



INTERVIEW

Rick Mantey: Exposing the Invisible¹

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- Rick Mantey

The public can see, dissect, debate, and focus the media on a bill—once it hits the floor of the House. But before that point, small armies of coordinated players have a “piece of the action.” Those players debate policy directions, argue legal ramifications, consider stakeholder interests, and solicit advice—almost entirely out of public view. To expose some of the invisible portion of law development in Manitoba, we sat down with Rick Mantey, former secretary of the legislative and regulatory review committee.

INTRODUCTION

IN A BID TO FORMALIZE THE PROCESS OF MOVING legislation from the policy document stage to the bill stage, the Filmon Government established the legislative review committee (“LRC”) in 1990. The LRC, complete with members from caucus, central government, Legislative Counsel, policy analysts, and departmental officials, reviewed the policy documents sponsored by ministers.

Rick Mantey was one of the driving forces behind the creation of this committee. During his tenure as secretary of the committee, he was involved in the development of amendments to *The Mental Health Act*, *The Freedom of Information and Protection of Privacy Act*, *The Elections Act*, and *The Elections Finances Act*. Also, based on recommendations from the Business Advisory Task Force, Rick established the procedures used to review Manitoba's 10 000 pages of regulations.

¹ Interviewed by B. Schwartz and D. Rettie (12 September 2001).



Since 1999, Rick has operated his own consulting company, advising private sector clients on government relations, procedural development, legislative and regulatory development, and international relations.

INTERVIEW WITH RICK MANTEY

Quality Control

The legislative review committee you helped to found was beyond public scrutiny. All its work was done before a bill was introduced to the House. What was its biggest impact?

Rick: The LRC meetings provided a substantive reality check for ministers, as their policy briefs were expected to be detailed and concise. The idea was if you can't defend your proposed legislation to your colleagues, how could you go on the floor of the House and ask the Legislature, as a whole, to endorse your policy?

Once the policy document had made its way through the LRC, it went off to the drafter. The completed bill came through the LRC a second time, for a clause review, before it was introduced to the House.

Many politicians are not detail people. They're used to giving bureaucrats orders like, "I want lower taxes—do it" Did you find in the course of the reviews political people, who ordinarily weren't that interested in the mechanics, starting to get interested in the details and structure of the bills?

Yes, the ministers were not as worried about details, in my opinion, at the beginning of the 90s as they were at the end of the mandate in '99. The fact was the committee expected detail. The process changed the mind-set of many ministers. They had to know their stuff. Some ministers had thorough briefing sessions before they went to LRC meetings because they wanted to ensure they had answers. Otherwise, it could delay the legislation's introduction into the House. That really got people to pull up their socks.

A senior cabinet minister mentioned that before the LRC was in place legislation would be introduced, passed and then they'd frequently find mistakes. Is that consistent with your observations?

Yes, all you have to do is take a look at the amount of amendments between 1988 and 1999 that were actually handled at committee level. You saw in '88 a good number of

amendments, which were moved to correct drafting anomalies. Throughout the '90s there were few "technical" amendments (changing commas, spellings). Now, most amendments are the result of public presentations.

What is the current status of the legislative review committee, under the NDP?

My understanding is that it is a much more caucus-oriented process rather than a cabinet/caucus oriented process. I believe the previous process struck the right balance and decisions were arrived at in an orderly fashion. I know that government was feeling more and more comfortable because they knew that the process was solid. However, I respect the fact that any new administration needs to establish procedures that make them feel comfortable.

I think the legislative drafting process might have been a shock for some of the new ministers: the consultation level, the pressure from the stakeholders, the pressure from bureaucrats, the pressure from central government, the pressure from political parties. How do you make everybody happy?

Public Participation

In your opinion, does the 48-hour notification period [for interested parties to make presentations before the standing committee] allow for meaningful public input?

I think it's too short. That was an initiative that was brought forward when the New Democrats were in opposition and accepted by the government of the day.

I prefer the reforms that were done in the House of Commons early in the Chrétien mandate, which allow for legislation, after first reading, to go to standing committees of the House.

Rather than after second reading?

Yes, that way discussion can begin at an earlier stage. A lot of people feel if a bill is at second reading the content has been decided so why should I bother—nothing will get changed. The House of Commons moved that once a bill has received first reading the government can have the bill go to a standing committee to review clause by clause, hear all the public presentations, and then report back to the House. That way, second reading happens after significant input. Now, is that a better process? Time will tell. In Manitoba, 48-hour notice has become the practice. Some provinces have no public input.



With the system we have today, how can the public play a more active role in the legislative process?

Well, I think they have to be much more aware of what is happening in the House. That's the first step. There is much more to the Manitoba Legislature than question period. If you want to have input: use the Internet, watch the clips on TV, and listen to the floor of the House [they televise it on the Internet]. That's where you will understand what's happening. Don't complain about a piece of legislation after it has been passed. Read Hansard! It's available for free on the Net and a hard-copy subscription is \$50 a year. Be informed—that's the key.

What weight is given to stakeholder's input?

It all depends on what kind of government you have. If you have a minority government, stakeholder's input may carry more weight, as politicians are more sensitive to losing their supporters. This is not necessarily the case with a majority government. It also depends on the legislative initiative being proposed. If you are looking at matters of principle then input may have a limited amount of influence.

The 1986 amendment to the Human Rights Code is a good example where stakeholders had a significant impact on the law. Stakeholders (political and otherwise) came before the standing committee and placed an enormous amount of pressure on the government to amend the legislation, to address certain needs. If you review the debate on this bill, I do not believe that a single government member spoke, during the report stage, until a consensus had been reached in the government caucus.

Nature and Quality of Discussions in the Legislature

Do members on standing committees actually have some discretion to express an opinion or change their mind, or they are basically there as representatives of their caucus?

It varies from member to member and from committee to committee. There are some members who, if you look at Hansard indexes, say maybe seven words. But that doesn't mean their influence isn't there. They might have said 100 000 words in caucus. Some opposition members are very vocal—they support government initiatives, if they feel they are worthy. I have heard all three parties come together and say, "This is the right plan and we should go in this direction". It shocks everybody that



there's agreement. It must be the water! Take a look at The Helen Betty Osborne Memorial Foundation Act [Bill 5] passed this last session of the House. Who needs to talk when you have consensus on such an important matter?

Reading Hansard, it appears opposition members are not always aware of, or don't have an appreciation of, the legal issues involved in proposed legislation. What access to background information do they have on proposed bills?

The opposition members only have access to a bill once it becomes the property of the House. It only becomes property of the House after first reading. What is the courtesy? Normally, the opposition critic can be briefed by the minister or his or her officials. This allows the critic to review the contents of the bill in an appropriate and timely fashion. I know, in recent times, a draftsman has been provided from Legislative Counsel to the opposition to review the legal ramifications of proposed legislation, once it has been introduced in the House. However, nothing prevents caucuses from entertaining counsel on their own.

Is it a detriment that a lot of members of the House don't have a legal background?

No, the lack of lawyers in the process has not hurt the system. Did the whole administration of justice fall down when Jim McCrae [a non-lawyer] was the Attorney General? I don't think so. Debates on issues before the House should be based on the merits of the arguments being advanced. This is often dependent on whether the members have done their homework, understand the issues, and see the complications.

In short, members must be able to argue in a logical fashion—and they have to know what they are talking about—in order to secure public opinion to their cause.

Media Coverage

People want to know what's happening with George W. Bush—what's happening with The Municipal Act just sounds less exciting. You were there when government did the massive reform of The Municipal Act. How many people knew about this massive change?

Not many, but you have to look at the medium that is bringing forward the message. When was the last time you heard CBC or CKY cover a second reading debate at 4:30 in the afternoon? What debates do the Winnipeg Free Press or Winnipeg Sun



cover—in their entirety? When debate isn't covered, the quality begins to slip.

The Province of Saskatchewan has gavel-to-gavel coverage, as has the Province of Alberta. I have watched it when I've been in Edmonton and Regina (and people say I have a life). I find their level of debate is much better than ours. The poignancy of direct question and the ability to answer on your feet, with cameras rolling – there is something about that combination.

I've been a strong advocate for gavel-to-gavel coverage here in Manitoba. Let people turn on and view the government and opposition in action. When my kids flip through the channels, they stop, occasionally to see who is yelling in the House of Commons or the Manitoba Legislature. They take five minutes to watch. People think the House is in session in the middle of July—they just don't know.

What's your perception of the journalistic coverage of the Legislature?

I get very annoyed when I hear intelligent people report without doing their homework. The coverage is pathetic. Look at your press gallery at the Manitoba Legislature. There are very few people who have desks there now. At one time, you had people who covered it religiously 24/7. The practical working knowledge of the House is absolutely dismal in the journalistic world today, in my opinion. This is a sad commentary. Reporters want a quick synopsis of what happens (a, b, c, d, e, f, g—30 seconds, click, done). The House doesn't work that way. I think that journalists need a better grasp of the basics. You ask any American journalist, do they understand their system of government? They can readily tell you how a bill becomes law.

What about academic comment on what's going on in the Legislature?

I have had the privilege of working with many newly graduated political science students over my years in government. The first thing I say to them is, "Take all the stuff you learned in university and put in on the shelf. Refer to it after you have been here for a while and have dealt with the realities of public life." Too often, academics live in the theoretical. I believe that we need more political science students doing internships in order to give them a better perspective of the differences between the theoretical and the practical.

Regulations Discussed

Getting back to the nuts and bolts of law development, we would like to discuss the issue of regulations. Lots of important details are routinely left to be fleshed out in regulations. A bill may give powers to a minister or a board to design regulations, with no public input. In your estimation, are regulations becoming more important, more the “guts” of legislation?

Yes, often the problem starts because we're too time specific when it comes to legislation. We need things done now. We need bills passed within three months. There is no guarantee that you are going to get the bill passed in four months or six months. From an administrative point of view, it becomes easier for government to say, “Assign the details to regulations.”

Where is the democratic process if substantive law is housed in regulations, which are not subject to House debate?

Cabinet makes regulatory decisions. Cabinet is not a democratic institution. Let's not fool ourselves—he/she who appoints also determines consensus. All the players know that as easy as the doors open for you to come into the cabinet, the doors can just as easily be opened for you to leave the cabinet. I've always maintained that we live in a democratic dictatorship because every five years we elect a government who has a whole regulatory scheme with which they can manoeuvre.

Having said that, the question of accountability to the Legislature is still at the heart of our system. Cabinet still must answer for decisions it makes. Governments and public servants always have to ensure they employ reason and common sense when making regulatory decisions.

Does Manitoba have a structured process for introducing regulations?

Yes, as far as I know it is still in place. Regulations are very similar to legislation. The new regulatory review structure came as a result of the review undertaken by the Small Business Task Force. They recommended the establishment of a regulatory review committee that had two functions: to review all the existing regulations in Manitoba and to review any proposed regulation.

Given the intimate nature of legislation and regulations, both review committees were combined into the legislative regulatory review committee (the LRRC) hence the committee nickname, “legs and regs.” The LRRC was later given the mandate to review



ministerial regulations—so the minister could not just sit at his or her desk and sign-off regulations.

Is there any requirement for public notice before regulations are passed?

No, but we've had regulatory impact statements all the way through the Lyon Government, Pawley Government, and Filmon Government. These impact statements are internal cabinet documents. The regulatory impact statement has changed a bit but it has always taken into consideration stakeholder's viewpoints and what the ramifications will be.

Sometimes a government chooses to pass policies that sit outside the actual legislation and regulations. These policies are actually two steps away from the debated legislation. When are they used?

It depends on the subject matter. Most often they are used to maintain department flexibility. It's up to the department to make sure those policies are made public.

If you had unlimited powers over designing regulations how would you change the process?

I would definitely put a mandatory sunset clause into The Regulations Act that would force governments to go back and review regulations. If anything showed me that our regulations can be worn out was the review we did of those 27 volumes—over 10,000 pages—of regulations.

I would also want to ensure the timely rewriting of legislation. The Highway Traffic Act, for example, is in desperate need of a rewrite. If you can find a person, outside the department, who knows how to read The Highway Traffic Act, I'll be amazed. It can take six pages of a bill to amend one section of The Highway Traffic Act. It just blows your mind. This is only one of several statutes that need to be looked at. If you introduced a policy of timely review, the overall drafting of amendments would be much smoother.

Proclamations

A large number of Acts passed by the House come into force by proclamation, rather than on the date of Royal Assent. Why is this happening?

There are a number of reasons why proclamation dates are used by government. Sometimes, regulatory development needs to take place. Possibly, resources have to be directed before the law



can be brought into force. Departments may need to develop forms, etc. All of these reasons are proper and required. The problem with proclamations comes when a department develops legislation and leaves the provision unproclaimed for a significant period of time—sometimes years.

During my tenure, I asked departmental officials to look at the whole picture when they decided a proclamation was required. What was the timeframe? It's not fair to the public to have legislation sitting on the books, but not in force. The public has seen the bill debated, passed, and so they believe the law is in force.

Drafting of regulations and internal operating measures needs to be done jointly with the development of bills. A holistic approach could save a huge amount of time and curtail, to some extent, the use of proclamations as a delaying measure in order to facilitate other work that has to be done prior to the bill becoming law.

Do you have any particularly egregious examples of unproclaimed statutes?

I'll give you two examples. In 1973, there was a huge philosophical debate on whether Manitoba should establish treasury branches, based on the Alberta model. A bill was produced but never proclaimed by the Schreyer administration, which had introduced the legislation. It wasn't proclaimed by the Lyon administration, nor by the Pawley administration. It was reenacted (as a result of a Supreme Court decision on the French language matter), reintroduced, and re-passed by the Legislature. In 1997, the fourth session, 36th Legislature, it was repealed without ever having been proclaimed.

Sitting on a bench for all those years waiting.

Bill 11—it's the record holder—*The Treasury Branch's Repeal Act*. I have it framed in my house, signed by the minister of finance.

Why does that happen?

Situations change, finances change, and in this case the perceived crisis was over and life went on. Governments who introduce new laws are not going to repeal them and subsequent governments often ignore unproclaimed statutes.



A recent example is *The Highway Protection Act*—introduced in 1992, but never proclaimed. We have amended it several times, but it's still never been proclaimed. Now, the bill would have to be rewritten, as many of the provisions are out of date.

*The Supreme Court of Canada held that Parliament properly exercised its discretion, when it gave Privy Council the power to proclaim or not proclaim sections of an Act.*²

The question of whether a government has the right to put off a proclamation indefinitely may not be a legal question, but it is a question of process. Unproclaimed statutes should be reviewed to see if they are still relevant in ever changing circumstances.

I suggest a provision could be enacted that requires cabinet to bring back unproclaimed Acts to the floor of the House within a set period of time. If you look at the legislation passed within the last five years you will see various sections being repealed that have never been proclaimed. Some people say, "Well, it doesn't hurt anybody." But, resources were used to draft legislation and legal uncertainty arises when laws remain unproclaimed for a significant period of time.

Would you support mandatory sunrise clauses, where all proclamations are brought into force automatically after three years?

Again, I would have problems with that because situations can change. I would much rather have them come back to the Legislature and ask, "Do you still think this provision is required and do you still support the principles upon which you passed this five years ago or three years ago?" I have learned over the last ten years that it is better to be more prudent.

How often does a new government intervene and stop a statute from being proclaimed?

It all depends on what the measures are. If you look at how governments plan their legislative agenda there is usually a distinct pattern. In the life of the Legislature, which is normally four to five sessions, governments pass their controversial bills in the middle, all their election manifesto bills at the beginning and really nothing at the end—they don't want to rock the boat. Election campaigns bills get floated out in the last session or last two sessions to see how they fly. Governments build their campaign strategies around the response. There usually are very

² Reference Re Proclamation of Section 16 of the Criminal Law Amendment Act, 1968-1969, [1970] 3 C.C.C. 320 (S.C.C.).



few unproclaimed statutes left on the table, at the end of the term.

Take a look at the welfare reform legislation the Filmon Administration passed in '99. The newly elected NDP government never proclaimed it.

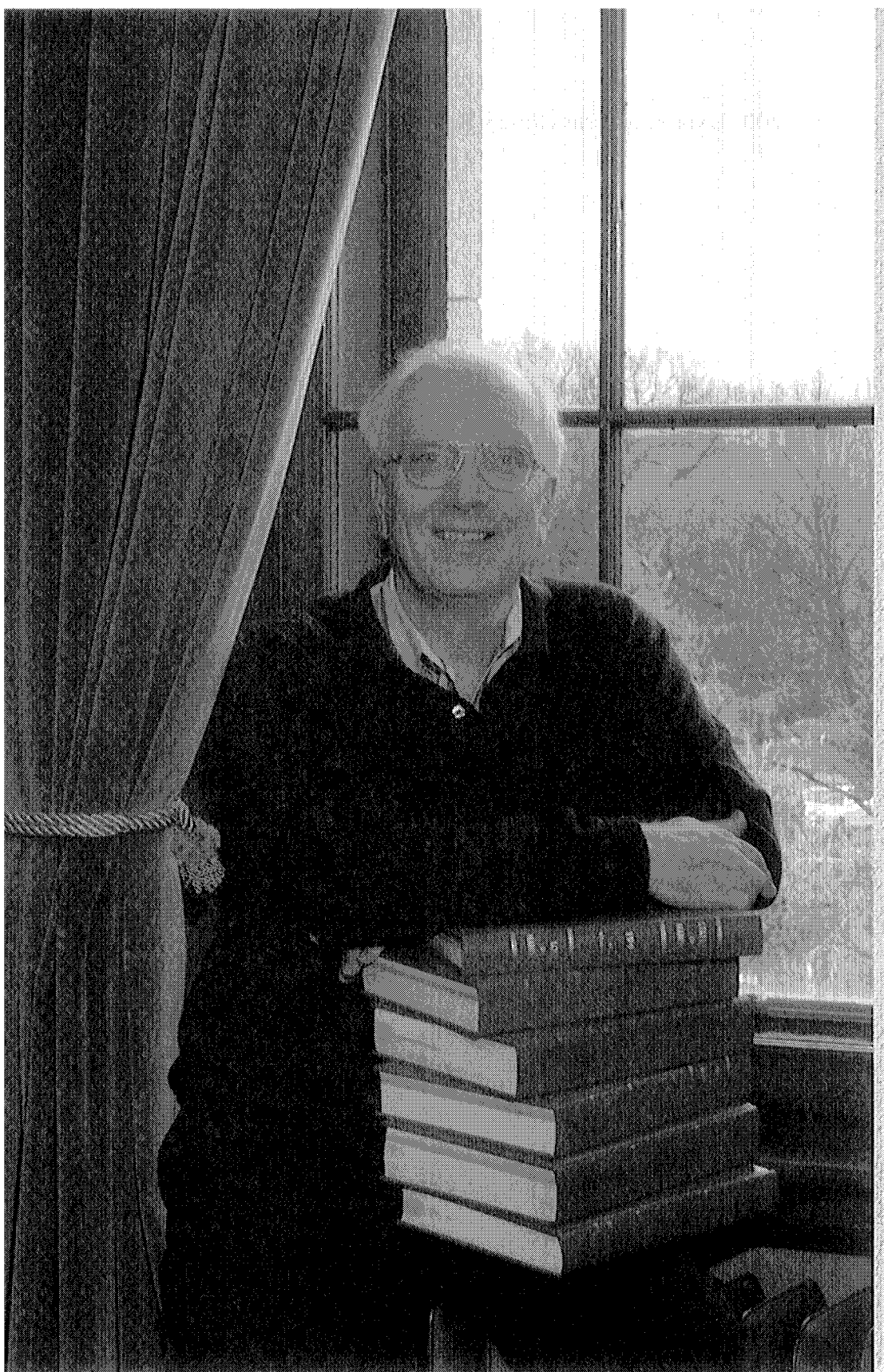
If you could change anything about the way the legislative process currently works what would it be?

I would definitely go back to reforms of '95 and '96, which allowed for the House to do estimates in the spring and legislation in the fall. We talked earlier about the fact that people don't get sufficient notice. That system was ideal for the MLAs, for the civil servants, for everybody. Ministers had a full summer to rally support for their bill. Opposition members had time to consult and rally support for their cause. Stakeholders had time to prepare briefs.

No system is perfect, but some processes do support the principles of participatory democracy better than others.



198³ UNDERNEATH THE GOLDEN BOY





2003 UNDERNEATH THE GOLDEN BOY

Norm Larsen is photographed in Committee Room #257 of the Manitoba Legislature, where he spent many hours listening to presentations at various standing committee hearings. Norm holds a representation of the 5,000 pages of legislation he crafted in his 13 years as a legislative drafter.