeal. Again, experience in the adjacent provinces is useful. There is no objection to a Right of Appeal in respect to jurisdiction or natural justice. Farmers support these principles equally with all other citizens. Experience indicates that Boards of Arbitration serve an extremely useful purpose, since they are usually composed of people knowledgeable in the areas in question, are more easily reached by the parties involved. They sit in the area in which the parties are located. The costs are manageable and at least relatively modest compared to litigation.

Both Saskatchewan and Alberta have tried various procedures in respect to Appeal requiring numerous amendments to their Acts. When Appeals were allowed the arbitration procedure did not work well. When they were restricted to their essentials they have worked well and to the satisfaction of both sides. It is extremely important to note that the Supreme Court of Canada in the only decision given by that court in surface rights matters respecting oilfield installations came down strongly on the side of the Arbitration Board and its specialized knowledge in legislation.

It would seem unfortunate if Manitoba farmers who have been long delayed in receiving treatment and compensation similar to their neighbours in Alberta and Saskatchewan were to be further penalized by again going through the exercise that was found so deficient in the other two provinces. If an Appeal procedure is advisable then it should be confined to the Court of Queen's Bench to questions of law or Board jurisdiction, and damage claims in excess of a substantial amount established by the regulation in which both industries have had an opportunity to express their views.

Matters which are less critical but of significant importance, if the Act is going to service either of the two industries well, are as follows:

1. The definition of "power lines" in its current form would deal with very few poles since the majority are established not "by an Operator" but by Hydro. The rules concerning power lines appear to be taken from the as yet unpublished amendments to The Saskatchewan Act. It is to be noted that the same phrase currently appears in the Saskatchewan legislation but it is provided in the same unpublished amendments to remove that phrase. The definition should be clarified to include those power poles already in place in respect to oil field installations and that they refer to poles both on and off the site.
2. Section 4 has a serious flaw in making The Surface Act potentially subservient to The Mines Act. This bill is intended to be a comprehensive procedure and therefore, if there are provisions in The Mines Act, which should be included in The Surface Act they should simply be included and then on the subject of the procedure this bill would prevail. There are a number of other places in the bill in which a similar argument can and is made.
3. Section 7(3) will create more problems than it solves. Again experience in numerous cases in the other provinces clearly indicate that the procedures of the Board as set out in Section 7(2) will be seriously interfered with by the necessity for witnesses to be under oath. There is no objection to any procedure which brings out the truth. Normally intelligent Board members will establish this feature and in those cases where it is necessary the parties could be put under oath if properly provided. It is to be remembered that

where persons are giving evidence under oath that certain difficult legal rules have developed which would be applicable if this provision were maintained. It is recommended that in its place the Board be given authority to place any witness under oath and to any part of his evidence it deems advisable. One would suspect that this would arise when there was material difference on facts between the parties. That would be soon enough to use the procedure of an oath to help to obtain the truth.

4. Section 16(3) does not provide a realistic period of time. This is a very useful and progressive section quite in line with other modern business procedures. The basic purpose of a waiting period is to give Owners an opportunity to seriously consider the material presented. It is often necessary to seek assistance. Assistance in the rural communities is at best confined to a very few people. The three days is much too short particularly if weekends were included. It would also be very short during the seeding and harvesting period. At a minimum it should be five days and more properly seven. If the oil industry properly anticipated its requirements for surface sites it would not be a question of the last minute nor a question measured in days at all.
5. Section 24(2) is not realistic. This section would seem to mean that time for service would run from the date it was received by the postmaster. Most procedural oilfield work is initiated in Calgary. The recipients of these notices from the Owners' standpoint are all farmers and most reside in the country. The time elements for giving Notices in this bill are all extremely short and are themselves the subject of complaint. It is a notorious fact throughout Canada that delivery of mail, in any fashion, is extremely slow. There are few communities in which mail can be expected to be delivered within anything less than a week of mailing. Our solicitors advise us that this procedure to count the time in respect to Notices is not the usual procedure followed in Manitoba. We recommend that at the minimum the Notice be deemed to have been received one week following the date of mailing and in the case of registered or certified mail to be the date of receipt. An outstanding example of the unfairness of Section 24(2) is found in the very important provisions of Section 27(1) respecting the Notice for an immediate Right of Entry. The seven days provided in that section is extremely critical and would, in our opinion, have the total seven days used up by the mailing procedure. It should be further noted that in Section 25(3) the Owner is given three days notice for the purpose of viewing and if this is to be by mail, it is doubtful if it would get from one side of Winnipeg to the other side in three days, let alone to rural communities in Manitoba or anywhere else in Canada.
6. Section 25(1) provides only fourteen days notice of a matter to be heard by the Board. It is hard to visualize why such a short time is granted to the Owner. If the Board is going to hold a Hearing it means that the negotiations between the Owner and Operator have failed. There is obviously some serious dispute between them since the vast majority of acquisitions are settled by negotiations. The matter is therefore important and it takes considerable time to consider the Owner's position and to prepare the presentations. As an example, our solicitors advise us that very few of such matters are presented for Hearing in such a short period as fourteen days. It sould be particularly difficult to the Owners to meet this short time frame particularly during seeding or harvesting. These two are critical seasons of the year for a critical industry. Fourteen days is little or no regard to the primary need of the Owner for time during these seasons.
7. Finally, with the exception of the immediate Right of Entry, the matters in dispute are basically those affecting the compensation of the Owner. The Association encourages a review of this time frame and that it be not less than thirty days at least during the seeding and harvesting period. Our views, in respect to the Right of Entry, are referred to later.
8. Section 25(5) as written, is supported however rights which are granted by the Owner and which are not exercised by the Operator within three months should automatically terminate (See Saskatchewan Section 86(1) and Alberta Section 25(1).
9. Section 26(1)(a) containS the phrase "having regard to its present use." The Association can see no value in the inclusion of this phrase. It should be borne in mind that farmers change the use of their land from time to time for good agricultural reasons. That which is pasture today may be cultivation tomorrow. Surface lease terms are usually 21 or 25 years but are renewable at the election of the Operator only for similar periods. Board Orders have no time limit. These time frames are so long that it is obvious there could be many changes in the farming use of the land and therefore the value of the compensation. The Association believes that this element of compensation is payable only once and for all. It is not reviewable as is the annual rent. Both Alberta and Saskatchewan legislation simply provide for the value of the land. Why Manitoba farmers should be restricted is beyond understanding.
10. Section 27(1) should more properly be called an "Immediate Right of Entry." As previously stated the time frame is extremely short when combined with the procedural rules. The taking of an Owner's land against his wishes should only occur following a full and fair hearing at which all parties have received adequate Notice and have been given an adequate opportunity to consider their position, receive advice, properly prepare and be able to present their case at a Hearing. It must be remembered that this taking by an Operator through the Order of a Board is for a private oil company to be able to make a profit. While the Owners recognnize the necessity to share their property with the energy industry, it should not be done in any fashion at the expense of the Owner. It is well known that oil wells are drilled and other installations established after very

lengthy and careful deliberation by the Operator. If an Operator deliberately ignores the known need for surface space until the last minute then such an Operator ought not to be given special privileges respecting time elements at the expense of the Owner who is being forced to respond in an unfair and hurried fashion. Both Alberta and Saskatchewan provide more realistic time elements, but they in turn are said by Owners in those provinces to also be too short and this particularly during the seeding and harvest time. The minimum time should be thirty days. Section 27(2) is a fair provision, however the Board would not be able to exercise a fair decision unless the Owner had sufficient time to place his point of view before the Board to be considered in that decision.

11. Section 27(3) should provide, as in Saskatchewan, for the payment to the Owner at once of the security posted by the Operator.
12. The review of compensation provisions is reasonable. Experience of all parties in Alberta and Saskatchewan over a long period of time in which review provisions have been in effect in those provinces, indicate that the normal procedure is for the Owner and Occupant on the one side and the Operator on the other to negotiate a mutually acceptable figure. It is quite common to take five or six months for the parties, for their own various reasons to conclude these negotiations or alternately to arrive at the point where it is agreed that the matter should be settled by the Board. For proper reasons Boards are often delayed in establishing their Hearings. It is quite common for a Board to be settling the question of compensation on review 10 or 12 months after the anniversary date on which the reviewed compensation would be effective. It is therefore important that the Board have authority to grant an order which is retroactive to the appropriate anniversary date of the installation in question. This could be achieved in Section 30 by including the phrase "effective the anniversary date of the lease or Order when reviewable."
13. Section 35(1) is an appropriate provision, however it too should provide for notification to the Owner and Occupant except in a true emergency when the notification can be given following the emergency repair.
14. Section 35(2) in the second line uses the word "damage" which is not a useful word but should be replaced by "losses."
15. Abandonment and restoration provisions are extremely important to not only the Owner but also the province itself. It is important that as much cultivated land as is possible should be retained or restored by the agricultural industry. These proposals are reasonable but do not take into account the large areas of land that have been abandoned but for which no release has been obtained. It is apparent that unless a special provision is inserted in the bill it could only apply to those areas for which abandonment procedures are commenced following the effective date of the legislation. The Association recommends that the procedures apply to all abandonments except where a release has been granted by the Owner either at the time of the abandonment or by a subsequent Owner.

15.(a) The phrase "as nearly as possible to its original condition" in Section 38 must be followed by "and if not so restorable to pay compensation in lieu thereof." The Operator is not responsible for on-site damages (S43(a)) at the time of damage. He must be responsible on abandonment to either fully restore or where the Operator has made this impossible then to compensate for the deficiency.

16. Section 40(1) by way of Section 41(2) effectively eliminates the claim of an Owner against the Operator after three years only. Oil companies, particularly independents tend to disappear or are sold, or merged in such a fashion as it is difficult for an Owner to identify their offices, therefore the Owner is left without a remedy on abandonment. It is unfair to allow the Operator who, in effect, state on abandonment that it is no longer possible to return it to its original condition when the Operator itself is responsible for this fact. Regrettably compensation is the only remedy but must be specifically provided.
17. In respect to Section 41(2) the time elements are all too short. The agricultural damage which is done cannot often be observed except through the observation of the reaction of crops. These reactions are often delayed due to weather conditions. In addition many farmers have historically cropped in rotations. In those cases in which summer fallow occurs every other year it is easy to see that in a three-year time frame only one crop could have been planted and observed. The original ten-year period is realistic but if it must be reduced then either it should be a minimum of five years or alternately the release of the Board to the Operators should be contingent upon further evidence being produced by experience up to the ten-year total time period. As stated Saskatchewan has met this problem by providing a special fund to cover the full ten-year period but still (in that case three and one-half years) granting a release to the Operator.
18. The provision respecting Tortious Acts is welcome. Its proper application by the parties will go a long way towards minimizing unnecessary conflicts provided they are faithfully carried out by the employees and agents of the Operator.

Section 43(a) punctuates the previous objection respecting abandonment. This subsection clearly limits the claim or "damages" to the adjacent land only ("that is not situated within the Surface Rights acquired . . .") No tenant should be permitted to indiscriminately damage the property without being liable for compensation forthwith. This provision coupled with the objection to the abandonment procedure leaves the Owner prone to damage of his property without ability to recover either at the time of the damage or at the time of the abandonment. The Association holds the view that damages should be recoverable as and when they occur and that the offending phrase in quotation marks above be removed.

Section 45 as presently worded is unfavourably viewed by the Association. These matters are the

ones which create the greatest conflict and lack of confidence between the parties after production. Surely the responsibility to monitor, detect and report lies entirely on the Operator. Unless a substantial penalty for failure to carry out these duties is provided or unless the Act provides for a monitoring by the Board then the conflicts will continue. A very lengthy list of examples supporting this objection can be provided.

19. The limitations and restrictions contained in the various subsections of Section 46 are unnecessary at the best and unfair to the Owner at the worst. Why the Owner should be required to follow any procedure or to be burdened with any time limit at the penalty of losing his claim entirely is beyond comprehension. It is unreasonable to require the Owner to make a second application and to give a notice to the Board as provided in Section 46(1) should be removed. The Board should automatically provide for a Hearing unless the Operator files a settlement within a reasonable period of time. Section 46(3) should simply provide that the Owner may require a Hearing if the matter is delayed unrealistically. The six-month feature is totally devoid of any merit from an agricultural standpoint. The necessity to observe the damage by way of crop reaction, to observe the damage by way of weather factors and seepage or runoff takes a considerable period of time measured in years before there can be any certainty. Surely the purpose of the provisions is to compensate the Owner for losses sustained by the negligence or disregard of the Operator to good housekeeping of its operations. Section 46(4) is unnecessary, unfair and unusual. These provisions presuppose that the Operator has damaged the property of the Owner. Very few, if any, injuries and damages are outlawed in Manitoba in such a short period of time. Since it is damage to land basically then if there must be a time frame it should be ten years from the date of discovery by the Owner.
20. The objections of the Association in respect to the Appeal provisions have been noted as one of the major objections and dealt with earlier in theis material. If Appeal provisions are to remain in the Act then the Association would request that they be limited as previously stated and as further comments are permitted to the Association at a later date.
21. Section 52 is not favourably accepted by the Association in its present form. The primary objection is to the use of the phrase in more than one instance, of "because of other special circumstances." Unless and until these are fully defined and understood the phrase should be removed. The Association is not directly involved in the question of Acquisition of Mineral Rights. It seems both inappropriate and totally unnecessary to include Section 52(2) in an Act intended to be a comprehensive procedure for the Acquisition of Surface Rights. We have already objected to the involvement of The Mines Act in The Surface Act and believe that if mineral rights must be dealt with in this manner that they should be dealt with in The Mines Act. While Owners are quite prepared to recognize the necessity of giving up their normal rights of ownership to a limited degree to the energy industry for the benefit of all of the people of Manitoba and Canada the same case cannot be in any way made why the Owner of mineral rights should be denied his total right of ownership including the right to decline, under any circumstances, to negotiate a lease. Finally the Surface Rights Board should not be charged with the responsibility of setting terms and conditions in respect to a Petroleum and Natural Gas Lease if for no other reason than the fact that a surface lease and a Petroleum and Natural Gas Lease have absolutely no relationship to each other and represents two entirely different fields.
22. In respect to Section 55 the bill attempts to address itself to a very serious problem. The limitation of three months for reimbursement to the Owner is unnecessary and unfair. It should be removed or at worst replaced by at least one year.
23. Section 57(1), 58, 61 and 64, for some reason or other, confines itself to Board Orders and ignores agreements. Agreements are the most common manner for the two industries to establish their respective rights. The bill throughout attempts to be a comprehensive code however this omission seriously weakens the purpose. It is not without some significance to note that Section 63, in the midst of all this, suddenly reverts to Orders and Agreements. Agreements should be included in all of these procedures.
24. The provision respecting Caveats is unnecessarily complicated and restrictive. The provision should simply be that all Caveats, no longer required by the Operator, should be removed whether they be established by a Board Order or an Agreement. Failing removal the Owner should, at the expense of the Operator, be entitled to have them removed by any procedure available in the general law of Manitoba which would, we are advised by our solicitors, include the more common and more appropriate procedure of a Notice to Lapse.
25. The Association holds the view that the bill has been substantially weakened first of all by mixing provisions of The Mines Act with The Surface Act and secondly by leaving critical matters of principle to regulations. If the bill is to be a comprehensive statute then all matters of principle should be included in the bill itself. If regulations are to become a part of the procedure then the Association holds the view that they should not be proclaimed unless and until the representatives of the Owners and the Operators have had an opportunity to review the intended regulations and, like this bill, an opportunity to consider their implication and to make a response so that the interest of all concerned would be better served.
26. The Association has constantly encouraged the government, even before the Nugent Commission, that experience in both Alberta and Saskatchewan over many years has established the advisability of the government convening a conference of knowledgeable representatives of the Operators and the Owners along with government to review the procedures and to directly make

recommendations. Experience in these provinces has proven, again and again, that this procedure will minimize unnecessary conflicts and oversights contained in any legislation and/or regulations. There is no need for such a conference to be lengthy and, we believe, that two or three days of such a conference would not hold up the bill unreasonably. The Association continues to be prepared to promptly provide knowledgeable representatives to such a conference.

27. Both Owners and Operators have long looked forward to a comprehensive and useful Surface Rights Act. Since the appointment of the Nugent Commission both parties have expected that its provisions would assist in the numerous agreements necessarily reached while awaiting its publication. Mr. Nugent recognized this necessary feature and recommended that its provisions, when enacted, be retroactive to December, 1980. The Association encourages the adoption of this recommendation.

Finally the Association commends the government in the creation of this bill and also the procedure of encouraging comment by all interested parties. With the exception of the two main objections the Association repeats that the effort has been worthwhile and that, by and large, the remedies are in place. With a very modest further effort on the part of Owners, Operators and Government a most enviable piece of legislation is possible in an etremely short time. The practical problems detailed herein can be resolved quickly and to the benefit of all concerned. Our observations are intended therefore towards that end. We have at all times attempted to be objective in the presentation of our views which are based upon lengthy and substantial experience.

All of which is respectfully submitted, Manitoba Surface Association.

PRESENTATION BY: D. R. Temple, Farmer, Waskada, Manitoa.

PREPARED BY: A CONCERNED GROUP OF AGRICULTURAL PRODUCERS FROM WASKADA, MANITOBA

INTRODUCTION

We would like to thank the members of the Law Amendments Committee for the opportunity to meet with you.

As members of the Waskada farming community who are directly involved with surface lease rental, we are concerned about the future of our farms, our community, and the future of agricultural production in Manitoba. When you live in the middle of an area affected by oil the "dreams" of having oil are somewhat diminished by the "real" problems associated with the practicalities of farming around it. It does not necessarily have a positive effect on our community. The landowner without oil rights is particularily vulnerable to the effect of an oil field. His future is on farming, not on collecting oil royalties. He should be treated fairly.

Thank you again for your time and consideration.

PART II SURFACE RIGHTS BOARD 6(2) QUALIFICATIONS

The following should be considered when selecting the members of the Board:

- members have agricultural experience so as to understand the ecological and cultural problems plus the problems of adverse effect to their business created by the presence of an oil well on their property.
- people with non-agricultural experience can not adequately relate to these ecological, cultural, and adverse effect problems since they have no practical experience as an agricultural producer.
- this Board really deals with the protection of a soil resource and related compensation of that resource from oil companies to a landowner. It does not seem logical to me that people from the oil industry should sit on a Board that deals with the protection and compensation of a soil resource when their only real interest is in retrieving minerals under that soil resource.

PART III RIGHT OF ENTRY DETERMINATION OF COMPENSATION 26(a)(b)(c)

The amount of land lost in a drilled out situation per quarter section is a minimum of 8.5 percent or 14 acres, which are roadways and well sites. As a potential area of 250,000 acres of oilfield, as suggested by one oil company, has indicated the oil field could cover 250,000 acres. This would mean more than 20,000 acres would be taken out of the land base of Manitoba agricultural economy. This percentage of loss could probably rise to more than 40,000 acres permanently damaged due to associated oilfield practices such as placement of batteries, treaters, injection wells, disposal wells, hauling of salt water, servicing of wells, placement of piplelines, etc. plus the potential of damage from salt water spillage. An example of salt water spill reclamation in Saskatchewan has placed the cost of replacing the sub-soil on an acre at $40,000 per acre, this does not include the black top soil.

As Manitoba citizens we are concerned about this potential loss. We are also concerned about the future loss to individual farmers. The land in southwestern Manitoba is 80 percent class 2 soil, which makes it some of the most valuable soil resource in Western Canada.

In addition to loss of land specifically effected by the oil field, the rest of the arable land associated with the well sites is subjected to a loss in value.

Both Bankers and Land Realtors, state that 1/3 of the arable land value is lost once a 1/4 section is drilled our (4 well sites per 1/4 section). They believe that the land in southwestern Manitoba provides one of the best returns per dollar invested compared to other land in the Western Canada. The loss of value of arable acres not associated with the well sites should be part of compensation consideration.

The losses accumulated to the land owners and the Province of Manitoba in this situation, especially when viewed as an oil development of 250,000 acres, are staggering. These losses will greatly reduce the re-sale value of the land base plus cause-reduced value to the tax-base.

These many problems associated with the present day method of Oil exploration could be reduced

substantially by using new oil field techniques such as Cluster Drilling, i.e., Angle or Slant-hole drilling. By this process the amount of land needed or taken for exploration could be reduced from 8.5 percent of the land base to 2.5 percent or less. With this type of drilling one 7 to 10 acre site can service one section of land.

26(1)(d) INCREASED COSTS TO THE OWNER AND OCCUPANT

Costs associated with the placement of an oil well site in the center of a 40 acre LSD are demonstrated under the following:

(1) Crop Production Efficiency loss.
(2) Direct cost of working around a well site.
(3) Additional direct costs:
    1. Crop yield reduction on the Headland
    2. Extra input cost on the Headland area
    3. Crop loss on the well site.

Figures in table No.1 were obtained through the use of a formula for:

(1) Determining the area of headland.
(2) Determining the amount of time to work the headland.
(3) Determining the amount of turning time on headland.

These formulas establish the amount of time spent on working around the well site over and above the normal working time. They also establish the direct cost of having to work around the well.

Figures 1 and 2 have been photocopied from the Alberta Agriculture publication. The well site shown only serves as an example of the diagonal and perpendicular working patterns. The formulas shown are actual ones used to determine the amount of extra time spent working around the site.

(Information source: No. 1 Resource Economics Branch of Alberta Agriculture information bulletin "An Overview of Compensation for Well Site Leases in Alberta" Prepared by Frank Hanus, P. Ag. Resource Economist. P24-25, figure 1 and 2.)

It takes an extra 8.65 hours/year to work around a well site. This costs $966/year (Table 2). The data used to establish the direct costs were obtained from the 1982 Rental and Custom Charges for Farm Machinery published by Manitoba Agriculture. (Table No.2).

A greater cost is the total effect on the efficiency of the farming operation. The "Crop Production Efficiency" loss to the farming operation is the time lost to that operation in the form of extra time spent working around an oil well site in the middle of forty acres.

The extra time spent working around that well site is 8.65 hr/yr. (Table No.1). The normal time to work that 40 acres eleven times would be:
40 x 11 over 25A/yr. equals 17.6 hrs/yr. (The 25 acres per hour figure is easily accomplished with an average implement of 50 ft.)

This additional 8.65 acres means a 49 percent increase in the time spent on that forty acres. For a quarter section, the time lost annually would be 34.6 hours. This means that on that quarter section 34.6 hours more time per year would be spent to farm 8.5 percent less land.

There is a real concern for a "drilled out" farm. Given the normal seeding time with a normal machinery complement the farmer could only complete two-thirds of his acreage. In order to seed his whole farm he would need more machinery and/or labour. His efficiency is reduced by 1/3, which probably means he would no longer have a viable operation.

ADDITIONAL DIRECT COSTS DUE TO CENTER WELL SITE

1. "Compensation for Crop Yield Reduction"

Overlap of cultural practices, soil compaction and trampling of crops on the headland area have reduced crop yields and have been recorded to occur by various researchers. ex. Study done by F. Hanus, Assessment of Effects of Power Lines on Farming Operations in Alberta.

The Formula used to determine crop yield reduction as per article "An Overview of Compensation For Well Site Leases In Alberta", Alberta Agriculture is:

Average area of headland (Acres)
Times
Crop Yield (bu/acre)
Times
Crop Price ($/bu)
Times
0.2 (Yield reduction factor (i.e. crop yield reduction by 20 percent)

2. "Cost of Extra Imputs used."

These are occurrences of overlap of seeding, fertilizing, herbicide and pesticide spraying, which result in extra materials being used.

The formula used to calculate the extra material is:

Average area of headland (acres)
Times
Cost of Material ($/acre)
Times
0.2 (overlaps factor, referring to 20 percent of the area of headland where overlap occurred.)

3. "Crop Loss on the Well Site."

This loss can be calculated by: Target Yield x Price x Acres.

TERMS AND CONDITIONS OF INTERIM ORDER 27(3)

It is imperative that no interim order be granted unless the dispute is strictly monetary. Any dispute which involves the lack of settlement over road, well site placement, cultural problems or ecological damage should be heard by the Board prior to any Right of Entry Order being issued. Without this hearing the landowner has no recourse or no avenue with which to protect his interest in his soil resource. We recommend that the Act be changed so the interim order may be issued for monetary disputes.

SUMMARY OF CONCERNS AND RECOMMENDATIONS

We would appreciate it if consideration would be given to the following:

1. That people be aware that up to 40,000 acres of Class 2 soil could be permanently removed from agricultural production.

2. That land surrounding well sites looses 1/3 of its market value.
3. That the amount of land permanently removed from agriculture could be significantly reduced by the introduction of cluster drilling i.e. slant or angle drilling.
4. That one well site considerably reduces farm efficiency.
5. That farms that are totally drilled out would only have 2/3 of normal efficiency and probably would not be viable.
6. And that if the Board members are to appreciate the impact of oil on agriculture they should have agricultural background.

PARTICIPATING MEMBERS

D. R. Temple, Farmer, Waskada
J. F. Griffith, Farmer, Waskada
G. D. Temple, Farmer, Waskada
J.G. Nielson, Farmer, Goodlands