



**Second Session - Thirty-Sixth Legislature**

**of the**

**Legislative Assembly of Manitoba**

**Standing Committee**

**on**

**Public Utilities**

**and**

**Natural Resources**

*Chairperson*  
*Mr. Jack Penner*  
*Constituency of Emerson*



**MANITOBA LEGISLATIVE ASSEMBLY**  
**Thirty-Sixth Legislature**

**Members, Constituencies and Political Affiliation**

<b>Name</b>	<b>Constituency</b>	<b>Party</b>
ASHTON, Steve	Thompson	N.D.P.
BARRETT, Becky	Wellington	N.D.P.
CERILLI, Marianne	Radisson	N.D.P.
CHOMIAK, Dave	Kildonan	N.D.P.
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ENNS, Harry, Hon.	Lakeside	P.C.
ERNST, Jim, Hon.	Charleswood	P.C.
EVANS, Clif	Interlake	N.D.P.
EVANS, Leonard S.	Brandon East	N.D.P.
FILMON, Gary, Hon.	Tuxedo	P.C.
FINDLAY, Glen, Hon.	Springfield	P.C.
FRIESEN, Jean	Wolseley	N.D.P.
GAUDRY, Neil	St. Boniface	Lib.
GILLESHAMMER, Harold, Hon.	Minnedosa	P.C.
HELWER, Edward	Gimli	P.C.
HICKES, George	Point Douglas	N.D.P.
JENNISSEN, Gerard	Flin Flon	N.D.P.
KOWALSKI, Gary	The Maples	Lib.
LAMOUREUX, Kevin	Inkster	Lib.
LATHLIN, Oscar	The Pas	N.D.P.
LAURENDEAU, Marcel	St. Norbert	P.C.
MACKINTOSH, Gord	St. Johns	N.D.P.
MALOWAY, Jim	Elmwood	N.D.P.
MARTINDALE, Doug	Burrows	N.D.P.
McALPINE, Gerry	Sturgeon Creek	P.C.
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PITURA, Frank	Morris	P.C.
PRAZNIK, Darren, Hon.	Lac du Bonnet	P.C.
RADCLIFFE, Mike	River Heights	P.C.
REID, Daryl	Transcona	N.D.P.
REIMER, Jack, Hon.	Niakwa	P.C.
RENDER, Shirley	St. Vital	P.C.
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ROCAN, Denis	Gladstone	P.C.
SALE, Tim	Crescentwood	N.D.P.
SANTOS, Conrad	Broadway	N.D.P.
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STRUTHERS, Stan	Dauphin	N.D.P.
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VODREY, Rosemary, Hon.	Fort Garry	P.C.
WOWCHUK, Rosann	Swan River	N.D.P.

**LEGISLATIVE ASSEMBLY OF MANITOBA**  
**THE STANDING COMMITTEE ON**  
**PUBLIC UTILITIES AND NATURAL RESOURCES**

**Thursday, November 7, 1996**

**TIME – 9 a.m.**

**LOCATION – Winnipeg, Manitoba**

**CHAIRPERSON – Mr. Jack Penner (Emerson)**

**VICE-CHAIRPERSON – Mr. Ben Sveinson (La Verendrye)**

**ATTENDANCE - 11 – QUORUM - 6**

*Members of the Committee present:*

Hon. Messrs. Findlay, Stefanson

Messrs. Ashton, Jennissen, Laurendeau, Penner,  
Pitura, Sale, Struthers, Sveinson, Tweed

**APPEARING:**

Mr. Richard Yaffe, Counsel to the Province  
Ms. Shirley Strutt, Legislative Counsel  
Mr. Julian Benson, Secretary to Treasury Board

**MATTERS UNDER DISCUSSION:**

Bill 67—The Manitoba Telephone System  
Reorganization and Consequential Amendments Act

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**Mr. Chairperson:** Good morning. Will the Standing Committee on Public Utilities and Natural Resources please come to order this morning. This morning the committee will be commencing clause-by-clause consideration of Bill 67, The Manitoba Telephone System Reorganization and Consequential Amendment Act.

Did the minister have an opening statement?

**Hon. Glen Findlay (Minister responsible for the administration of The Manitoba Telephone Act):** Yes, I do, Mr. Chairman. I guess, I would have to say at

the beginning, every time this committee meets, there is either a storm or a pending storm. We have had a few of them along the way. I imagine some of you had trouble getting in this morning, no matter where you live.

Mr. Chairman, as you know, we are here to do clause-by-clause review of Bill 67. I have my package of amendments, which I know the NDP have already received, I think, late Tuesday. I will be passing it around to the rest of the committee members as a package. We are dealing with each clause on a separate basis. I am not going to pass them as a group of amendments.

I am sure all members are clearly aware that Bill 67 is quite complex. You may appreciate that a number of technical amendments have emerged since this bill was introduced. In addition, there are a few substantive issues, and I will briefly outline how these issues have been resolved.

Probably the most important issue certainly relates to the new pension plan for MTS employees and retirees. I am pleased to report, subsequent to our discussion during the presentation hearing period, that a major amount of negotiation has gone on between MTS and the retired employees. Mr. Harry Restal, I believe, has been chairman of that committee, and has been negotiating with the president, Mr. Bill Fraser. It is my understanding that the vast majority, if not all the issues, have been resolved or are in the process of final resolution.

MTS has obtained an opinion from Buck Consultants, an actuary and an asset consultant, confirming that the new MTS pension plan will provide for benefits to present and former MTS employees and their survivors, which, as of the implementation date of the new plan, are equivalent in value to the benefits provided under The Civil Service Superannuation Act. In fact, the Buck Consultants' opinion goes on to point out that certain benefits out of the new plan will exceed the present

benefits under The Civil Service Superannuation Act, so that the new plan will actually confer some enhanced benefits.

Secondly, MTS has received an opinion from Towers Perrin. The Towers Perrin opinion confirms that if the new MTS pension plan were effective as of September 30, 1996, the market value of the new plan's assets would exceed the obligations of the plan on an ongoing basis. The opinion also confirms that the market value of the new plan's assets would exceed the plan's liability for purposes of The Pension Benefits Standards Act, which is the federal legislation under which the new plan will be registered. Simply put, the Towers Perrin opinion confirms its new MTS plan would be fully funded on both a going concern basis and a solvency basis if the plan were in effect as of September 30, 1996.

Thirdly, the question regarding employee representation on the pension committee has been resolved. MTS is proposing that there will be equal employer and employee pensioner representation on the new pension committee.

Fourthly, MTS has undertaken that any surplus in employee contributions to the Civil Service Superannuation Fund will not, and I stress not, be used to reduce MTS's costs or share of contributions to the new pension plan.

Fifthly, you should be aware that MTS will be responsible for any future deficiencies between the asset values and the pension obligation liabilities that may arise.

The last point I would like to make regarding employee benefits is that other employee benefit plans will provide enhanced benefits over the current employee plans at less cost.

Before moving into clause by clause, I will quickly summarize the other significant amendments to Bill 67. Bill 67 will no longer contemplate a strategic partner owning shares in MTS or an affiliate of MTS. The individual ownership restriction which relates to ownership of shares in MTS and its affiliates by individuals and by groups of associated persons will be reduced from 15 percent of the outstanding shares to 10 percent. A provision will be added prohibiting MTS

from continuing outside of Manitoba. This section will not, I stress not, be repealed after the special share has been redeemed. The preferential offering that will be made available to Manitobans will be made to Manitoba individuals only and their self-directed RRSPs and RRIFs.

We are eliminating the building of a holding company or a family trust to buy under the Manitoba preference. By doing this, it is the ordinary Manitoban who will be able to take advantage of the Manitoba-only portion of the public offering. As I have already indicated, the balance of the proposed amendments are technical in nature and designed to clarify and strengthen Bill 67. Thank you, Mr. Chairman, and I am prepared to move into the clause by clause. Have the packages been distributed yet? If they will be distributed right away, so all members will have a copy of each of the amendments.

**Mr. Chairperson:** Thank you, Mr. Minister. Did the member opposite for the official opposition have an opening statement?

**Mr. Tim Sale (Crescentwood):** I do. Thank you, Mr. Chairperson. But before I do I wonder, the minister moved very quickly through some quite substantive amendments and if he might just clarify the third point that he made under the continuance certificate about not repealing. I missed his words in terms of that issue, in terms of I believe it was head office. I am not sure which he was saying would not be repealed, and the point that immediately followed that. I wonder if he might just, for clarification, since these are both very substantive issues, repeat those sections.

**Mr. Chairperson:** Thank you, Mr. Sale.

**Mr. Findlay:** Mr. Chairman, I believe the member is referring to continuing outside of Manitoba?

\* (0910)

**Mr. Sale:** Yes.

**Mr. Findlay:** Okay. I will read very carefully what it is. A provision will be added prohibiting MTS from continuing outside of Manitoba. This section will not be repealed after the special share has been redeemed. In

other words, the end result is that MTS continues in Manitoba forever. That is the intent.

**Mr. Sale:** A Manitoba corporation is what, headquartered and located here, is that the intent?

**Mr. Findlay:** Mr. Chairman, absolutely. Then the next point on preferential offering, do you also—

**Mr. Sale:** That is right. That was the other one I was not clear on.

**Mr. Findlay:** Okay. The preferential offering that will be available to Manitobans will be available only to individuals and their self-directed RRSPs and RRFs. In other words what it means is that it eliminates holding companies, corporations in Manitoba purchasing in that period. It is only ordinary Manitobans that can purchase in that preferential period.

**Mr. Sale:** First, I would like to thank the minister for making some clarifications on some issues, and we will be addressing each of those issues I am sure in detail as we come to those sections and attempting to understand clearly the legal ramifications and the degree of the legal protection which is being offered by these various amendments.

Mr. Chairperson, we are at an historic committee meeting this morning. I believe that this is the first time in our provincial history that a major Crown corporation has been set up for privatization, and as many people have acknowledged, if this act passes, then we will no longer have the pleasure of sitting with members of the Manitoba Telephone System Board of Directors and officers and understanding more clearly how that system serves Manitobans well and has provided for Manitobans affordable and efficient and effective and technologically advanced profitable services over many, many years and continuing to the very present time.

We also will, of course, at some point have to express our sympathy to the minister who will no longer have the appellation of Minister responsible for the Manitoba Telephone System. While that may seem a light point, and in some ways it is a point of somewhat humorous reflection, it is nevertheless also a very serious point, because for these 80 years a minister of the Crown has always had a special responsibility to all Manitobans to

ensure that their telephone system is efficient, effective, available, accessible, technologically advanced, soundly administered.

Let me say, Mr. Chairperson, that in the past number of years this administration has provided good direction for the Manitoba Telephone System.

It pursued vigorously a long-term plan established by numbers of governments to ensure single line service throughout rural Manitoba, one of only three telcos to have 100 percent single line service, or virtually 100 percent. I think the minister probably would want to qualify that to 99.9 or 99.44 percent single line service—we never want to say 100 percent of anything—nevertheless an immense benefit for rural Manitobans in particular, so that cities like Portage la Prairie and others can have enhanced 911 service where it was previously not available, but perhaps even more important, where individuals have a level of safety and security which was not available to them under party line service and where individual businesses, and I include in this our many, many farm businesses, can have access to the modern technological tools that they need to be successful.

This government has made many great boasts, and some of them I think are fair, that rural Manitoba is enjoying a very strong economy at the present time, that there are great advantages available to rural Manitobans in the kind of economy into which we are moving to strengthen the economy of our rural areas. I think it is clear that no modern farm person, no modern operator of an agribusiness, whether it is a family farm or a larger entity, can do that without access to modern telecommunications, access to markets around the world, to the Internet, to pricing information, to supplier information. All of those things are crucially dependent on telecommunications, and so the stewardship and role of this government and of other governments in ensuring that we have that kind of a system has been part of the stewardship of government from 1908 forward.

Mr. Chairperson, the fact that we are sitting here on the last day of the session and only now getting around to detailed consideration of this bill speaks to the immense complexity of doing what the government is doing by privatizing this corporation. There are so many complex issues from the maybe obvious issues of what will the

ownership structure of the corporation look like, what will the land transfers and asset transfers require, what kinds of Orders-in-Council, what kinds of division of the holdings of various things where MTS currently shares easements and rights of way and where it shares premises and where it shares in some cases, I believe, even some equipment with other corporations.

Certainly, there is an immense amount of careful, thoughtful legal work to be done as well as, as I suspect, a requirement for a great deal of good will to sort out the complexity that we have before us, symbolized in actually a rather short bill. Mr. Chairperson, we are very concerned that the detail contained in the amendments to this bill, which are in some cases housekeeping, probably about three-quarters of them would be termed housekeeping amendments, but a good quarter of them are very substantive amendments.

We were, and I think all Manitobans were outraged by the presentation to this committee of a package of amendments late in an evening and the demand that this committee consider such complex issues as the elimination of provision for a strategic partner, the reduction from 15 to 10 percent of any individual's holdings, as the minister has outlined this morning, many complex pension issues.

We had heard during our committee hearings from retired MTS employees and from members of the current plan, both union and the management union representatives, that they were deeply dissatisfied with the current state of negotiations, that they were even more profoundly dissatisfied with the actual wording in the bill of the pension plan and the associated clauses in Section 15 of the proposed act.

\* (0920)

Now, Mr. Chairperson, the government has known for at least a year, at minimum, that it was going to privatize MTS, even though it lied to people in the election and it lied to people after the election that there were no plans. There were indeed, as it is now clear, significant plans to privatize MTS. The member for St. Norbert (Mr. Laurendeau) does not like our use of that word. I do not like it either.

It certainly does not give me any pleasure to serve in a Legislature where the words of the First Minister and of

other ministers of the Crown turn out to be hollow. I do not think any of us enjoy serving in such a situation, but on the other hand, the saying which was quoted to us at least once during the public hearings, that for evil to triumph all that is required is for good people to do nothing, is also true.

So when promises are made and then broken in the most cavalier fashion, it is incumbent on all people, but particularly it is incumbent on those of us who are entrusted with representing Manitobans, to do our best to discern the truth and to then do our best to speak the truth. The role of the faithful servant is defined in one place as speaking truth to power. The government is power in this situation. The government has power. The government embodies the power given freely, given democratically, given after centuries of struggle to articulate that democracy to a thing called government. So government has a sacred trust, and I use that word advisedly as well.

It is a holy trust to speak truth, to not dissemble and to only change its word when there is demonstrated serious reason to say such a new and unknown situation has arisen that the previous process or the previous structures cannot serve in this new situation. Therefore, much as we regret that we said one thing in the past, we must now, for the good of Manitobans, do another thing in the future.

Now, Mr. Chairperson, when such a situation arises, what would be the normal duty of someone entrusted with a sacred trust? It would be at the very least to make available to all those who gave their trust the full and complete circumstance that caused the requirement for change to be so pressing that a mere matter of days after assurances were given that, no, there were no plans to privatize MTS and the only one talking about the privatization of MTS was the member for Thompson (Mr. Ashton), and the only party considering the problem of privatizing MTS was the New Democratic Party, when patently and clearly and on the record now, we know this not to be the case.

So the first requirement would be to make it plain to all Manitobans why this new circumstance had arisen, what the urgency was, and to plainly share with Manitobans data as objective as can be obtained by government in a form and in locations accessible to Manitobans,

particularly those Manitobans who live in parts of our province where telephones are even more vital and where their affordability and accessibility, functionality are even more an issue than they are for us who live in urban settings.

As was said more than once during our presentations, it is one thing, though not desirable in our modern world, to go next door to make a phone call and quite another thing to have to go a number of miles to make a phone call, and you know, Mr. Chairperson, I think members opposite and members on this side of the House suffer from a very real problem. It is a problem that sometimes poisons our debates, and it is regrettable when that happens, and I would acknowledge that both sides—and I take personal responsibility for my part in this—sometimes poison debate, because we do, by virtue of the fact that this is to a significant extent a class-based, sociodemographic representation that we enjoy here, work with disproportionately more poor people in our ridings than the Conservative Party does.

Now, that is not said in any blame. It is simply said as a reflection of demographic fact. The inner part of this city has not been for decades represented by the party of the members opposite. The North has not been represented by members of the party opposite for a long time. It has in the past at various points, but not for quite some time.

We have a much stronger sense than government does, I think, of the urgency of the fact that we know from our work, from our involvement with our constituents, that slowly, slowly, but very clearly, fewer and fewer poor people have access to a telephone. As I said in committee and acknowledge, my partner works in an inner city drop-in centre where many people on social assistance are there. Most of them have some form of handicap, whether it is mental or physical. Increasingly, she reports that more and more of these folks are giving up their telephone because, at \$175 a month, they cannot do anything else. That is what single people on social assistance have to live on after their rent is paid.

Now, I would ask members opposite not to trivialize that issue because in the United States of America, as phone rates have skyrocketed with privatization and with deregulation, the number of Americans with phones has fallen. Now, it has not fallen by 50 percent, but it has

fallen from the high nineties to the low nineties, and in Canada the same thing will inevitably happen as phone rates escalate.

So the first duty of a government that has—let us give the government the scenario that it genuinely, although I have trouble with this, but let us give the scenario that it genuinely woke up and suddenly realized that 70 percent of the phone company's revenues were in fields where alternative suppliers were present. Now, I am sure this was no surprise to the telephone company, and I am sure it was no surprise to the minister responsible because he is a well-informed and competent minister.

Let us give the government the idea that, yes, they woke up one morning and this was news to them. What should they have done?

The first thing is, they should have made available to all Manitobans factual information about this issue in open public ways, using all of the tools that they are so prone to use in crisis to make their case, to make their case not rationally or with data, but to make their case emotionally, with propaganda sheets devised by the former spin merchant of the Premier, Barbara Biggar and her company, and to shamelessly use not their own assets as a government or party, but the assets of the Manitoba Telephone System, as though Mr. Chairperson, the Manitoba Telephone System Board of Directors had approved the sale, this privatization, when in fact, they had not even been consulted. The decision had not been taken to them, only the chairperson of the board had much involvement in this decision. The issue, as the Premier (Mr. Filmon) said in the House, was not a management issue.

\* (0930)

Now, it is really interesting, the government takes pride in the fact that under its stewardship this company has made solid profits, has invested wisely in services to Manitobans, yet its board of directors was apparently not competent to use its wisdom to even advise the government. Even if the government did not want to have the board of directors move a motion requesting privatization, because of these new circumstances that so rationally and logically required a change in the management structure, ownership, even if the government did not want the advice of the board of directors, they

could have at least have gone to them and said let us get some information, some credible, logical, system-wide information based on privatizations elsewhere, based on this new technological environment.

Let us get out to rural and northern and southern and urban Manitoba, let us hold those public meetings, let us mail stuff out to people, let us explain this new circumstance to which we awoke one summer morning after the Crown Corporations Council reported and said, my goodness, you are at risk, folks, you better change, or at least consider how to manage that risk. But they did not do so; they did not do so. They have had one year to help Manitobans understand in a dispassionate way what the reasons for this change are.

Now, Mr. Chairperson, the opposition has been pilloried for going around and doing what the government was apparently unwilling or afraid to do, which is to say, come and meet with us, not as the Premier said this morning, on radio, at a by-invitation-only coffee and chat, where those who are invited are very clearly members of the Conservative Party, and where the meetings are not publicized as open and public, at least not the ones in Winnipeg, certainly not the one that was held in my constituency at Crescentwood Community Club. It came as quite a surprise to the Premier (Mr. Filmon) and his cabinet that there were many people there who would have liked, indeed, to ask questions and would have liked to approach the Premier at the podium and say, Mr. Premier, I do not understand this decision.

The Premier (Mr. Filmon) at that evening, which I was present at the back of the room, essentially made a speech that could be summarized as the world is changing, the world is changing very rapidly, change is difficult, change for all of us is difficult, but we have to change because the world is changing and it is changing very rapidly, and change is difficult, but we all have to change because the world is changing and it is changing very rapidly.

It went around and around and around in circles. Mr. Chairperson, change for change's sake has no ethical, moral, or other content; it is just change. It is just revolution like a wheel revolves. It is not based on the normative values of change. Change ought to have a normative value. What is the value of the change, not simply what is the change. We can change things all the time, but we do not get anywhere when we do so unless

there is a direction and a normative content to it. The government made no information whatsoever available.

What would be the second thing? The second thing that a government really concerned about this might do would be to recognize that when you divest yourself of a \$1.5 billion asset, including the pension assets, that this is an extraordinary circumstance. If the government was not willing to do the appropriate thing of going around and informing Manitobans in a full and fair way, then the government might at least have had the courtesy to schedule public hearings on this bill, formal public hearings, in places other than Winnipeg.

It surely came as no surprise to government that in November and late October, it is a law of nature that there will be snowstorms. In fact, it is a law of nature that there will be a snowstorm on Halloween. I am not sure where it is written down, but I can remember a fair number of Halloweens standing in my snowmobile suit and boots while my kids banged on doors, shivering, high on chocolate, and that was about the only thing that was keeping them going. Indeed, we had another one of those storms this year.

So it should have come as no surprise that the government was pilloried by such groups as MSOS and the Union of Manitoba Municipalities, both for its decision to privatize and for the process of privatization. There was ample, ample, ample opportunity to have at least public hearings, and more preferably, the first thing, government should have done a campaign of dispassionate, rational, data-based information available to Manitobans.

Now, Mr. Chairperson, in concluding my remarks, let me say that it is clear that government has some of this information. Our very embarrassed Premier (Mr. Filmon) stood in the hall the other day in the scrum and acknowledged to reporters that yes indeed, government and cabinet has studies performed by groups that he would not identify. He identified them as people who were competent in the field. Now if government has such information, surely if it bears out their case, they should make that information available. There is nothing to fear from clear information.

I would ask those who inhabit the back benches if they have seen those studies. I would just acknowledge that



it is much easier to be a backbencher in opposition as we at least get to participate in the debate. To be a backbencher in government I think is very difficult often, because while you can serve your constituents, you do not have as much opportunity to be engaged in policy development and in the House. I would ask the four backbenchers who are here, have you seen and read the detailed studies that cabinet has on the privatization of MTS? Have you read the rate implication studies, or have you read studies at all, and were there rate implications in them? Have you read any major piece of rational, external information generated at government's request to sustain the decision to privatize this corporation? Have you in your caucus studied this information and debated it and come to a mind in caucus that you can defend to your constituents? Have you seen this information? Is there such information, and if it sustains the case that government is making, why is it not public?

Why, when the New Democratic Party goes to a reputable consulting firm in Toronto, which has been an intervener and served interveners such as the Manitoba Society of Seniors and others at CRTC hearings and clearly knows its business, understands the regulatory environment, that is why we went to them, because they are professionals. We tabled information that has a very disturbing fact in it, at least an alleged fact, which flies in the face of, goes against all of the assurances of the Premier (Mr. Filmon), the Minister responsible for Telephones (Mr. Findlay), that the fact of privatization will have no bearing on rates. It is very clear that this firm does not believe that is correct. Now this is not just an assertion on their part. They not only asserted it, they gave you the mathematics. They gave you the formulas they used; they gave you their methodology; they gave you their references to CRTC.

They referenced the fact that the Manitoba Telephone System itself applied in the summer to have in its rate application a provision for what is called an exogenous factor, and the exogenous factor being whatever costs of privatization or other effects of privatization that we cannot now foresee to be allowed as part of our going in rate as a private corporation under the rate cap proposals. When the NDP went to that organization and said, give us your views, and we tabled the views, we gave them to everybody. Yes, they sustain our case, but we knew they

would because the reading of the CRTC ruling in Alberta makes that very plain.

\* (0940)

If the government knows this to be wrong, why will you not put forward the data that shows that it is wrong? Why will you not table that information? Is it that you do not have it, or that you do have it and it sustains the view of the Ontario consultant and the CRTC in regard to Alberta? We have asked repeatedly, do the backbenchers have the data? Will you be able to go to your constituents and say, all of the opposition is wind and rhetoric. The Union of Manitoba Municipalities is comprised of those who do not understand the situation and have no access to competent advice. So their opposition, the opposition of every single municipality in this province to what you are doing, is based on fearmongering by the NDP. Mr. Chairperson, when was the last time the NDP had the power to fearmonger in the council of Morden, Manitoba? When was the last time we had the ability to fearmonger in the Union of Manitoba Municipalities?

You demean the elected officials of this province when you suggest that they are so feeble-minded that the NDP can just walk in and tell them to pass a motion. You demean those people by suggesting they are open to such crass manipulation. They are not fools; they do not take their decisions lightly; and yet their president stood here and told you you were wrong and challenged you to make a case to the contrary. Not a case of the world is changing, change is difficult, we must change, the world is changing, change is difficult, we must change, but a rational case based on some data. If you have the data, table it. So we will now move into clause-by-clause consideration, and we will do our homework carefully, and I expect that we will have quite a number of questions. With those remarks, Mr. Chairperson, I think we should begin, unless there are other members of the committee who wish to put some remarks on the record.

**Mr. Chairperson:** Thank you very much, Mr. Sale. Are there any further comments by committee members at this time? Seeing none, we will then move into clause by clause consideration of Bill 67. During consideration of the bill, the table of contents, the title and the preamble are postponed until all other clauses have been considered in their proper order. Is that agreed? [agreed]

Shall Clause 1(1) pass?

**Mr. Findlay:** There are nine amendments in this particular Section 1. Mr. Chairman, I ask you, do you want me to read each of the nine in Section 1 into the record and move them and discuss them all, or is there a desire just to do them one at a time?

**Mr. Chairperson:** Let us proceed with one at a time.

**Mr. Findlay:** Okay.

**Mr. Sale:** I think one at a time is preferable, Mr. Chairperson, but read them all in and get them on the table.

**Mr. Findlay:** All nine, read them all in now.

**Mr. Sale:** Mr. Chairperson, with the advice of the clerk, I think that we have to proceed in the procedurally correct manner. I have no objection if it is procedurally correct for the minister to read all the amendments in at the present time, but I believe we have to pass them individually. I do not believe we can pass them as a group. So at the advice of the Chair and the clerk, we should proceed.

**Mr. Chairperson:** There are two ways we can do this. With the leave of the committee, we can get the minister to read all of them onto the record and then we can proceed in passing them singly after that. So what is the wish of the committee, that we read all of them into the record and then pass them singly? [agreed] Mr. Minister, you may proceed.

**Mr. Findlay:** Mr. Chairman, I move

THAT the definition "associate" in subsection 1(1) be amended by adding "or" at the end of clause (e) and by striking out clause (f) and substituting the following:

(f) a person with whom that person has entered into an agreement or arrangement, other than only by the granting of a proxy, under which such persons agree to act or do act in concert, whether by active participation or passive consent, with respect to any of their interests, direct or indirect, in the issuer; ("liens")

[French version]

*Il est proposé de remplacer l'alinéa f) de la définition de "liens" au paragraphe 1(1) par ce qui suit:*

*f) la personne avec laquelle elle a conclu une entente ou un arrangement, exception faite d'une procuration, en vertu desquels elles s'entendent pour agir de concert ou agissent de concert, que ce soit par participation active ou par consentement passif, à l'égard de intérêts qu'elles ont dans l'émetteur. ("associate")*

**Mr. Chairperson:** Mr. Minister, might I suggest that you not indicate that you move every one of them as you read them. It would be preferable if you read them all and then we will move them as we consider them.

**Mr. Findlay:** Thank you, Mr. Chairman. The next one is

THAT the definition "district registrar" in subsection 1(1) be struck out and the following substituted:

"district registrar" means a person having the powers of a district registrar under The Real Property Act or the powers of a registrar under The Registry Act; ("registraire de district")

[French version]

*Il est proposé de remplacer la définition de "registraire de district" au paragraphe 1(1) par ce qui suit:*

*"registraire de district" Personne investie des pouvoirs conférés à un registraire de district en vertu de la Loi sur les biens réels ou des pouvoirs conférés à un registraire en vertu de la Loi sur l'enregistrement foncier. ("district registrar")*

Next, is

THAT the definition "foreign government" in subsection 1(1) be struck out.

[French version]

*Il est proposé de supprimer la définition de "gouvernement étranger" au paragraphe 1(1).*

**Mr. Sale:** Excuse me, Mr. Chairperson. My package does not seem to have that particular amendment. Is that

a new amendment or is it—well, I apologize if it is a photocopying problem, but I do not have that amendment.

**Mr. Chairperson:** Mr. Sale, you are referring to the foreign government one.

**Mr. Sale:** Yes.

**Mr. Chairperson:** Could we make sure Mr. Sale has a copy, and check with all members of the committee that they all have copies.

**Mr. Sale:** Thank you, Mr. Chairperson.

**Mr. Chairperson:** You may proceed, Mr. Minister.

**Mr. Findlay:** Mr. Chairman, the next is

THAT the definition “indebtedness to the Crown” in subsection 1(1) be amended by striking out “coming into force of this Act” and substituting “coming into force of this section”.

**[French version]**

*Il est proposé d'amender la définition de “endettement envers la Couronne” au paragraphe 1(1) par substitution, à “de la présente loi”, de “du présent article”.*

Next, is

THAT the definition “instrument” in subsection 1(1) be struck out and the following substituted:

“instrument” includes

(a) a caveat or an instrument within the meaning of The Real Property Act or The Registry Act,

(b) an Order in Council issued by the Lieutenant Governor in Council for the purpose of conveying the custody, control and administration of land or any other interest in land,

(c) a right-of-way agreement, easement agreement or other agreement, a transfer, assignment, licence, permit or reservation to use property, a mortgage, encumbrance,

charge, title, certificate of title or certificate of registration,

(d) a judgment, order, direction, appointment, approval or determination of a court, judge or other constituted authority,

(e) a pleading, notice or document in an action or other proceeding in a court,

(f) a document issued, registered, filed, lodged or deposited by or with a district registrar, and

(g) a document issued, registered, filed, lodged or deposited in the register evidencing the disposition of Crown lands kept and maintained pursuant to the provisions of The Crown Lands Act; (“instrument”)

**[French version]**

*Il est proposé de remplacer la définition de “instrument” au paragraphe 1(1) par ce qui suit:*

*“instrument” Sont assimilés un instrument les documents suivants:*

*a) les notifications d'opposition ou les instruments au sens de la Loi sur les biens réels ou de la Loi sur l'enregistrement foncier;*

*b) les décrets du lieutenant-gouverneur en conseil ayant pour but de transporter la garde et la gestion d'un bien-fonds ou un intérêt dans celui-ci;*

*c) les ententes, notamment les ententes de droit de passage et les ententes de servitude, les transferts, les cessions, les licences, les permis d'utilisation ou les mises en réserve de biens-fonds, les hypothèques, les grèvements, les charges, les titres, les certificats de titre et les certificats d'enregistrement;*

*d) les jugements, les ordonnances, les directives, les nominations et les approbations ou les déterminations d'un tribunal, d'un juge ou d'une autre autorité constituée;*

*e) les actes de procédure ainsi que les avis ou les documents liés à une action ou à une autre procédure judiciaire;*

f) les documents délivrés, enregistrés, déposés ou inscrits par un registraire de district ou auprès de lui;

g) les documents délivrés, enregistrés, déposés ou inscrits dans les registres servant à attester l'aliénation de terres domaniales et tenus et gardés à jour conformément aux dispositions de la Loi sur les terres domaniales. ("instrument")

Next,

THAT the definition "non-resident of Canada" in subsection 1(1) be amended by striking out clause (c).

**[French version]**

*Il est proposé de supprimer l'alinéa c) de la définition de "non-résident du Canada" au paragraphe 1(1).*

Next,

THAT the definition "non-voting common share" in subsection 1(1) be struck out and the following substituted:

"non-voting common share" means a share of the corporation the holder of which is not entitled to receive notice of or attend or vote at meetings of shareholders except as specifically provided under The Corporations Act, is entitled to receive any dividend declared by the corporation and is entitled to share in the distribution of the assets of the corporation upon dissolution subject to the rights, privileges, and conditions attaching to any other class of shares of the corporation ranking in priority thereto; ("action ordinaire sans droit de vote")

**[French version]**

*Il est proposé d'amender la définition de "action ordinaire sans droit de vote" au paragraphe 1(1) par ce qui suit:*

*"action ordinaire sans droit de vote" Action de la Société qui ne confère pas à son titulaire le droit de recevoir les avis de convocation aux assemblées des actionnaires, d'assister à ces assemblées ou d'y voter, sauf dans les cas précis prévus par la Loi sur les corporations, mais qui lui confère celui de recevoir les dividendes que déclare la Société et de participer, en*

*cas de dissolution de la Société, à la répartition des actifs, sous réserve des droits, des privilèges et des conditions rattachés aux autres catégories d'actions de la Société qui ont priorité de rang. ("non-voting common share")*

\* (0950)

The next, Mr. Chairman, is

THAT the definition "voting common share" in subsection 1(1) be struck out and the following substituted:

"voting common share" means a share of the corporation the holder of which is entitled to receive notice of and attend and vote at meetings of shareholders, to receive any dividend declared by the corporation and to share in the distribution of the assets of the corporation upon dissolution subject to the rights, privileges, and conditions attaching to any other class of shares of the corporation ranking in priority thereto: ("action ordinaire avec droit de vote")

**[French version]**

*Il est proposé de remplacer la définition de "action ordinaire avec droit de vote" au paragraphe 1(1) par ce qui suit:*

*"action ordinaire avec droit de vote" Action de la Société qui confère à son titulaire le droit de recevoir les avis de convocation aux assemblées des actionnaires, d'assister à ces assemblées et d'y voter, de recevoir les dividendes que déclare la Société et de participer, en cas de dissolution de la Société, à la répartition des actifs, sous réserve des droits, des privilèges et des conditions rattachés aux autres catégories d'actions de la Société qui ont priorité de rang. ("voting common share")*

Next,

THAT the definition "voting share" in subsection 1(1) be struck out and the following substituted:

"voting share" means a share of an issuer the holder of which is entitled to receive notice of and attend and vote at meetings of shareholders on resolutions electing

directors, and includes a voting common share; (“action avec droit de vote”)

**[French version]**

*Il est proposé de remplacer la définition de “action avec droit de vote” au paragraphe 1(1) par ce qui suit:*

*“action avec droit de vote” Action d'un émetteur qui confère à son titulaire le droit de recevoir les avis de convocation aux assemblées des actionnaires, d'assister à ces assemblées ou d'y voter relativement aux résolutions visant l'élection des administrateurs. Sont assimilées aux actions avec droit de vote les actions ordinaires avec droit de vote. (“voting share”)*

Those, Mr. Chairman, are the nine proposed amendments to subsection 1(1).

**Mr. Chairperson:** We will then proceed to the moving of the individual amendments.

**Mr. Findlay:** Mr. Chairman, I move—

**An Honourable Member:** Dispense.

*THAT the definition “associate” in subsection 1(1) be amended by adding “or” at the end of clause (e) and by striking out clause (f) and substituting the following:*

*(f) a person with whom that person has entered into an agreement or arrangement, other than only by the granting of a proxy, under which such persons agree to act or do act in concert, whether by active participation or passive consent, with respect to any of their interests, direct or indirect, in the issuer; (“liens”)*

**[French version]**

*Il est proposé de remplacer l'alinéa f) de la définition de “liens” au paragraphe 1(1) par ce qui suit:*

*f) la personne avec laquelle elle a conclu une entente ou un arrangement, exception fait d'une procuration, en vertu desquels elles s'entendent pour agir de concert ou agissent de concert, que ce soit par participation active ou par consentement passif, à l'égard de intérêts qu'elles ont dans l'émetteur. (“associate”)*

**Motion presented.**

**Mr. Sale:** Mr. Chairperson, I looked at the amendment, and I think it is quite minor, but could the minister just for the record indicate what the change is and why it was made?

**Mr. Findlay:** The definition of associate is expanded to clarify the concept of acting in concert and to correct a typographical error.

**Mr. Sale:** Could the minister indicate what the words “active participation or passive consent” mean in law? Passive consent, as a concept, troubles me as to what this is actually meaning. I do not know whether I passively consent when I do not know that something has happened to which I ordinarily would be entitled to information but fail to receive that information, for example, in regard to a trust involving a minor or a trust involving a mentally incompetent person, or any other shareholding arrangement or corporate arrangement where a corporation is in some associate status. What does “passive” mean in law in regard to this?

**Mr. Findlay:** Mr. Chairman, I am informed it means “acquiescence.”

**Mr. Sale:** I do not want to make a major point of this, and I am not trying to. I just am wondering whether legal counsel—and, Mr. Chairperson, I have no objection if the minister would like to have the legal counsel explain directly. I do not understand these things, and I am happy to have others speak at the committee if that is the committee's wish. I know there are traditions about that, but if he could simply give us a short explanation of what “passive consent” means, I would be happy to have that.

**Mr. Findlay:** Mr. Chairman, I would ask if there is leave to have legal counsel comment directly on the interpretation.

**Mr. Chairperson:** Is there leave? [agreed]

**Mr. Richard Yaffe (Counsel to the Province):** Mr. Chairman, the intention of the addition of the words “passive consent” is to broaden the scope of the concept of associated persons so that persons who are silent initially, and then subsequently it is determined are acting with a common goal or are acquiescing with respect to a common goal, would be caught by the definition of associate.

**Mr. Chairperson:** Thank you, Mr. Yaffe.

**Mr. Sale:** So would that cover the situation of two companies who had some kind of silent agreement and might be involved with MTS, the new MTS, in some formal business arrangement, and that silent agreement had implications of common process, common purpose, but by virtue of its silence was not known, and so then subsequently some event takes place that has legal implications, this definition would link those companies by their passive or silent consent and have that effect. Is that correct?

**Mr. Yaffe:** Mr. Chairman, that is correct.

**Mr. Sale:** I thank the chairperson and the minister for that. Can I just clarify, Mr. Chairperson, that the consent of the committee was meant not just to cover this one section but to allow for counsel to provide advice throughout?

**Mr. Chairperson:** Amendment—pass;

**Mr. Findlay:** Mr. Chairman, I move—

**Mr. Chairperson:** Dispense.

*THAT the definition “district registrar” in subsection 1(1) be struck out and the following substituted:*

*“district registrar” means a person having the powers of a district registrar under The Real Property Act or the powers of a registrar under The Registry Act; (“registraire de district”)*

**[French version]**

*Il est proposé de remplacer la définition de “registraire de district” au paragraphe 1(1) par ce qui suit:*

*“registraire de district” Personne investie des pouvoirs conférés à un registraire de district en vertu de la Loi sur les biens réels ou des pouvoirs conférés à un registraire en vertu de la Loi sur l’enregistrement foncier. (“district registrar”)*

**Mr. Chairperson:** Amendment—pass.

**Mr. Findlay:** I move—

**Mr. Chairperson:** Dispense.

*THAT the definition “foreign government” in subsection 1(1) be struck out.*

**[French version]**

*Il est proposé de supprimer la définition de “gouvernement étranger” au paragraphe 1(1).*

**Motion presented.**

**Mr. Stan Struthers (Dauphin):** We heard a lot of presentations at the public meetings that were held here in this room express a great deal of concern about where the shares of MTS will eventually end up. We had one fellow in particular that comes to mind who talked specifically about our phone company becoming an American phone company. There is a great deal of worry out there amongst people. I do not know if this is just a technical thing that the minister is addressing here, but I am wondering why the definition of foreign government has to be deleted, has to be struck out in that section. Is there an explanation for that?

**Mr. Findlay:** There are actually two separate issues here. You will find elsewhere in the bill that foreign ownership is restricted forever at 25 percent, an ongoing provision. We are striking it out because now it is unnecessary to have that because we are prohibiting ownership of the shares by any government. It is a 100 percent share offering to public and there will be no government ownership.

**Mr. Struthers:** The minister said that there were two sides to this, two reasons. I do not believe I heard the second one. You explained the first one and that seems to be fairly clear to me, and what was the second part that he was talking about?

**Mr. Findlay:** Because of the noise in the background, I can understand you could have difficulty. I think you were referring to a presenter who was worried about ownership going outside of the country into the U.S. That is covered in my first comment that there will never be more than 25 percent foreign ownership. What we are doing is, we are providing for here, that no government shall own any portion of MTS. So the need for the definition of foreign government is no longer necessary.

**Mr. Sale:** For greater clarification, that is the new Section 8.1(1).

**Mr. Findlay:** Yes.

**Mr. Chairperson:** Amendment—pass.

**Mr. Findlay:** I move—

**An Honourable Member:** Dispense.

*THAT the definition “indebtedness to the Crown” in subsection 1(1) be amended by striking out “coming into force of this Act” and substituting “coming into force of this section”.*

**[French version]**

*Il est proposé d'amender la définition de “endettement envers la Couronne” au paragraphe 1(1) par substitution, à “de la présente loi”, de “du présent article”.*

**Motion presented.**

\* (1000)

**Mr. Sale:** I am not clear why this section reference, indebtedness to the Crown. It seems strange in that this is Section 1(1), why do we refer to the section when indebtedness to the Crown, the special share function in this act is such a central issue and one to which some of the initial comments of the minister were addressed. After the special share is extinguished, the minister is attempting, by other amendments, to protect some of the things government wishes to protect. Why section rather than act?

**Mr. Findlay:** Mr. Chairman, the bill will be proclaimed in different stages so we have made many changes throughout the amendments. When coming into force this act is replaced by coming into force this section. So when the section is actually proclaimed, this provision is covered.

**Mr. Sale:** Mr. Chairperson, I am not a regulatory drafter, but I do not understand. Section 38 says this act comes into force on a day fixed by proclamation, so Section 38 covers the whole act. There does not seem to

be, in other sections, something saying this section comes into force on a day fixed by proclamation. There is just one overarching statement about coming into force. So help me understand the confusion that is in my head if nowhere else.

**Mr. Findlay:** Mr. Chairman, effectively I have had confirmed what I just said, that the bill is proclaimed in stages, portions, sections, if we want to change that statement here so that it allows the indebtedness to the Crown to become enacted when that section happens. [interjection] Oh, yes. I am sorry. Also Section 38 is also being amended, to which the member referred to, so that amendment is to come to effectively do the same thing there.

There is another element here. The Interpretation Act—maybe I will ask counsel to comment directly to be sure we get this clear.

**Ms. Shirley Strutt (Legislative Counsel):** In The Interpretation Act there is a provision that indicates, if you state in an act that it comes into force in proclamation, that you can proclaim the act in parts or by section, and this is being amended to make sure that this particular section comes into force, therefore, on proclamation of the section. It is a standard thing that we do in drafting. Does that clear that up?

**Mr. Sale:** Mr. Chairperson, just for the record, I suspect that all of us are fatigued. I did read also Section 38 last night, but it did not stay in my head. There are proposed amendments on that section, so I thank the minister for clarifying that issue.

**Mr. Chairperson:** Amendment—pass.

**Mr. Findlay:** Mr. Chairman—

**An Honourable Member:** Dispense.

*THAT the definition “instrument” in subsection 1(1) be struck out and the following substituted:*

*“instrument” includes*

*(a) a caveat or an instrument within the meaning of The Real Property Act or The Registry Act,*

(b) an Order in Council issued by the Lieutenant Governor in Council for the purpose of conveying the custody, control and administration of land or any other interest in land,

(c) a right-of-way agreement, easement agreement or other agreement, a transfer, assignment, licence, permit or reservation to use property, a mortgage, encumbrance, charge, title, certificate of title or certificate of registration,

(d) a judgment, order, direction, appointment, approval or determination of a court, judge or other constituted authority,

(e) a pleading, notice or document in an action or other proceeding in a court,

(f) a document issued, registered, filed, lodged or deposited by or with a district registrar, and

(g) a document issued, registered, filed, lodged or deposited in the register evidencing the disposition of Crown lands kept and maintained pursuant to the provisions of The Crown Lands Act; ("instrument")

**[French version]**

*Il est proposé de remplacer la définition de "instrument" au paragraphe 1(1) par ce qui suit:*

*"instrument" Sont assimilés un instrument les documents suivants:*

*a) les notifications d'opposition ou les instruments au sens de la Loi sur les biens réels ou de la Loi sur l'enregistrement foncier;*

*b) les décrets du lieutenant-gouverneur en conseil ayant pour but de transporter la garde et la gestion d'un bien-fonds ou un intérêt dans celui-ci;*

*c) les ententes, notamment les ententes de droit de passage et les ententes de servitude, les transferts, les cessions, les licences, les permis d'utilisation ou les mises en réserve de biens-fonds, les hypothèques, les grèvements, les charges, les titres, les certificats de titre et les certificats d'enregistrement;*

*d) les jugements, les ordonnances, les directives, les nominations et les approbations ou les déterminations*

*d'un tribunal, d'un juge ou d'une autre autorité constituée;*

*e) les actes de procédure ainsi que les avis ou les documents liés à une action ou à une autre procédure judiciaire;*

*f) les documents délivrés, enregistrés, déposés ou inscrits par un registraire de district ou auprès de lui;*

*g) les documents délivrés, enregistrés, déposés ou inscrits dans les registres servant à attester l'aliénation de terres domaniales et tenus et gardés à jour conformément aux dispositions de la Loi sur les terres domaniales. ("instrument")*

**Motion presented.**

**Mr. Sale:** Mr. Chairperson, the change here seems to be the addition of a number of clauses, particularly the Order-in-Council, which becomes (b) and some other wording changes to make this a much more exhaustive definition of instrument than was already in.

Could the minister indicate what the role of an O/C here is, why an O/C might be necessary?

**Mr. Findlay:** There are certainly parcels of land that are held in the name of the Crown for MTS, and we have to be sure that we have provisions for all the means of conveying those kinds of lands to the MTS of the future. The intent is fully that any land that is held in the name of MTS will become land of MTS in the process here. This is just to be sure we have all the vehicles of conveyance in place.

**Mr. Chairperson:** Amendment-pass.

**Mr. Findlay:** I move—

**Mr. Chairperson:** Dispense.

*THAT the definition "non-resident of Canada" in subsection 1(1) be amended by striking out clause (c).*

**[French version]**

*Il est proposé de supprimer l'alinéa c) de la définition de "non-résident du Canada" au paragraphe 1(1)*



**Motion presented.**

**Mr. Sale:** This is the first—well, no it is not, it is the second—of amendments that go to a very central issue of the future of the corporation in terms of the ownership. Again, I do not have any legal expertise, let alone the legal expertise required to enquire in this area, but in law, is a government a person, and is a foreign government a foreign person? I guess to be plainer, I cannot see what is lost by leaving this in. If it is unnecessary it will not be the first act in Manitoba's history that has an unnecessary clause in it.

We have lots of examples of acts which attempted to foresee problems which perhaps were never there, so I am uncomfortable with eliminating this. I am uncomfortable in terms of potential future developments within our own country and potential developments which none of us can foresee, because we all take history to be a slow thing, but as the last 20 years has shown us, the evolution of the world makes it a place that will be barely recognized from 20 years ago in terms of nationalities, boundaries, legal entities. Countries have changed their shape and texture and governments in ways that no one could possibly have foreseen. So I am wondering why it is a good idea to eliminate this. If it does no harm, then maybe we should take the Hippocratic oath as a guide that our role here is to do no harm. We hope to do good, but we must at least do no harm. So if it does no harm, why not leave it in?

(Mr. Vice-Chairperson in the Chair)

**Mr. Findlay:** Mr. Chairman, it does no harm to leave it in if you want to leave it in.

**Mr. Sale:** Mr. Chairperson, I thank the minister for that. If that is the case, would he withdraw the amendment then?

**Mr. Findlay:** Mr. Chairman, we would be prepared to withdraw it if that is the will of the committee.

**Mr. Vice-Chairperson:** Is it the will of the committee to withdraw the amendment? [agreed] Agreed? The amendment is withdrawn.

**Mr. Findlay:** Mr. Chairman, I move—

**An Honourable Member:** Dispense.

*THAT the definition “non-voting common share” in subsection 1(1) be struck out and the following substituted:*

*“non-voting common share” means a share of the corporation the holder of which is not entitled to receive notice of or attend or vote at meetings of shareholders except as specifically provided under The Corporations Act, is entitled to receive any dividend declared by the corporation and is entitled to share in the distribution of the assets of the corporation upon dissolution subject to the rights, privileges, and conditions attaching to any other class of shares of the corporation ranking in priority thereto; (“action ordinaire sans droit de vote”)*

**[French version]**

*Il est proposé d'amender la définition de “action ordinaire sans droit de vote” au paragraphe 1(1) par ce qui suit:*

*“action ordinaire sans droit de vote” Action de la Société qui ne confère pas à son titulaire le droit de recevoir les avis de convocation aux assemblées des actionnaires, d'assister à ces assemblées ou d'y voter, sauf dans les cas précis prévus par la Loi sur les corporations, mais qui lui confère celui de recevoir les dividendes que déclare la Société et de participer, en cas de dissolution de la Société, à la répartition des actifs, sous réserve des droits, des privilèges et des conditions rattachés aux autres catégories d'actions de la Société qui ont priorité de rang. (“non-voting common share”)*

**Mr. Vice-Chairperson:** Amendment—pass.

**Mr. Findlay:** Mr. Chairman, I move

THAT the definition—

**An Honourable Member:** Dispense.

*THAT the definition “voting common share” in subsection 1(1) be struck out and the following substituted:*

*“voting common share” means a share of the corporation the holder of which is entitled to receive notice of and attend and vote at meetings of shareholders, to receive any dividend declared by the corporation and to share in the distribution of the assets of the corporation upon dissolution subject to the rights, privileges, and conditions attaching to any other class of shares of the corporation ranking in priority thereto: (“action ordinaire avec droit de vote”)*

**[French version]**

*Il est proposé de remplacer la définition de “action ordinaire avec droit de vote” Action de la Société qui confère à son titulaire le droit de recevoir les avis de convocation aux assemblées des actionnaires, d’assister à ces assemblées et d’y voter, de recevoir les dividendes que déclare la Société et de participer, en cas de dissolution de la Société, à la répartition des actifs, sous réserve des droits, des privilèges et des conditions rattachés aux autres catégories d’actions de la Société qui ont priorité de rang. (“voting common share”)*

**Mr. Vice-Chairperson:** Amendment—pass.

\* (1010)

**Mr. Sale:** Mr. Chairperson, just for a matter of procedure, again not meaning to delay consideration, but I think, given the complexity, that we would prefer that sections be passed section by section and not page by page or group of clauses by group of clauses, that we go in section by section.

**Mr. Findlay:** Mr. Chairman, going back to the amendment that we had deleted. I am informed that the definition of foreign government is out, so this section has no force. The legalese is working here.

**Mr. Sale:** Mr. Chairperson, perhaps the clerk could advise how we might bring that back in. I say that on the basis that I have had a moment to reread the definition of person in the act, and person does not include government. So, for clarity, I think it is useful. It provides some increased confidence to the public of the government's intention. So, if the clerk could advise as to the proper procedure to put the previous deletion back in, either I would be glad to move it or the minister might wish to do so himself.

(Mr. Chairperson in the Chair)

**Mr. Chairperson:** Could we come back to order. I have been advised that we need to ask leave of committee that we may in fact move a withdrawal of an amendment that was passed that speaks to the definition of “foreign government,” which was passed before. I need permission.

**Some Honourable Members:** Leave.

**Mr. Chairperson:** Leave has been granted now. The amendment is withdrawn. Agreed? [agreed]

It has been requested that I read into the record the amendment that has been withdrawn. It was moved by the honourable minister

THAT the definition “foreign government” in subsection 1(1) be struck out.

**[French version]**

*Il est proposé de supprimer la définition de “gouvernement étranger” au paragraphe 1(1).*

That is the one that has been withdrawn.

**Some Honourable Members:** Agreed.

**Mr. Chairperson:** Now, we are on motion 9. Mr. Struthers, sorry about that.

**Mr. Struthers:** I want to make sure I am clear with what we are doing here. In the same act that prohibits ownership by a Crown, we are still allowing foreign government or agents of a foreign government to buy shares or not?

**Mr. Findlay:** My understanding is the answer is a definitive no.

**Mr. Struthers:** A definitive no.

**An Honourable Member:** As opposed to a regular no.

**Mr. Struthers:** That is fine. He made it perfectly clear.

**Mr. Chairperson:** Can we proceed then?

**Some Honourable Members:** Proceed.

**Mr. Chairperson:** It has been moved by the honourable minister

THAT the definition "voting share"—

**An Honourable Member:** Dispense.

*THAT the definition "voting share" in subsection 1(1) be struck out and the following substituted:*

*"voting share" means a share of an issuer the holder of which is entitled to receive notice of and attend and vote at meetings of shareholders on resolutions electing directors, and includes a voting common share; ("action avec droit de vote")*

**[French version]**

*Il est proposé de remplacer la définition de "action avec droit de vote" au paragraphe 1(1) par ce qui suit:*

*"action avec droit de vote" Action d'un émetteur qui confère à son titulaire le droit de recevoir les avis de convocation aux assemblées des actionnaires, d'assister à ces assemblées ou d'y voter relativement aux résolutions visant l'élection des administrateurs. Sont assimilées aux actions avec droit de vote les actions ordinaires avec droit de vote. ("voting share")*

**Mr. Chairperson:** Amendment—pass. Now Clause 1 as amended—pass; 1(1)—I am sorry—pass. Shall Clause 1(2) pass?

**Mr. Sale:** Mr. Chairperson, this goes back to the whole question of what affiliation means. The first part, it is clear to me that if there is a subsidiary relationship, if I am understanding "(b)" correctly, this pertains to a situation where a company, let us say, Northern Telecom, who is a big vendor of telecommunications products, has two independent subsidiaries which themselves are not related—in other words, Northern Tel either owns or controls two separate companies, neither of which has a beneficial ownership relationship between them. Nevertheless, for the purposes of this act, they are deemed to be affiliated by virtue of their common parent, whether or not they have anything to do with each other at a company-to-company level. Is that correct?

**Mr. Findlay:** Mr. Chairman, the answer is yes.

**Mr. Sale:** Then, just briefly, without getting into a great long explanation, what is the purpose of this kind of clarification and protection? What is the event against which this is protection?

**Mr. Findlay:** Mr. Chairman, I would ask the member to be more clear in what he is asking for, so counsel could understand what he is asking.

**Mr. Sale:** Mr. Chairman, I am trying to be; that is my problem. I am not clear about the implication of needing to have—I am not arguing against; I am simply trying to understand. Why do we need to have this? Why is it a good idea to have this particular protection of (b) in?

**An Honourable Member:** Under "instrument"?

**Mr. Sale:** Under Affiliated bodies corporate, which I think is what we are debating now, 1(2)(b). Maybe the Chairperson needs to clarify. I think that is what we are on.

**Mr. Chairperson:** That is what we are on.

**Mr. Findlay:** In the example the member describes where a parent owns two subsidiaries, although the two subsidiaries are not related in any direct fashion, they are deemed to be related to the fact they have a common parent to prevent any context of acting in concert to override the maximums of ownership put in place there.

**Mr. Sale:** Would this then arise for situations where there was non arm's length? Would such companies to be deemed to be not at arm's length, even though they are not related directly, and therefore for any tendering or other business purposes would not be deemed to be at arm's length for legal purposes? Is that the point here?

**Mr. Findlay:** Yes, Mr. Chairman.

**Mr. Sale:** Okay.

**Mr. Chairperson:** Item 1(2)—pass; item 1(3)—pass. Item 1(4).

**Mr. Sale:** I think this is the same issue. At least 1(4) and 1(5) are the same kind of issue if I am correct, that

what we are doing here is attempting to be clear—I am sure not attempting, I am sure we are being clear—about for other legal purposes of defining transactions, bidding procedures, tendering procedures, entering into agreements. We are defining how companies are viewed from the point of view of the new MTS, and how then they have to operate in regard to conflicts of interest, a combination under the federal anticombines—it is not called anticombines—the federal Competition Act, et cetera?

\* (1020)

**Mr. Findlay:** I think the most succinct way to say it is eventually we have a 10 percent commitment that the maximum ownership is 10 percent. What we are doing is putting in place here requirements to make sure we can achieve that maximum of 10 percent, that there is no way of getting around it, avoiding it or bridging it.

**Mr. Chairperson:** Shall item 1(4) pass?

**Mr. Sale:** Mr. Chairperson, that then gets clearer under 1(6) and 1(7), if I have read this correctly, that this is where then the effect of what we are doing in 1(2), 1(3), 1(4) and 1(5) then actually takes effect?

**Mr. Findlay:** Mr. Chairman, the answer is yes.

**Mr. Chairperson:** Item 1(4)—pass; Item 1(5)—pass. Item 1(6).

**Mr. Sale:** Mr. Chairperson, this one puzzled me a bit, and I am not sure whether there is any other place. I think there is, but the minister probably can advise me.

In a legal partnership there is usually a requirement that the partnership consent to actions of partners in regard to the holdings of the partnership, and of course as the minister and everyone knows, partnerships are a very common form of business arrangement. I am not clear about how the issue of obtaining consent or direction pertains to a legal partnership. What this says is that I control securities. The definition of control for the purposes of this act—which is a very important issue because the members will know that the government is proposing to reduce the maximum number of shares that can be controlled, maximum percentage, from 15 to 10

percent, so the question of what constitutes control is a vital legal issue.

As I read this, as a layperson, I have been involved in some partnerships and have some knowledge of others who are involved in partnerships, and they have to obtain consent or direction before they can dispose of partnership's assets or their own assets held under and through the partnership. If I give the example of a general partner versus a limited partner, then I think that everyone will understand what I am getting to. I think there is an important issue here because this is a very common arrangement in business. So I am wondering if the minister and his counsel could clarify whether in fact the question of obligation to obtain consent or direction has been carefully thought through in regard to the partnership question.

**Mr. Yaffe:** The purpose of subsection 1(6) is to make it clear that, again for purposes of the individual ownership restriction that we will be coming to, a person will be deemed to be the holder of a share even in the event that person is not the registered owner of the share, but if that person has the ability, the authority to dispose of the share without getting the specific authorization of the beneficial owner. So there would be a very limited number of circumstances where that would arise. One would be, for example, a committee ship.

**Mr. Sale:** A committee ship?

**Mr. Yaffe:** Yes.

**Mr. Sale:** Thank you. I am still not satisfied, Mr. Chairperson, that the minister and counsel have addressed the issue of general and limited partnerships. The most publicly known example of that is the Winnipeg Jets, in which the general partner maintained corporate residence in Manitoba. The limited partners decamped to Quebec, some of them ironically just about the date the Nordiques decamped for Denver. So even though Quebec did not think it had a hockey team, in fact it did. It is just its hockey team was playing in Winnipeg, that is all. It was a nonresident hockey team for purposes of this act.

I am not clear, having read the corporate documents in which the various partners moved their limited partnerships and their assets to Quebec while the general

partner stayed here, Jets 8 Hockey Ventures Inc., I am not sure how that is all affected, because under the terms of that limited and general partnership, the partners could change the ownership of the assets. They could shift them either among themselves or to others, with permission. They could not be prohibited from reasonably doing so.

Very clearly, the world of corporate legal existence is a very complex world. I am not satisfied yet that this issue of control of securities has contemplated the issue of general and limited partnerships which are a common form of investment co-operation. Quite legal, and I am not suggesting anything to the contrary, but I am not clear at all yet that this issue is addressed, and I would appreciate more discussion.

(Mr. Vice-Chairperson in the Chair)

**Mr. Yaffe:** I guess the first point I would make, Mr. Chairman, is that again, 1(6) is in the bill specifically for the purposes of adding strength to the individual ownership restriction. It does not deal with control of assets other than control of securities, and in the context of Bill 67, the relevance would be that the securities referred to would be shares either of MTS or of an affiliate.

So the effect, if one were to put this into the context of shares of MTS owned by a limited partnership, one example of the implication of 1(6) would be that if a general partner of a partnership had the authority to dispose of shares owned by its limited partners, the general partner would be deemed to be the owner of those shares. To the extent that the general partner was so deemed, you would aggregate the shares over which it had control.

So, if there were 15 limited partners, and the general partner had direction and control over the shares of all of those limited partners, the general partner would be deemed to be the owner of the shares of all of those limited partners.

\* (1030)

**Mr. Sale:** I appreciate that explanation. I think what I am asking, though, is if the general partner did not have that power—and we used the analogy of the Jets situation

where you have a general partner and eight limited partners—but the shares were held beneficially in the limited partnerships but not requiring the consent of the general partner, then are those shares deemed to be part of a block of up to 10 percent, or by virtue of the fact that they are only held in a limited partnership, are they separate, and so eight partners could hold 10 percent each, to use an extreme example, by virtue of the general partner not having explicit control over those securities?

I think the case of the Jets is not an inappropriate analogy because I believe the way those companies are structured, each individual partner has the right to dispose of or alter its holdings without consent of the general partner. Now, I may be wrong about that, but it would not be the first time that a cabal of people decided to take control of a valuable asset by means of a legally constituted device, very technical, but nevertheless achieving that effect, so I am concerned that we do, in fact, what the government is saying it is doing, and I trust the government in regard to their intent here. I am asking, does this really achieve the intent?

(Mr. Chairperson in the Chair)

**Mr. Yaffe:** Mr. Chairman, the response to that question, I think, is to turn back to the definition of “associate” as amended in 1(1)(f), and that would be exactly the situation that would be contemplated particularly in the broadened wording as a result of the amendment that has been passed. That would contemplate your favourite term of passive consent.

**Mr. Chairperson:** Clause 1(6)—pass. Clause 1(7).

**Mr. Sale:** Could, just briefly, the minister or counsel just outline the intent of this held as security or in a managed account? A security held as security, that presumably does not mean held as security against a loan or against something else but held in the form of the security itself. What does as security mean?

**Mr. Yaffe:** Mr. Chairman, it is intended to refer to a share held as collateral.

**Mr. Sale:** Held as collateral. So just maybe interpret for me beneficial ownership of shares held as collateral security. Does that mean that the entity holding the shares is deemed to be the beneficial owner if they are

holding them as collateral? For example, if I wish to buy a house and I pledge my MTS shares to the Bank of Commerce as collateral against my mortgage, is the Bank of Commerce the beneficial owner for purposes, or do I maintain my beneficial ownership?

**Mr. Yaffe:** In those situations, I would refer you to 1(7)(d). In those situations, as a result, if neither of the arrangements is in (a) or (b), the beneficial owner would continue to be considered to be the beneficial owner, and the person holding the shares as collateral or the portfolio manager holding the shares on behalf of a client would not be seen to be the beneficial owner.

**Mr. Sale:** So just to summarize then, the intent of this would be to clarify or, in fact, to prevent somebody from, in fact, holding a larger number of shares than to which they were entitled by virtue of placing them in a banished account or pledging them against a loan that they have made.

Those shares cannot be seen to be somebody else's. In fact, they are still held by the original owner even though they are pledged; thereby preventing the original owner from exercising a larger than 10 percent ownership. That is the effect of this, it seems.

**Mr. Yaffe:** The effect is twofold. One of the ramifications is as you have stated. The other is that a portfolio manager would be able to hold in excess of 10 percent if the beneficial owners of the shares were a number of clients, each of whom held less than 10 percent.

**Mr. Chairperson:** Clause 1(7)—pass; Clause 1(8)—pass. Clause 2(1).

**Mr. Sale:** I believe that there is no issue here. It is just providing for a new name, but this is not the same as continuation and the discontinuance clause, so I have no problem with this name.

**Mr. Chairperson:** Shall the item pass? The item is accordingly passed. Clause 2(2)—pass; Clause 3(1)—pass. Clause 3(2).

**Mr. Sale:** Mr. Chairperson, could counsel advise whether this is a common provision where there is a technical complex act to supersede The Corporations Act?

**Mr. Yaffe:** It is typical. This act, as you pointed out in your introductory comments, is a relatively brief act. It does not include all of the very, very standard provisions relating to corporate structure, and for those purposes the intention is to rely on The Corporations Act.

**Mr. Sale:** Mr. Chairperson, could the minister or counsel indicate if there are what counsel would consider substantive places in this act where The Corporations Act is being superseded? I read this; I understand the intent, and I accept that this is perfectly reasonable, but could there be a couple of examples where a substantive overriding is contemplated?

**Mr. Yaffe:** The two most obvious examples, I think, would be subsection 14(2) which actually contemplates prospectively items that will be required to be included in articles of continuance under The Corporations Act. Typically that would not be something that would be thought through prior to the time of application for articles of continuance.

The other area in which The Corporations Act would be superseded would be an amendment that we have not yet looked at, and that is the addition of a new subsection 16(4) which we will be looking at.

**Mr. Sale:** Just by way of comment, that was one that I was going to say, help us. So when we get there, I will say, help us. Fair enough.

\* (1040)

**Mr. Chairperson:** Clause 3(1)—pass; Clause 3(2)—pass. Clause 4(1).

**Mr. Sale:** Mr. Chairperson, this is the one that I guess I understand why we need to have it, but it appears to provide more than it does. I think one of the very real concerns in regard to the privatization of this corporation is the example that has been seen in other provinces, where sophisticated telecommunication services are simply not available in rural and remote areas.

I can recall in the last couple of years being in Fort Albany, for example, at the mouth of the Albany River in Ontario, in which there is no sophisticated telecommunications available. There were two phones in the airline office of what at that time was still Austin

Airways in Ontario. Most people did not have phones. The quality of the phone connections and service was clearly, clearly inferior to what is present in many northern communities.

What this really says is, if you can afford it, if the company wishes to make it available at whatever price, then the company shall do so, but this is one of those clauses where the substance is considerably less than the appearance, instead of the other way around. The substance appears to give some guarantees.

I think we have heard from many, many presenters their very real concern that there is lots and lots of evidence that private telephone companies are skimming the cream off the profitable services in our own city. Videon and Unitel are two examples. Videon is in the process of tapping into very major fibre optic installations that Manitoba Telephone and its ratepayers have paid for and requiring MTS, as it is required under CRTC, to carry Unitel's business.

There are other examples in which Unitel, Sprint and others have absolutely not the slightest shred of interest in providing telecommunication services to individual rural residents, or even whole communities in more remote areas, but they are terribly interested in taking over the business of the University of Manitoba and have been enabled to do so by virtue of this government saying, well, it is the University of Manitoba's business. We do not really mind if U of M thinks it can get a little better deal from Unitel. We do not mind if all that traffic goes somewhere other than the Manitoba Telephone System. Let the university manage its own affairs and make its own economic decisions as it sees fit; there is no problem.

Well, there is a problem, and it is called in economics the tragedy of the commons, that if people are able to take advantage of those things which are seen to be in the short run and in the narrow scope advantageous to them but the broader public interest is never protected, then we have that tragedy occurring.

So this section, simply, I think legally Mr. Yaffe will probably say all this is doing is providing a little more flesh to the bones of continuance of the corporation under 2(1). Well, now we are saying what it is going to continue to do. It is going to continue to provide tele-

phones under a competent regulator. I know competent regulator is the legal meaning of competent—that is, the regulator to which the right to regulate is given, which is the CRTC at this point.

One might argue that the CRTC is not a competent regulator in some other ways, and I think that the minister might even agree with that. Certainly, the Manitoba Telephone System and its Stentor partners would agree that CRTC has passed some regulations that have harmed the best interests of those telcos, though they may have provided short-term advantage to particularly major users.

So I think when we pass this clause—and there is no particular reason not to pass it—we have to understand that it really does not say anything except in law you are giving it permission to do what it now does, but I do not think we should read it as in any way providing the slightest guarantee that any services will be provided on an affordable basis anywhere in Manitoba. They are just going to do what private companies do best, which is provide services that can make a profit in their best corporate sense of what their strategic interest is now and into the future.

If that means to reduce service or eliminate service in some areas or pay a very high premium, then that is what is going to happen, so we should not be under any illusion that 4(1) means anything other than what it actually says.

**Mr. Chairperson:** Clause 4(1)—pass. Clause 4(2).

**Mr. Sale:** Mr. Chairperson, what is the effect of 5—I am sorry, we are on 4(2)? I beg your pardon. Pass.

**Mr. Chairperson:** Clause 4(2)—pass. Clause 5(1).

**Mr. Sale:** Mr. Chairperson, what is the effect, if any, of the pension changes and the obligations of the current MTS in regard to present and future pensioners of the corporation and the rights and responsibilities of the corporation in this regard, because currently it functions through the Superannuation Board, and I know that the idea is to separate that entirely.

What does “not an agent of the Crown” mean here?

**Mr. Chairperson:** Maybe what I might suggest to the committee before we continue questioning that we put the amendment that is being proposed in this section on the table and then debate the amendment or the clause as it might be amended, if that is agreeable. [agreed]

**Mr. Findlay:** Mr. Chairman, I move

THAT subsection 5(1) be amended by adding “, and shall not be deemed to be,” after “not”.

[French version]

*Il est proposé d'amender le paragraphe 5(1) par adjonction, après "Couronne", de "et n'est pas réputée l'être".*

**Mr. Chairperson:** Amendment—pass.

**Mr. Sale:** Could we just have some explanation of the relationship of 5(1) and 5(2)? This whole section down to 5(4) deals with the old question of Her Majesty in Right of Manitoba and the role of the Crown. Are there not some residual roles or responsibilities that carry on here, or am I mistaken?

**Mr. Findlay:** Mr. Chairman, the answer is no, there are no further responsibilities by the Crown.

**Mr. Sale:** Mr. Chairperson, I thank the minister for that clarification.

Essentially, then, under these four sections—I know they are not all on the table; in fact, all of Section 5, five sections—are we clear how easements and land assets which are shared with Manitoba Hydro and with gas and other utility corridors and have an impact on private owners to which they now have some avenue of appeal because there is a Crown entity here, are we clear how this is all functioning? I recall a presentation by Mr. Kowalski who is, perhaps unnecessarily, but he is worried about the role of this new corporation in his backyard where there is a telephone line.

**Mr. Yaffe:** I think the short answer is that there has been some very, very careful due diligence with respect to all property matters on the part of outside counsel and also on the part of the company's internal law department. The provisions of Section 5 have been reviewed very,

very carefully with those people, and there is a very high comfort level that all contingencies have been considered.

\* (1050)

**Mr. Sale:** Thank you. I am sure that is the case.

The definition of land, I believe, is further on. I think there are amendments to that, and I do not want to go further ahead, but I would appreciate the opportunity to just ask a question about that, because what we seem to be doing by this is completely divorcing government from the Manitoba Telephone System. There is not going to be any relationship legally. There are no duties of one to the other anymore. These are totally separate corporations, and you have been very careful under these sections to achieve that.

But by virtue of the definition of land, as I read it at least, are we transferring beneficial rights to Manitoba Telecom, I have to get used to this, Services—

**Mr. Findlay:** It is still MTS.

**Mr. Sale:** MTS, that is the easy way. Yes, I know, we would like to say that, would we not? It brings to mind the chairman of the board telling the committee when he presented his annual report that under the new reality nothing would change. The mandate of the company would be the same. Mr. Benson was present during that discussion, and he knows how ridiculous that statement is, and so does the committee. In fact, as we are making very clear by these detailed considerations, a great deal changes, and the mandate will change, of the corporation; otherwise it would not be behaving as a proper corporation with fiduciary responsibility to its owners because the ownership structure is so radically different.

My concern in this, and I think it is a very important issue, is it seemed to me that we may be transferring more than we want to transfer to this new corporation, given that land apparently includes subsoil rights, mineral rights, all of the rights. Land is deemed in this act to have an incredibly exhaustive definition, and I appreciate that, that it is very plain, but I am sure we are transferring some land. In fact, I know we are transferring some land. I, for one, am not much interested in transferring to the Manitoba Telephone System, MTS, subsoil rights to anything. If they have to bury some cable, bury some



cable. If they have to string some cable, string some cable, but they bloody well do not get what is underneath, nor ought we to be giving them what is underneath.

So when we get to that section, I am certainly going to be concerned about the implication of that. I simply put on the record that I understand and take what the government is saying. There is going to be no relationship. We are transferring everything. There are no formal duties or requirements in future. Fair enough, but lets us then be clear about what it is we are transferring, so when we get to that section—maybe I am giving counsel and everybody warning that I am very concerned that we appear by the definition of land to be including stuff that I am not so sure I want MTS to own.

What happens if we suddenly discover how to make oil out of clay, with all that clay we have transferred to them? I guess we could say there is lots of other clay we can use, and MTS will not have any need of their clay, but I will be asking that question, so counsel should be ready for it.

**Mr. Frank Pitura (Morris):** Mr. Chairman, I have a question with respect to Section 5(5) with regard to the land transfer tax.

**Mr. Findlay:** We are not there yet.

**Mr. Pitura:** Okay, sorry.

**Mr. Chairperson:** If you allow me the latitude, we will move into that area, and I will allow you the question.

Clause 5(1) as amended—pass. Now, the next amendment.

**Mr. Findlay:** Mr. Chairman, I move

THAT the following be added after subsection 5(1):

#### **Shares of affiliates**

**5(1.1)** 100 shares of the capital stock of each of MTS NetCom Inc., MTS Mobility Inc. and MTS Advanced Inc. are deemed to have been validly issued to the corporation on January 1, 1996, and the stated capital of those shares is deemed to be \$1.00 per share.

[French version]

*Il est proposé d'ajouter, après le paragraphe 5(1), ce qui suit:*

#### **Actions des groupes**

**5(1.1)** *Sont réputées avoir été dûment émises à la Société le 1 janvier 1996 cent actions du capital-actions de MTS NetCom Inc., de MTS Mobility Inc. et de MTS Advanced Inc. Le capital déclaré de ces actions est réputé être de 1 \$ par action.*

#### **Motion presented.**

**Mr. Sale:** Mr. Chairperson, in the dark of night when I was trying to remember, I thought we had four subsidiaries, four sections of MTS. We have four vice-presidents that came in. What is the fourth one of? Just help me understand this.

**Mr. Findlay:** Mr. Chairperson, if you look specifically at the amendment, you will see MTS NetCom. Then there is MTS Mobility and MTS Advanced. NetCom is one company.

**Mr. Sale:** Yes, I understand.

**Mr. Findlay:** You understand that. You think in terms of MTS Net and MTS Com as two. Effectively, they are one. There are two divisions in the one company.

**Mr. Sale:** Mr. Chairperson, then, just for the record, they each have a vice-president, but they are one company? [interjection] A president? I beg your pardon, Mr. Benson is correcting me. They each have a president, but they are one company, with Mr. Fraser CEO of the whole shooting match. Okay, I appreciate that clarification.

**Mr. Chairperson:** Amendment—pass; Clause 5(2)—pass; Clause 5(3)—pass. Clause 5(4).

**Mr. Sale:** I think there is an amendment here, Mr. Chairperson.

**Mr. Findlay:** Mr. Chairman, I move

THAT the section heading for subsection 5(4) be amended by adding “of land” at the end.

**[French version]**

*Il est proposé d'amender le paragraphe 5(4) par adjonction, au titre, de "du bien-fonds".*

Mr. Chairman, that is intended as a clarification of the intent.

**Motion presented.**

**Mr. Sale:** Mr. Chairperson, I am just having trouble finding where that definition of land is in such great detail. I recall it, but I cannot remember where it is. [interjection] Right at the beginning? Yes, okay, so we have passed it, and I thought that quite appropriately we want to have that kind of detailed definition, but this is where the definition has some real effect.

I think it is plain to the minister and to counsel what my concern is here, and I think, historically, we only need to think about the Hudson's Bay Company and the CPR, two great Canadian examples to know just how apparently worthless the Government of Canada's grant of what was seen to be waving prairie grassland and trees and a whole bunch of water was to both the CPR and the Hudson's Bay Company, although I may be wrong.

It may have been that the parents of Confederation understood that there might well be gold in them thar hills, but I do not know whether that was the case and certainly we know as citizens of the 20th and 21st Centuries that there is a great deal of wealth represented under Manitoba's soil, a great deal of wealth in the soil too, but there is a great deal of wealth under the soil, and governments have benefited by helping corporations to exploit that.

But what I read this to mean is that we are conveying to the new company not simply the need to use the land for purposes of stringing wire or burying cable, but everything on that land. Now, I have no idea of the extent of the lands being transferred. I understand that we may be talking about narrowly defined land, but when you include paths, passageways, ways, water courses, waters, water rights, water powers, water privileges, air rights, licences, liberties, privileges, easements, trees, timber, mines, minerals and quarries, now I know we are not setting up a multinational corporation here that is

going to have immediately on the Alberta stock exchange a penny mine to exploit some gold that it has discovered at the corner of somewhere.

Nevertheless, I really question the wisdom of this section and the extent of the definition. I am wondering if the minister and counsel could respond.

\* (1100)

**Mr. Yaffe:** Mr. Chairman, the salient words in subsections 5(2), 5(3) and 5(4) are found in 5(2). The only land that is the subject of those subsections is land that is now beneficially owned by the corporation or an affiliate of the corporation and registered in the name of the Crown.

So, although the definition of land is broad, as you have correctly observed, if the land or any element of the definition is not now beneficially owned by the company or an affiliate, it is not the intention of Section 5 to transfer the land or any element of the land to the company.

**Mr. Sale:** Mr. Chairperson, I am not sure that that helps me. Maybe it does, and maybe I just do not understand enough about law to—well, I know I do not understand enough about law—know for sure what that means.

Currently, the protection against the company becoming a harvester of timber or the miner of minerals is that it is a Crown corporation, and the Crown would not undertake that kind of activity lightly. It would do so, presumably, for the greater benefit of Manitobans and all those other things that make a Crown corporation a servant of the whole entity, Her Majesty in Right of Manitoba.

I do not know how much we are transferring here. I do not know whether we are transferring corridors that are two feet wide or corridors that are a mile wide. I do not know whether we are transferring corridors that are two-foot wide or corridors that are a mile wide. I do not know whether we are transferring major holdings in rural Manitoba or minor holdings. I simply do not know. But I believe those are all beneficially owned now by the Manitoba Telephone System as a Crown. They are owned under the Crown, and that is the whole reason for having to do what we are doing here because in fact they

are currently held by the Manitoba Telephone System or its affiliates. I do not think it is an insubstantial amount of land that we are talking about or an insubstantial area of the province.

I am not trying to suggest that it is anything like the Hudson's Bay or the CPR rights. Obviously, it is not. But I do not take from what Mr. Yaffe has said any great comfort, because it does not change the fact that we are conveying rights which I cannot, for the life of me, see any need to convey. I do not know why we would need to give this new company anything other than the right to use the land that they are acquiring for telecommunication purposes, and particularly the notion of subsoil rights, subsurface rights. If they need to bury cables six feet down, then give them rights to six feet down but do not give them the extensive rights that are contemplated under this section.

**Mr. Findlay:** Mr. Chairman, can I understand Mr. Sale is concerned with just the mineral rights under the land that be used to bury cable or build buildings or whatever the case may be?

**Mr. Sale:** For clarification to the minister, I do not know what the holdings are. I do not know how wide the corridors to which Manitoba Telephone currently has beneficial ownership in the North are. I do not know what the timber that it has is. I mean, I just do not know, but I do not see the need to convey those rights to the new corporation when the purpose of this is tele-communications. Why do we do something that is much broader than what everyone agrees is a valid purpose?

Mr. Chairperson, I wonder if we might agree to a three- or four-minute recess for urgent personal purposes.

**Mr. Chairperson:** Agreed. Five minutes.

*The committee recessed at 11:05 a.m.*

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#### After Recess

*The committee resumed at 11:16 a.m.*

**Mr. Chairperson:** Could the committee please come back to order.

**Mr. Findlay:** I thank the member for Crescentwood (Mr. Sale) for raising the issue of the definition of

"land." Mr. Chairman, I would ask leave of the committee to withhold any amendment to the definition of "land" until legal counsel can draft what we believe would be appropriate and reasonable and acceptable to the committee, and that would be that the definition of "land" with regard to mines and minerals would be consistent with what is currently the provision under The Crown Lands Act, which is that when land is sold, for instance, to a farmer, it is with the exclusion of mines and minerals, sell him the land but the mines and minerals are retained by the Crown. Our intent, I believe, and I think the intent of the committee, as I understood it, was to be right and reasonable in this instance, that land that is currently held by the Crown be transferred to the new MTS exclusive of mines and minerals.

**An Honourable Member:** Timber.

**Mr. Findlay:** I am thinking it consistent with The Crown's Lands Act; only, in my understanding, it applies to mines and minerals. Just hold it for a second, we will clarify that.

**Mr. Sale:** I have no problem if we pass by this point at this point and come back at some point later in our discussions when there has been a little further clarification. If I might also ask, and this may not be the place where it needs to be done, but let me put it forward and you can tell me whether it is the place or not. We also have concerns about The Municipal Act and tax assessment questions. Under the Crown, the land occupied is not assessed for property tax purposes, and I am not clear where in the act the status of the lands that are so transferred by these sections for assessment purposes is clarified.

So that is an issue, I am sure, for many jurisdictions, obviously municipal level jurisdictions, what are the tax implications. This may not be the place to clarify that, but if we could pass by this whole section and come back, unless the minister is able to provide that clarification right now, then that is fine. I am just raising it so that he knows that this is an issue for us, and we are unclear how it is dealt with.

**Mr. Chairperson:** Would it be possible to raise that again when we get to the section, and we will make note of it? If there is a will to pass by, that can be done.

**Mr. Sale:** Mr. Chairperson, I have no problem with that, and I may just again in fatigue have missed it, but I did not see where it was in terms of the status of their land for assessment purposes, so I am quite happy with your direction. I would have no need to discuss it further now as long as we understand that we are going to raise it and we do not know where to raise it.

\* (1120)

**Mr. Chairperson:** Is there leave of the committee to pass by this section until we have consideration of amendment? [agreed]

The last clause we were dealing with was 5(4), and we had not passed the amendment. We were debating the amendment. So we will leave this amendment and the clause, 5(4), until there has been reconsideration of this item that was raised by Mr. Sale.

We will pass on to 5(5), 6(1).

**Mr. Sale:** I think we should leave 5(5), as well, Mr. Chairperson, and get on to 6.

**Mr. Chairperson:** Is that agreed?

**Mr. Yaffe:** Mr. Chairman, if I could just respond to Mr. Sale's earlier question, I think we will be dealing with your other concerns when we turn to Sections 31 through to—the consequential amendments sections which are 31 through to 36 at the back of the bill.

**Mr. Sale:** Would it be specifically Section 34?

**Mr. Yaffe:** It would be 33, 34 and perhaps 35, and I think Legislative Counsel could assist me on this.

**Mr. Sale:** Mr. Chairperson, if I could just sort of give notice that I do not have with me and I honestly did not look up Section 22(1)(a)(6). I presume what that is is the section that exempts MTS currently from assessment, so it puts it into an assessable class. Am I right, Mr. Yaffe?

**Mr. Yaffe:** That is my understanding. Again, I would defer to Legislative Counsel on the consequential amendments.

**Mr. Sale:** Why do we not just leave this for now?

**Mr. Chairperson:** We go then to item 6(1). Shall Clause 6(1) pass?

**Mr. Sale:** I think this is a fairly standard clause. I understand that the capital of the company is proposed to be 67 million common shares. I am not aware of whether there are any preference shares being issued immediately or not because I have not seen the prospectus, but I understand that the suggestion, at least to me, was that there be 67 million common shares.

The second one was puzzling to me because I thought that the purpose—I am sorry, I am confusing two issues. I am unclear about the purpose of section (b), an unlimited number of nonvoting common shares of a single class. The government is getting a share called special share under section (d), so I am unclear about the implication of common shares at an unlimited number that are nonvoting. Why is this contemplated?

**Mr. Yaffe:** Mr. Chairman, Section 6 of Bill 67 will for all intents and purposes constitute the articles of incorporation, the constating documents of the company when it is no longer a Crown corporation. Subsection 6(1) sets out the authorized capital, as would the articles of incorporation for any company, and in not every event will authorized capital be issued.

The intention right now is that there will be issued capital pursuant to 6(1)(a), and the number has not yet been set. That number consistent with Section 7 which we will be looking at shortly will be related to the reduction of indebtedness, and it is not contemplated now that there would be any shares issued under (b) or under (c), and then, as you observed, (d) authorizes the creation of the special share, and one special share would be issued.

**Mr. Sale:** Mr. Chairperson, I am certainly not aware of the real implications here, but the thing that occurred to me and raised some concerns for me is that a private company can apply to a securities commission to authorize the issuing of nonvoting common shares which are nevertheless dividend bearing or entitled to rights and privileges such as warrant rights, warrants to purchase common shares of other classifications or preference shares or whatever. I mean, this is a common financing device the companies going to the market for capital might use.

I am wondering whether it is consistent with government's intent to protect the investments of ordinary Manitobans to have the right to the income stream from the company via dividends to enable the company nevertheless to issue common shares, which could have significant rights attached and certainly could have the effect of diluting the authorized capital of the company by either a minor or a major amount. Obviously, to investors, dilution is a real issue.

So I am wondering whether it is wise to give this right to a new company at this point. It seems to me that if the company is successful and profitable and does its job well, which obviously we all hope would be the case, even though we oppose the creation of it, nevertheless, if it is created, we would wish it well as a private company, as we would wish any other private company well. But ought we to be giving at least at its formation the capacity to so dilute the earning streams by issuing shares?

Secondly, Mr. Chairperson, my question that goes with that is, do the share restrictions on the Class A, the voting shares, apply also to these Class B shares? That is, could some investor or partner own all of the nonvoting common shares that are dividend bearing and might have preference share rights attached or share warrants attached?

In effect, if you think of a company like Dia Met, the diamond company in the Northwest Territories, you will see listed on the Toronto Stock Exchange two kinds of shares for Dia Met, Class A and Class B, and they have very different rights and privileges. Different investors will buy them for different reasons.

So I think this is a very important section, and I am prepared to move that this section be deleted unless the government can persuade me that there is some good reason why this power is needed by the new corporation in addition to the power to issue preference shares. So I would appreciate an answer to that.

\* (1130)

**Mr. Chairperson:** Is there leave of the committee that we skip over 6(1) temporarily and move on? [agreed]

**Mr. Sale:** Mr. Chairperson, this is 6(2) then.

**Mr. Chairperson:** I am going to ask the question whether we deal with 6(2). Shall Clause 6(2) pass?

**Mr. Sale:** Mr. Chairperson, maybe Mr. Yaffe could advise whether or not I am correct. I do not have an absolutely clear memory on this, but I believe that The Corporations Act already provides for this right under the act, and so I am wondering why we need to put it in here. Maybe Mr. Yaffe can clarify whether my memory is faulty here, which it often is.

**Mr. Yaffe:** Mr. Chairman, you are correct, Mr. Sale. However, for purposes of clarity and specifically for purposes of Section 10 where we talk about class vote, as a protective measure really you will see that Section 10 refers back specifically to subsection 6(2). So it is a protective measure, clarification that there will be a class vote in respect of a resolution for the creation of a new class of shares and that that vote would require the affirmative vote of each class of shares.

**Mr. Chairperson:** Mr. Benson, for clarification.

**Mr. Julian Benson (Secretary to Treasury Board):** So, for instance, now in 6(1)–

**Mr. Chairperson:** Would you please use the mike.

**Mr. Benson:** –6(1)(b) that we are removing, if the company wanted to create that kind of class of shares, then each existing class of shares would have to vote on that type of share so that the province's special share would vote as a special group and that special share could, if you want, thwart the creation of another class.

**Mr. Chairperson:** For clarification and benefit of the recorders, that was Mr. Jules Benson, and they are here sitting at the table advising on the logistical and legal matters.

**Mr. Sale:** I believe I understand the issue here. The protection the minister is suggesting is that, while the special share is still in existence, the Crown would have the ability to protect its rights and to vote. Mr. Chairperson, Mr. Yaffe indicates he has clarification, so I would be glad to defer.

**Mr. Yaffe:** The protection works both for the Crown and for the holders of the voting common shares. Either class has, in effect, a veto power.

**Mr. Sale:** Mr. Chairperson, like all good legal counsel, Mr. Yaffe anticipated what I was going to say, that while we were still in the special share situation, the province is protected. After that, as a private corporation with all the normal rights and privileges, then all classes of shareholders are protected. So when we delete (b), then the company is not in a position to immediately create, before there are such shareholders, classes of shares which might impact on the rights of the common shareholders before they had an opportunity to pass on that question.

So I think that I am comfortable with this, although only a corporate lawyer would know.

**Mr. Chairperson:** Clause 6(2)—pass. Clause 7(1).

**Mr. Findlay:** Mr. Chairman, I move

THAT subsection 7(1) be amended by striking out “coming into force of this Act” and substituting “coming into force of this section”.

**[French version]**

*Il est proposé d'amender le paragraphe 7(1) par substitution, à “la présente loi”, de “le présent article”.*

**Mr. Chairperson:** Amendment—pass. Clause 7(1) as amended.

**Mr. Sale:** Mr. Chairperson, just for the record, this is the clarification we had earlier about sections, I believe, of allowing for the act to be claimed in sections, and specifically the reference is to 38(3) where the coming into force is the day this act receives Royal Assent; in other words, sometime in the next few days, as currently contemplated by the House.

I am not sure why we have to do this since really what we are saying under 38(3) is that it receives Royal Assent as an act, as the whole, and there is no contemplation of delaying the proclamation.

**Mr. Yaffe:** Mr. Chairman, there is an amendment proposed to Section 38 which would result in three stages of implementation of the bill, one retroactive, three

sections, I believe, on Royal Assent and the rest by proclamation which would likely appear as a group.

**Mr. Sale:** I see your point.

**Mr. Chairperson:** Item 7(1) as amended—pass. Clause 7(2).

**Mr. Sale:** Could counsel just explain Clause 7(2) in a little detail, so that we can be clear as to what it is we are looking at here?

**Mr. Yaffe:** Mr. Chairman, the purpose of Clause 7(2) is to deal with the event where there was no public offering, at this time, of the shares. This would contemplate the ability of a public offering of shares at a later date, and the offering would be of such number of shares as had been transferred from the company to the Crown in consideration for payment of indebtedness.

\* (1140)

**Mr. Sale:** I thought I understood about half of that, and I wonder if Mr. Yaffe would just indulge me with a bit more of an explanation. I do not think this is what is contemplated at this point. I think what is contemplated is an offering relatively soon, but if you could just explain again, if for some reason, let us say for some reason the Manitoba Securities Commission—well, maybe you can tell me, is the primary issuer and approver going to be the Ontario Securities Commission or the Manitoba Securities Commission?

**Mr. Yaffe:** The Manitoba Securities Commission will be the principal jurisdiction, and 7(2) simply is there to cover off the event where for whatever reason we do not close the public offering, and we would then have the ability under Bill 67 to have a public offering at a future date, and the number of shares that would be the subject of the public offering would be whatever number of shares had been issued to the Crown in consideration for a satisfaction of indebtedness.

**Mr. Sale:** Mr. Chairperson, what that sounds like to me is an agreement to enable the Crown to accept equity in the corporation in exchange for its current debt; in other words to securitize its debt in the form of common shares or some other instrument that is not a debt instrument, which is what we have now.

I am just not clear why this is needed. If what we are doing right now is to contemplate a public offering—I can understand that a securities regulator might say, I am sorry, this prospectus does not adequately disclose, there are some technical problems here, and without ever implying anything, somebody has made a big mistake. We have to go back and do some more work here, so there is not going to be a prospectus for a while.

Now, I cannot imagine that that is going to happen. I think the minister already knows and everyone knows that there is a draft prospectus out there that has already been seen by some people and is ready to be registered with the Securities Commission, presumably the day or the day after this bill passes the House.

I do not think that any of us believe that there has not been a lot of careful work done to draft a prospectus and that the disclosure requirements have not been properly addressed. I believe that everyone is trying to do that in the appropriate fashion, but in the event that the Securities Commission lawyers, who I am sure will be very careful in approving this, as they should be, see serious problems, we may have a delay, but I cannot imagine that we would have a delay of more than a matter of weeks or at most a month or two. There have been lots of privatizations in Canada at the federal level, although relatively few provincially, so there are patterns, precedents and templates out there that I think probably deal with the vast majority of the unknowns that we might have, if this were the very first one, and it is not.

So I am not clear what this achieves, why we need it. If we need it, then I am still unclear what it means, because it is not plain to me why we should securitize our debt with an equity participation in this company when we are saying that is exactly what we do not want.

**Mr. Yaffe:** Mr. Chairman, under Section 7(1), the company will issue to the Crown shares, and it is those shares that will be offered to the public.

**Mr. Sale:** This is so complex. I do not mean to be rude to Mr. Yaffe at all, but what he just said puzzles me even further. The company will issue shares to the government, and the government will issue shares to the public? Is that what you just said?

**Mr. Yaffe:** That is what is contemplated by Section 7.

**Mr. Sale:** I apologize to the committee. I did not understand that, and I am not wanting to ask for a revision back, but I am going to ask a question about 7(1) then if the Chair will allow me.

**Mr. Chairperson:** Is there leave? [agreed]

**Mr. Sale:** Mr. Chairperson, is then the issuer of the common shares the government and not MTSCom?

**Mr. Yaffe:** The issuer of the shares is the company. The selling shareholder, under the public offering, is the Crown. It is shares of the company being held by the Crown, which the Crown will receive under Section 7.

Let me take it to the next step. Under Section 7 there will be a finite number of shares issued by the company to the Crown, and Section 7 contemplates a public offering of those shares.

I thank you for your confidence in securities and corporate lawyers in ensuring that transactions close as and when scheduled. It does not always happen that way, and sometimes for reasons within our control and sometimes for reasons not within our control. If for whatever reason the offering does not close, 7(2) says, you can try again, and even though shares had already been issued under 7(1). So there had been a transfer from the company to the Crown for the purposes of the public offering. If the public offering has failed and there is a second go at it two months later, there can be further shares issued if the company is in the position to pay down debt in that interim period, and the company, therefore, is in the position to issue further shares to the Crown. It is a mechanical provision.

**Mr. Sale:** I thank Mr. Yaffe for that explanation and for his patience in making plain something which had not dawned on me, and maybe not on others, but certainly had not on me, that the actual marketing and selling of the common shares, the 67 million contemplated in the draft prospectus at least, will be under the auspices of government as the current owner of that equity, and that, should some portion of that equity remain unsold, for example, it would be held by government still. Presumably there will be some penalties to brokers in that case; nevertheless, government retains the beneficial ownership of those shares, and should there be a lapse of time between that initial public offering and the clearance

of the prospectus—oh, no, wait a minute, you cannot sell the shares without the prospectus.

**Floor comment:** Right.

**Mr. Sale:** So the shares will be issued, but they may not be able to be sold initially unless the Securities Commission approves the prospectus. In the interim, and I am paraphrasing back to make sure I understand, in the interim period of weeks or months between the initial application and the actual offering to the public, delayed for whatever good reason, the company is in a position to say, we are going to pay down another \$100 million or another \$200 million of our outstanding debt as contemplated at present. Additional shares could be issued, could be made available for that subsequent marketing and that would be acceptable under 7(2), and that is the purpose of 7(2).

**Mr. Yaffe:** Correct. For clarification, if I may, Section 7 as a whole will contemplate only one offering, but that is absolutely correct.

**Mr. Chairperson:** Clause 7(2)—pass; Clause 8—pass; Clause 9—pass. Clause 10.

\* (1150)

**Mr. Findlay:** I have an amendment. Mr. Chairman, I move

THAT clause 10(c) be amended by striking out “any matter described in” and substituting “the creation of new classes of shares under”.

**[French version]**

*Il est proposé d'amender l'alinéa 10c) par substitution, à “une question visée au”, de “la création de nouvelles catégories d'actions en vertu du”.*

**Mr. Chairperson:** Amendment—pass. Clause as amended.

**Mr. Sale:** Mr. Chairperson, I think this is plain, but it is simply providing the fact that while there is a special share it is a special class, and the government has the right to exercise a vote under that class, class voting

procedures which are contemplated in Section 6(2) and wherever we just were talking about. Where was it?

**Some Honourable Members:** Page 10.

**Mr. Sale:** Yes. It is simply protecting the right to vote by class on the part of the Crown? Is that the whole intent here?

**Mr. Yaffe:** Mr. Chairman, a predecessor of 6(2) dealt with more than one item; 6(2), as it appears in Bill 67, deals only with the creation of a new class of shares. This is an amendment simply to tighten up some wording. But you are right, it creates the effect of the section; not the amendment so much as the section, it is to give a veto power to the holders of either class, the special share or the outstanding voting shares.

**Mr. Chairperson:** Clause 10 as amended—pass.

**Mr. Findlay:** Do you want to revert now? I have the amendment for Clause 6(1)(b)'s removal.

**Mr. Chairperson:** Is it the will of the committee? Is there leave to revert? [agreed]  
Clause 6(1).

**Mr. Findlay:** Mr. Chairman, I move

THAT clause 6(1)(b) be struck out.

**[French version]**

*Il est proposé que l'alinéa 6(1)b) soit supprimé.*

**Mr. Chairperson:** Amendment—pass. Now, shall Clause 6(1)—Mr. Sale.

**Mr. Sale:** A point of procedure. Is there a renumbering provision in the act that allows us not to have to renumber at this point?

**Mr. Chairperson:** Yes. Clause 6(1) as amended—pass.

Do you want to move now to 11(1)? Clause 11(1). Shall the item pass?

**Mr. Findlay:** Mr. Chairman, I move



THAT clause 11(1)(d) be struck out.

**[French version]**

*Il est proposé de supprimer l'alinéa 11(1)d).*

**Motion presented.**

**Mr. Sale:** Mr. Chairperson, this is one of those negatives—negative motions, and so you have to read it carefully. I will get into trouble with double negatives. “So long as the Crown owns the special share, neither the corporation nor any affiliate shall . . . (d) continue into another jurisdiction”—another jurisdiction being another province or another country, and continue as the legal meaning of the corporation, having a corporate existence in another jurisdiction. Is that the intent? Am I right in the intent here?

**Mr. Findlay:** Mr. Chairman, the provision we are talking about here is actually now covered in 12(2), so we will pick it up again in 12(2) where, I believe, I should have an amendment.

**Mr. Sale:** Would the committee just be prepared to wait for a second while I see what 12(2) says? I see. I agree. You are simply moving it from one place to another. Right. Thank you.

**Mr. Chairperson:** Item 11(1) as amended—pass.

**Mr. Sale:** That is the amendment we are passing, right?

**Mr. Chairperson:** Amendment—pass. So now, Mr. Minister.

**Mr. Findlay:** Mr. Chairman, I move

THAT subsection 11(2) be amended by striking out—

**Mr. Chairperson:** Oh, oh, we are not to 11(2) yet. We have not dealt with 11(1). What is the will of the committee? Shall 11(1) as amended pass?

**Mr. Sale:** Mr. Chairperson, the minister, in his opening remarks—I did, by the way, ask for a copy of those if possible. I appreciate that. In his opening remarks, the minister indicated some important protections that were not in the initial act, which are contemplated to be in the

act as amended in terms of keeping the company in Manitoba and other things.

I, first of all, have a question on the other side of this issue which I want to ask, and this may sound strange coming from us in regard to our position on this whole thing because, obviously, we want the company to stay in Manitoba, and we want its affiliates to stay in Manitoba.

But, under the meaning of “affiliate” as defined, I wonder what the status of, for example, MB Communications Inc. would be, given that MB Communications, I believe, is 80 percent owned by Clifford Watson and Associates and 20 percent owned by Manitoba, now which one is it, Net? I cannot remember which one it is.

**Mr. Chairperson:** Mr. Minister, for clarification.

**Mr. Findlay:** For clarification, I think you are referring to MC Communications?

**Mr. Sale:** MC, sorry.

**Mr. Findlay:** The 80-20 is right, but it is MC.

**Mr. Sale:** I beg your pardon, Mr. Chairperson, the minister is correct. I thank him. MC Communications Inc., 80 percent owned by Clifford Watson and Associates, 20 percent by Manitoba Tel, but I cannot remember which subsidiary it is. It is whichever subsidiary sells long distance service toll. Which one is that?

**Mr. Findlay:** NetCom, we believe.

**Mr. Sale:** We hope that somebody knows. I am sure the minister does, sure his staff do.

Given that this is a federally regulated corporation, and given that there are, I think, probably sometimes going to be—in fact, I hope there would be—situations where the company may well want to be in a relationship with a company that is not based in Manitoba for strategic purposes or for any other purposes that seem good to its directors at some point in the future. This is not an argument to move it, but it is simply an argument that, in our concern to limit, we may be putting in place here a limitation which we may turn out to be troubled by if for

whatever reason the company wishes to pursue an alliance and affiliate itself in a legal sense with somebody that is not a resident corporation in Manitoba.

I wonder what we have done here in the light of the very tight definition of "affiliate" which we have adopted. What is the implication for the corporation? Are we tying its hands inappropriately, or am I inventing ghosts that are not there?

**Mr. Yaffe:** Mr. Chairman, the restrictions in subsection 11(1) are all subject to the—

**Mr. Sale:** I am sorry. Could Mr. Yaffe repeat?

**Mr. Yaffe:** The restrictions in Subsection 11(1) are all subject to the granting of consent by the Lieutenant-Governor. So if a situation arose where it became necessary or appropriate to request permission for any of the changes enumerated in 11(1), the consent of the Lieutenant-Governor would be sought.

The other point I would make is that the definition of affiliate is not as broad a definition as that of associate, which we dealt with earlier. Affiliate is generally a subsidiary, a parent, or one subsidiary vis-à-vis the other.

\* (1200)

**Mr. Sale:** I thank counsel for that explanation. I think that the point still stands, that it may be in the interests of the corporation to affiliate in the narrower sense rather than associate, as Mr. Yaffe points out, with corporations that are not resident in Manitoba. He is saying that there is provision for permission to do this. My question is a little broader than that.

I understand that that is what we are talking about here, the special share protection. The minister suggested some strong provisions to protect the Manitoba base. I have not seen the substance of how that is going to happen yet. I wonder if the implication was that this kind of restriction was being placed on the company in the future, even though the special share was extinguished. Is the company then in any way disabled from doing things that would be strategically advisable for it? That is my question. I understand the issue here.

**Mr. Yaffe:** The restriction that the minister referred to in his opening comments will be found in an amendment

to Section 12. I expect we will be looking at that in a few minutes. That would prevent the company from continuing outside of Manitoba. The concept of continuance is a corporate law concept. The restrictions in Section 11 would, in no way, preclude any kind of contractual arrangement from being entered into. Two entities could certainly enter into a business arrangement without the necessity of undergoing any of the activities enumerated in Subsection 11(1).

**Mr. Sale:** I think that we are prepared to pass this section if I could just, I guess—give notice always sounds so formal; that is not what I mean—just indicate that my concern is that we understand very clearly the actual substance of the minister's opening remarks in regard to further protections and that we really understand what that means in law. Then maybe we will have that opportunity under the amendment on 12(2).

**Mr. Chairperson:** Clause 11(1) as amended—pass. Clause 11(2).

**Mr. Findlay:** Yes, Mr. Chairman, I move

THAT subsection 11(2) be amended by striking out "coming into force of this Act" and substituting "coming into force of this section".

[French version]

*Il est proposé d'amender le paragraphe 11(2) par substitution, à "de la présente loi", de "du présent article".*

**Mr. Chairperson:** Amendment—pass; Item as amended—pass. Clause 12.

**Mr. Findlay:** Mr. Chairman, I move

THAT section 12 be amended by renumbering it as subsection 12(1) and by adding the following as subsection 12(2):

**No continuance outside Manitoba**

**12(2)** The corporation shall not continue into another jurisdiction.

[French version]

*Il est proposé que l'article 12 devienne le paragraphe 12(1) et que soit ajouté, après le paragraphe 12(1), ce qui suit:*

**Prorogation à l'extérieur du Manitoba**

*12(2) La Société ne peut être prorogée sous le régime des lois d'une autre autorité législative.*

**Mr. Chairperson:** Amendment—pass. Shall the item as amended pass?

**Mr. Sale:** Mr. Chairperson, my colleague the member for Flin Flon (Mr. Jennissen), has some questions on this one. I also have. I would like to defer to him first. You have heard enough of my voice for a while.

**Mr. Chairperson:** Are we dealing with Clause 12, or did we not pass it?

**Mr. Sale:** Clause 12 as amended, I believe.

**Mr. Chairperson:** Clause 12 as amended. Okay.

**Mr. Sale:** I do not think we passed the amendment.

**Mr. Chairperson:** No, we passed the amendment. We have not yet passed the clauses.

**Mr. Gerard Jennissen (Flin Flon):** Am I speaking to the actual clause or to the amendment of the clause? I am not sure.

**Mr. Sale:** Clause as amended.

**Mr. Jennissen:** This is the one dealing with head office being in Manitoba, correct? I have some concerns with this particular clause, Mr. Chair. First of all, I think there a lot of head offices in a lot of places in the world, in the Cayman Islands and so on, that may give the impression that the actual work happens there and that the jobs are there. I do not think that is necessarily true.

Symbolically, it may satisfy the longings of a lot of Manitobans to say the head office is in Manitoba. I think all of us are aware, the way electronic communication works now, it is quite possible to have those jobs elsewhere. I am kind of wondering, and the minister can clarify that for me later on, whether the jobs will actually

stay here. The head office is here, but the head office could also easily be a shell. I am thinking, for example, CN, after they privatized, there is a provision to keep the head office in Montreal. However, we also know that 64 percent of the company is owned by Americans. We know how difficult it has been, via CN's rationalization, for northern Manitoba. The fact that some of those rail lines were in jeopardy, could in fact be abandoned or closed, created major problems. Saying, well, rest assured, Canadians or Manitobans, the head office is in Montreal does not really solve the problem for us. The job still losses still continue.

What guarantee is there merely because you have the head office here that that really means something, that it is not just a symbolic gesture? For example, I could read from a newspaper quote last week where a Mr. Colin Latham, MT&T, Maritime Tel, where they are in the process of laying off 140 managers, and I think they have laid off something like 325 technical and clerical people, states and he states clearly: We are determined to have the head office of a major telecommunications company here in Nova Scotia.

That might indeed satisfy voter demand, or it may look really democratic and noble to have your head office in this particular province, but if the real action and the jobs and the energy moves elsewhere, it is a bit of a con game. Would the minister comment on that?

**Mr. Findlay:** Well, Mr. Chairman, I listened to the member's comments, and I will try to sort them out because I think our intents are exactly the same here. I do not think there is any question about our intent here, but I think from the examples you have used that we have in certain circumstances a different situation here.

You referred to CN, in terms of it started out being two-thirds Canadian owned, now two-thirds American owned, but one must not forget that CN had no provision to restrict foreign ownership, no provision whatsoever. It was wide open to anybody who wanted to buy it. In this bill, we have made a purposeful intent to prevent that by saying at no time in the future will there be more than 25 percent foreign ownership. So the ownership cannot go above 25 percent in a non-Canadian fashion. We have been very explicit in that, and I guess the CN example is a good situation to raise, that we have tried to deal with that to prevent it from happening here.

We have also indicated very clearly that the majority of the board will be Manitobans. We are creating a situation where a majority of Manitobans should own the shares when this thing is done. We are here making explicit intent that it shall not continue out of Manitoba. So certainly the intent is there, and when the board is majority Manitobans and the shareholders are Manitobans, I cannot imagine approving a process to countervene what we have intended here.

You talk about jobs and layoffs. Within the corporation, I think the figure is that they have reduced the workforce by some 1,400. To their absolute credit is the fact that they only had to lay off some 47 people to achieve that over a period of five, six years. It is an adjustment in the industry that is happening everywhere.

But our sole intent by putting this in is that the corporation stays in Manitoba, shall not continue out of Manitoba, and I think all the other provisions in the bill try to strengthen that.

One other one I missed along the way is reducing the individual ownership max from 15 down to 10. We want broadly based Manitoba ownership, Manitoba controlled and the corporation to stay in Manitoba. That is the intent and I do not think it is any different intent than what the member opposite wants.

\* (1210)

**Mr. Jennissen:** I am still not convinced, Mr. Minister, that having a head office here necessarily means ensuring that the jobs stay here, that the work stays here, that it cannot be outsourced or moved out; for example, the Unitel jobs that moved. We lost 150 Unitel jobs not too terribly long ago, so, I mean, that movement is going to continue and, certainly, although the minister says it is very broad-based and that a lot of Manitobans will end up owning shares—possibly 10 percent of Manitobans, the richer Manitobans, may own shares—will that still be the case five years from now?

**Mr. Findlay:** I guess I have to be quite honest and say nobody can absolutely guarantee the future, but we are creating all the provisions possible for Manitobans who I know take pride in this corporation to extend that pride by purchasing shares in the corporation. Any employee whom I have talked to who was part of Bell Canada had

always taken pride in that share, and the shares have been a valuable asset to hang onto over the course of time. That has been the history in that circumstance.

So I would have to assume that we have gone legally as far as we can go to give that guarantee, and that is why we strengthened this by adding 12(2) at this time.

**Mr. Jennissen:** Well, I find the minister's intent very commendable indeed, but the reality of the fact is when I go to Flin Flon, which is my constituency, the city of Flin Flon, at the telephone centre there, we have lost one job, or one person, I think, has been moved away. We now have some of the services that were formerly done at that particular phone centre now moved into a store.

Northern Manitobans and I guess rural Manitobans are saying, is this a continuing trend? I know you cannot predict the future. We just have serious concerns that when we get into this corporate ownership, the bottom line and not service and not maintaining our lifelines up North are going to be the first priority, and that is our grave concern.

**Mr. Findlay:** Mr. Chairman, I have said many times the industry has a lot of new technology. It is doing things different ways. There has been a certain degree of job reduction, as I have already mentioned, as a Crown, under Crown ownership. It has happened at every telco across Canada, but the current company and the new company will have its assets in the ground all over the place. It has a regulator that requires that they use those assets to deliver services that are approved at different tariffs for citizens across the province.

I think we have done what we can do to create a sense of confidence that it must stay here, that it will provide the services. In terms of the people who buy the shares, they are investing in the company. As long as they are Manitobans, they are going to demand service at the most competitive price possible, and the company clearly recognizes if they do not achieve that service at a competitive price, maybe somebody else will come in and provide it.

The CRTC continues to open up the ability to compete in that context, and whether it is competition by a wired process or a wireless process, it is clearly an evolving technology. It does change the way business is done in

the telecom sense. So I think the company in the future, the same as the company today, has to continue to be able to adapt to change, maximize service and keep the costs competitive and at a point where citizens feel that it is the right choice.

**Mr. Struthers:** Certainly, we heard in almost all the presentations that I was able to listen to over the last little while in this room concerns expressed about the number of shares, the amount of control that is going to be shifted from what we have now, a million shareholders being the people of Manitoba, to a few people. The concern is as I read through different sections of this act that fewer and fewer and fewer people are going to have control of this new MTS.

The minister, just in response to questions that my colleague from Flin Flon was asking, mentioned that control should stay in the hands of Manitobans. It should stay. I am afraid that does not offer me or many of the people in my constituency who have approached me on this or certainly in any of the tours that we have done in different parts of Manitoba and the people who presented here at the public hearings, it does not give us a high level of comfort that much of this control is going to be put in the hands of a few people. What my worry is, is that we have nothing that is going to protect us from the conglomeration of a whole big bunch of power with very few people.

Can the minister explain to me whether there is a scenario that could unfold and lead to a situation where that happens, where a whole bunch of shares, a whole bunch of power, control, ends up in very few hands? Can he kind of take me down the path of saying this is one way in which that can actually happen?

**Mr. Findlay:** Again, I am just presuming certain things will take place. When this issue is offered, we will have tightened things up here to be sure it is offered to ordinary Manitobans. Very broadly based ownership is what we are after. We have said trust companies, institutional purchasers, corporations cannot buy in that period, so it is really wide open for the ordinary Manitoban to purchase. Therefore, you start with a very broad base of ownership in Manitoba.

I say we have made the amendments to try to achieve that, to maximize the capability of that happening, by not

allowing the investor, the corporation, to step in in the early stages. Once the initial period is passed—there is employee purchase, too, of course, in that period. Then the share is in the hands of the average, ordinary Manitoban. I have a lot of confidence that they will have pride in the ownership of that share. They will see the power that that share has, and they will appropriately retain the share and utilize the power of it as a Manitoban wanting the best quality service at competitive prices.

Now, you say, can I develop a scenario? Well, I have confidence in Manitobans wanting to be the owners in the longer term, and, ultimately, there will be some liquidity, of course, to that share by the broader based ownership. We have heard those representations about wanting to ensure that Manitobans had ownership, and we have made the amendments to try to maximize that capability.

**Mr. Struthers:** How long is that period that the minister talks about?

**Mr. Benson:** That will be laid out in the prospectus document, and it will identify and spell out the length of time for Manitobans to exercise their will in terms of buying the shares. That preference is exclusive to Manitobans. That is, in terms of time frame, approximately three weeks, which is, again, in line with what the time frame has been in other issues of this nature. There will also be, and I cannot recall the specifics—I guess, two things. One, I think what we are looking for is that things would be priced very moderately; and, secondly, people will not have to buy up a lot of shares to become a shareholder, like a very few shares would have to be acquired to become a shareholder. We have done everything we can to make it as easy and accessible as possible for potential purchasers. I think from the outset it has been said by the minister and others that we want—or the telephone company, through the offering, wants to offer and ensure that a majority of the shares are acquired by Manitobans.

**Mr. Sale:** A point of procedure for clarification.

**Mr. Chairperson:** Mr. Sale, on a point of procedure.

**Mr. Sale:** Mr. Chairperson, I notice that we are approaching 12:30, and I think that there has been agreement that the committee will rise at 12:30 and will reconvene at a time that the House leaders have agreed

upon, and I think that we should recognize that we may not conclude this section, but for everybody's sake we know that we are moving to a time.

**Mr. Chairperson:** Yes, Mr. Sale.

\* (1220)

**Mr. Struthers:** Either I missed it or I just did not get an answer to my question. I think what the people of Manitoba want—first and foremost, they do not want you to sell the company—but if you go ahead and do that, I think they are in sync with you in saying that you want a broad base of people involved in it. I think what people are worried about is that that broad base in a short period of time will constrict into a very small base, a very small group of people. I do not know if I got an answer to the question about how long the period is that you are guaranteeing that the larger base will be there, but you understand the concern that was presented here at presentation after presentation and you understand that, I think, people are looking for some level of comfort, even so far as a guarantee, that that broad base is not going to be shrunk. I am not sure I got that level of comfort from the answer I just heard.

How long is that period, that guarantee?

**Mr. Findlay:** Well, Mr. Chairman, the prospectus has not been filed. You cannot comment on specifics that may well be in that prospectus, but we have in the general sense commented in terms of our intent that it be similar to other examples, and we talk in terms of approximately three weeks as that window for special consideration for Manitobans to be able to at least purchase an investment certificate, I think it is called, or something of that order to—[interjection] installment receipt, and we want conditions around it such that maybe they do not have to pay for the whole thing in the beginning, that there is a window there that is a preferential purchase for employees and for Manitobans.

Let us assume then, pick a figure, 50,000 Manitobans purchase shares in that window. After that window is over, they can still buy shares in the broader issue. If he is asking that we now restrict them from reselling them if they deem that to be the appropriate investment decision, we cannot do that. We make it available to them, and I have confidence they will have pride in ownership, pride

in being able to have a say, and we have heard members come here and say they may not agree with what we are doing, but they are going to buy a share or shares because they want to have a say. That gave me some confidence that there is a desire to own for the purpose of having a voice. That, to me, means that the broad base we are allowing for in the initial stages will carry out over the course of time.

**Mr. Benson:** If I could maybe just try and give you a practical example, I think maybe where you are heading, and I am not sure we can get there under any circumstances, would be to enshrine in legislation, in effect, a provision that said after you as an individual acquire shares in the company, you cannot sell them. I think for the government to restrict you and how you deal with your personal assets is going a little bit over the line. That is really where I think we are at on this.

We have endeavoured to put every restriction in the legislation that we can in terms of the 10 percent rule, in terms of continuing the corporation in another jurisdiction, the amendment that I think you are talking about now, but I do not know how you can compel people to deal with their personal assets in a certain way. It is the same as saying that you cannot sell your house unless you have government approval. I am not sure we want to be in that position.

**Mr. Struthers:** I am glad that Mr. Benson could see the direction that my question was heading. He was right. That is exactly where I was heading with my question. I want to remind him, though, that to accomplish the goal of having Manitobans having a large amount of say in a telephone company is by keeping it in the public sector and by not selling the company in the first place. You are automatically going to much fewer shareholders when you do that, and no matter how broad a base you start with, it is going to be less than what we have right now. What you are saying to me right now is that we are moving from this broad base that you want to maintain to an even smaller one with no guarantee.

I understand exactly what Mr. Benson says. There is no guarantee that you are going to be able to keep any kind of a base there. I think further to that is that you are going to have a tough time keeping that base in Manitoba and that, no matter what kind of rules you come up with, once the shares are being bought and sold out on the free

market, you are not going to be able to control whatsoever where those shares go and who has control of this new telephone company.

The minister made the point of saying that many people who do not like the fact that we are selling MTS are still going to buy shares in the system so that they can have a say in the system. I mean, I want to make sure that we all understand that these are people who want to maintain their say because they do have a say right now. When it is a publicly owned corporation, they do have a say right now in how their corporation is run through the minister, through all the methods of accountability that we have right here in the Legislature. So I think those points need to be made as well, although I think the minister should also continue to think of restrictions. If he is bound and determined to sell this company, he needs to be looking at ways to keep it Manitoban. I would suggest the best way to do that is not to sell the company in the first place.

**Mr. Findlay:** I guess I will put my comments in two categories. One is we do have a debt load to deal with. This is a recapitalization process to take some of the burden off the taxpayer and put it on to the investor. But I would like to more broadly say I see a real element of stimulating people in this process. First, for Manitobans to invest in Manitoba is something of a problem that we have. People who invest want to invest somewhere else because they are a little more confident. I want them to have confidence in investing in something that is really Manitoba.

Secondly, employees will get a good opportunity of purchasing shares here. I think it gives employees more say in this company in the future than they have today. It gives them more pride in what they do, and the better the outcome of their work efforts, the value of their share technically goes up.

I think it instills pride in the workplace, pride of ownership, pride of outcome, and the reward is not only in the salary, but the reward at the end of the day is that you are part of a successful corporation, and your share value goes up because of it.

I think it empowers employees to own shares in the company that they work for. Now, you may say, well, they are already owning it because they are Manitobans, but they have a unique and better opportunity as a shareholder in the company that they work for.

**Mr. Struthers:** Well, this is a debate that the minister and I could get into for a long time, and we have been having the debate for some time now.

The minister used the word "stimulating." You bet; he has just stimulated over 180 people to come here and tell him not to sell MTS. I find I have to agree with what you say there. You are motivating a lot of people, and they are coming in and saying, do not sell our telephone system because we are not going to have as much say as we had before. As a matter of fact, we are not going to have any say.

I will use myself as an example. I am not going to be one of the people buying shares in MTS. I do not have the money to do it to begin with, and I already own my part of this company. You are telling me that you are going to sell my company back to me. To use the analogy of the house that Mr. Benson was talking about, you are telling me that you are going to sell me back my house. That is wrong. That is actually wrong. [interjection] Exactly. As has been pointed out, that means I am also going to assume, even without having the house, I am going to have half the debt.

So I think the points that the minister makes about the debt and how it is going to stimulate the employees to be all that more hardworking and efficient or happy on the job just does not make sense. I think the people working at MTS are hardworking to begin with. I think they are efficient to being with. I do not think privatizing their company and cutting them out of a say in their company is going to make them all that more efficient and happy and effective.

**Mr. Chairperson:** The hour being 12:30, committee rise.

**COMMITTEE ROSE AT: 12:30 p.m.**