I. INTRODUCTION

Bill 11—The Animal Diseases Amendment Act,1 was given Royal Assent in the Manitoba Legislature on 25 July 2002. This paper will examine the forces behind why the government felt compelled to amend The Animal Diseases Act2 of 1987, as well as exploring the effects of those changes and additions. The official government reasoning for bringing this bill forward was to “allow the province to improve its response to new and emerging issues related to animal diseases.”3 The government objectives in implementing the proposals were set out as follows:

- To assist federal and provincial partners in emergency management of diseases of trade concern in animals;
- To enhance bio-security measures to reduce the opportunity for disease to be introduced from outside the province; and
- To provide flexible regulatory support in the development of industry-led disease control programs in animal agriculture.4

Although Bill 11 doesn’t address any specific diseases, it becomes apparent from the legislative debates, as well as from interviews with stakeholders, that the legislation was intended to deal with concerns arising from the foot-and-mouth outbreak in Great Britain, the on-going problem of tuberculosis in Riding Mountain Park, and the spread of chronic wasting disease in deer.5 The amendment also addressed an administrative concern arising from The Freedom of Information and

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1 S.M. 2002, c. 11 [the Act].
2 C.C.S.M. c. A85.
4 Ibid.
5 Interview of David Meighen, Manitoba Legislative Drafter (31 October 2002) [Meighen].
Protection of Privacy Act, as well as giving the Minister the legislative authority to enter into agreements with other stakeholders, mainly in the livestock industry. In addition, a major impetus behind the legislation was the concern of provincial veterinary personnel about the capability and willingness of the federal government to take the appropriate action if a serious animal disease appeared on Manitoban soil.

II. WHY AMEND THE ANIMAL DISEASES ACT?

A. External Pressure

1. Foot-and-Mouth Disease in Great Britain

In February of 2001, an outbreak of foot-and-mouth disease ravaged the livestock industry in Great Britain. A recent report into the tragedy identified a lack of preparedness and response capabilities to deal with the problem as the leading factors that resulted in the spread of the disease for three weeks before “anyone realized it was there.” It has also been recognized that “because of the speed at which infectious diseases such as foot-and-mouth can spread, the key to controlling an outbreak is to detect the disease at the earliest possible moment.”

The experience in Great Britain, though horrible, can serve as a lesson to Manitoba. According to the findings of the British government, the primary way identified to avoid a severe outbreak is through early detection.

The toll on Manitoba’s economy if such an outbreak were to occur here would almost certainly be disastrous. The foot-and-mouth outbreak in Great Britain “devastated the livestock industry there, resulting in the destruction of four million pigs, cattle and sheep—costing the British
economy upwards of $30 billion.”11 The Manitoba Department of Agriculture was motivated by this crisis to evaluate the procedures and resources available to the provincial government in the case that such an outbreak were to occur in Manitoba. The recommendations that came out of that assessment served as the inspiration behind these amendments. During second reading of the bill, the Minister of Agriculture, the Honourable Ms Wowchuk, stated that:

The outbreak of foot-and-mouth disease in the United Kingdom in 2001 stimulated Manitoba Agriculture and Food to re-assess its animal disease status and regulations, as well as its disease preparedness capacity. As part of the re-assessment, we looked at our Foreign Animal Disease Eradication support program, better known as FADE, in conjunction with CFIA, the Canadian Food Inspection Agency.12

The Veterinary Services Branch also identified the foot-and-mouth outbreak in Great Britain as the major external pressure behind the amendment.13

B. Potential Impact on Manitoba

A brief examination of livestock statistics indicates the importance of the livestock industry to the Manitoban economy. More specifically, out of province sales to the United States and to other provinces are what drive this industry. The livestock animals that are considered here are cattle, pigs, and hogs, with a combined annual value to the provincial economy of about $2.5 billion.

1. Background Statistics

Manitoba has 12 per cent of the nation's beef cows and 1.5 per cent of total North American beef cows, making it the third largest producer in Canada behind only Alberta and Saskatchewan. In 2001, the value of the more than 505,000 head marketed for slaughter or sale out of the province was close to $525 million; about one-seventh of the total value of agricultural production in the province. Illustrative of the importance of the United States market to this industry is the statistic that almost half of this total, or about 202,200 slaughter cattle and 12,800 feeder cattle, valued at $255.6 million, were exported from Manitoba to the United States. The inter-provincial market took up almost all the rest

11 Santin, supra note 8.
12 Manitoba, Legislative Assembly, Hansard, (5 June 2002) (Hon. Rosann Wowchuk) [Wowchuk].
13 Whiting, supra note 7.
with almost 31,000 slaughter cattle and an estimated 321,000 feeder cattle and calves sold mainly to Alberta and Ontario.14

Manitoba is the largest hog-exporting province in Canada, with the value of this industry increasing by 23 per cent in 2001 to about $860 million. This was about one-quarter of the total value of agricultural production in the province. Of the 6.03 million hogs in Manitoba in 2001, over 2.67 million were sold out-of-province. Not surprisingly, the U.S. was once again a major market for this product, with about 900,000 hogs and 1.72 million weanlings exported directly to the U.S., totalling almost $247.5 million in 2001.15

Pork and pork products produced in the province in 2001 had an estimated total wholesale value of $1.1 billion. As Manitobans only consumed a very small percentage of the total pork produced in the province, most of the pork produced in Manitoba had to be sold out-of-province. Almost one-quarter of the pork produced by Manitoba plants in 2001 was shipped to other provinces, leaving the remainder to be sold out-of-country. This accounted for a record $518.8 million worth of Manitoba pork and pork products being sold directly to 36 countries in 2001, with most exports going to the U.S. and Japan.16

The huge reliance on exports to the United States is obviously of great concern. If an outbreak of a serious animal disease did occur, it is very likely that Manitoba livestock products exported to the U.S. would be subjected to the same treatment as British products were during the outbreak there. During this period, the United States Department of Agriculture implemented a policy “prohibiting or restricting the importation into the United States of live swine and ruminants and any fresh swine or ruminant meat (chilled or frozen) or products from Great Britain or Northern Ireland.”17 The closing of such a huge and important market for Manitoban livestock exports was recognized by Provincial Liberal Party Leader Jon Gerrard as the likely result of an outbreak in Manitoba, with devastating costs to the province’s economy of between $5 to 10 billion over a four or five year period.18

16 Ibid.
C. Internal Pressure

1. Concerns with the Freedom of Information and Protection of Privacy Act

With the implementation of The Freedom of Information and Protection of Privacy Act, the staff of Veterinary Services was prevented from giving notice about an outbreak of a disease to others who had animals at risk. Assistant Director of Veterinary Services, Dr. Terry Whiting, alluded to this in an interview, part of which is reproduced below. ¹⁹

Q. Were there internal pressures from within Manitoba to make these amendments?

Yes, there were internal pressures. We had a program for many years to eradicate [a serious disease prevalent in chickens]. We are now a region free of the disease without vaccination. One of the problems when we passed The Freedom of Information and Protection of Privacy Act is that I could no longer tell people that the backyard flock next to them was infected with this disease. So the industry wanted an exemption for specific purposes for named diseases so that I could supersede The Freedom of Information and Protection of Privacy Act, so that I could tell those in a geographical risk of the disease. This was the logic behind it.

2. Ability to Enter Agreements with other Stakeholders

Concern about the downloading of federal responsibility over animal diseases to the provinces was addressed with the inclusion of s. 18.1(1), which reads:

For the purposes of this Act, the minister may enter into an agreement with a qualified person or organization or a government

(a) for the performance of such duties or functions under this Act as the minister may specify, on such terms and conditions as the minister may specify; or

(b) for the implementation and funding of disease control programs and initiatives.

Dr. Whiting spoke to this issue during his interview: ²⁰

Q. Is there anything else that concerned the province?

Yes. There are a bunch of changes in the Act that allows the Government of Manitoba to enter into joint funding agreements to provide ‘Help’ programs. Up until now, since the beginning of

¹⁹ Whiting, supra note 7.
²⁰ Ibid.
time, when the federal government got involved in animal disease they paid for it all from general revenue. We are now preparing for the feds not to be involved at all, so we need local tools of compulsion to make people participate in animal health programs. If the provincial government is going to pay for something, I need the legislative authority to spend public money. That allows us to enter into binding agreements with the Manitoba Pork Council, Dairy Association, et cetera. This empowers us to enter into those relationships which we need to do for food safety.

3. Provincial – Federal Mistrust

With so much of an economic nature at stake, and the belief that the federal government could not or would not adequately respond, the province felt compelled to act now to take the necessary precautions and to arm itself with the necessary tools to be able to take the appropriate steps if an outbreak occurred. Dr. Whiting addressed these concerns in his interview:

Q. Debate in the legislature suggested that the provincial government could force the federal government to do something about the tuberculosis outbreak in Riding Mountain National Park. Is this accurate?

We can’t even force the federal government to cooperate with the province. They are just, just pompous. They are really tough to deal with. Two, three, four years ago we wrote a provincial regulation to prohibit the movement of elk into Manitoba for the control of chronic wasting disease. The federal government also had a movement control program where you have to have a permit to move elk within Canada. They continued to sign federal movement permits to move elk from Saskatchewan into Manitoba—in brutal disregard of the provincial Department of Agriculture. The federal government, in the area of disease control, thus far has been totally and completely committed to non-cooperation with sub-national animal health infrastructures. It is a very, very strange situation.

Q. If there were an outbreak of foot-and-mouth disease, would it be under federal jurisdiction?

Parts of it are. One of the things we wrote into this Act was the ability to have a movement standstill order at the provincial level. We can make people stop moving animals.

Q. Wouldn’t the feds do that anyway?

21 Ibid.
Eventually they would. But our previous history with them is that they are very, very slow to make a decision which might have some liability associated with it.

D. Political Pressure
Shortly after the outbreak of foot-and-mouth disease in Great Britain, the topic of Manitoba’s response to such an occurrence in this province became the frequent theme of questioning in the legislature by Jon Gerrard. He repeatedly peppered the Minister of Agriculture with questions regarding the provincial state of preparedness, and the existence of a provincial action plan in the case of a foot-and-mouth disease outbreak. The initial response by the Agriculture Minister was that this was not a provincial concern but “a veterinary issue. I am confident that the vets are addressing this issue properly. ... This is a reportable disease through the federal government, and it is the federal government, the CFIA (Canadian Food Inspection Agency) that is responsible.”

Dr. Gerrard kept up this line of questioning for many days in the spring of 2001, and was repeatedly faced with similar answers—even though this is a very important issue, the province was not in a position to take the lead and was subjected to activities that are coordinated through the CFIA. Minister Wowchuk went as far as to state that “should there be [an outbreak], Manitoba ... will follow the guidance and the instruction of the Canadian Food Inspection Agency, which has the responsibility for reportable diseases. That is the plan that everyone will follow.”

Dr. Gerrard also pressured the government to take action concerning the outbreak of tuberculosis in Riding Mountain National Park. His tenacity—as well as his verbosity—on the subject seemed by some to be monotonous, as when he once again started to talk about animal diseases in the legislature, the entire press gallery stood up and walked out, “[leading] many to remark he seemed to have ‘foot in mouth disease.”

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22 Manitoba, Legislative Assembly, Hansard, (10 12 24 25 26 April and 8 24 May 2001) (Jon Gerrard).
23 Manitoba, Legislative Assembly, Hansard, (12 April 2001) (Rosann Wowchuk).
24 Ibid. (26 April 2001).
25 Manitoba, Legislative Assembly, Hansard, (5 and 6 June 2001) (Jon Gerrard).
26 Mia Rabson “It’s a Bird it’s a Plane, it’s ... Everywhere Man” Winnipeg Free Press (1 May 2002) A12.
III. THE ACT

The Animal Diseases Amendment Act was introduced in the Manitoba Legislature on 29 May 2002 for first reading. The bill significantly enhances and widens some of the powers already present in The Animal Diseases Act, especially relating to animal movement into and around the province, as well as the ability to quarantine animals and the premises where they are housed. It also addresses concerns over the inability to notify stakeholders when a disease is present, and empowers the province to act in areas historically of a federal concern. According to Minister Wowchuk, “the proposed amendments to The Animal Diseases Act will allow the province ... the legal certainty to act quickly in instituting animal movement controls and quarantines to reduce the spread of disease in the province.”

Bill 11 does include other important aspects that are important to the control of animal diseases. With the additions of ss. 3(2) and 3(3), the force of the Act not only applies to animals, but also to a ‘fomite’ and a ‘vector’. According to the definitions, a fomite is a substance or thing by which a diseases causing agent may travel from an infected animal to an uninfected one (examples being food or manure), while a vector is an animal by which the disease causing agent may travel from an infected animal or place to an uninfected one.

An important consideration that the government wished to have included in Bill 11 was to change the required immediacy of reporting a suspected animal disease. The requirements in The Animal Diseases Act were that a veterinarian had up to two days to notify the Director of Veterinary Services in writing if a disease was suspected to be present in an animal. Section 2(4) of the amendment now requires that the veterinarian must not only still notify the director by writing, but must also “notify the director of the suspected disease by the fastest available means of communication.” This addresses the central issue of preventing the spread of these diseases. The primary concern is to contain and deal with it as soon as possible because of the speed with which these diseases can proliferate.

The Act gives much greater powers to the Director of Veterinary Services concerning quarantine and the power to control movements of animals in an effort to reduce the spread of diseases. The Director can

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27 Manitoba, Legislative Assembly, Hansard, (29 May 2002).
28 Whiting, supra note 7.
29 The Act, supra note 1.
30 Ibid. [emphasis added].
31 Wowchuk, supra note 12.
quarantine not only animals, but can also control the movement and quarantine of vectors and fomites. The Act also expands the powers of an inspector by allowing for any vehicle to be stopped, not just one carrying an animal.

There are also enhanced penalties “to reflect the economic realities of the impact of animal disease in the livestock industry and in society at large.” Section 17 of The Animal Diseases Act stated that the penalty for contravening its provisions, the regulations or an order from the director resulted in liability on summary conviction to a fine of between $50 and $500, or imprisonment for not more than two months. The amendment replaces this with a fine of not more than $10,000 or imprisonment for a term of not more than one year, or both.

A. Drafting Bill 11

The instructing officer for Bill 11 was the Director for Veterinary Services, though it was the Assistant Director who oversaw Bill 11’s development. Dr. Whiting explained the initial process during his interview:

Q. How did this amendment come into being?

Industry says ‘we want to be able to do these things’, and then we describe the powers that we need, to our legislative drafts people. Actually, I wrote this one. I write the first draft of the amendments stating ‘this is what I want to do,’ and then we pump it through the system to make the amendments.

The draftsperson was referred to federal legislation as an example of what should be included in the amendment. The federal legislation, the Health of Animals Act, could only be used as a guide in determining what powers the province would like to see included in Bill 11. It couldn’t be copied or used as a template. The problem arises from the fact that an amendment is limited to the style of the existing Act, in this case The Animal Diseases Act. It was remarked that Bill 11 might have looked much differently if it was drafted from scratch. The objective for the draftsperson—when dealing with an amendment—is “to make things mesh with what is already there.”

The draftsperson was told that there were problems with The Animal Diseases Act when dealing with foreign animal disease outbreaks. This statute didn’t have the tools to deal with the problem of these diseases

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32  Ibid.
33  Supra note 1 at s. 17(1).
34  Whiting, supra note 7.
36  Meighen, supra note 5.
spreading to Manitoba from other countries or other provinces. The existing legislation also was identified as not being effective enough in containing animal diseases once they were in the province. Also of great concern were the issues surrounding the powers of the inspectors, and the requirement for reporting diseases within a certain time frame.

The inspectors’ powers were drafted in such a way as to bring them in line with, and to keep them consistent with, other Department of Agriculture legislation drafted in recent years. The requirement for reporting diseases was based upon similar requirements in the Health of Animals Act. In that Act is a list of reportable diseases. If a veterinarian comes across one of them, they must report their finding to the department right away. The existing provincial legislation was kind of like this but wasn’t as immediate, as people had a certain amount of time to report the disease. This was problematic since any delay in reporting a disease could result in less of a chance of containment. Now they must report a suspected disease immediately.

The drafting style of the Act reflects the somewhat technical nature of the subject matter. Still, it is reasonably capable of being read and understood without too much difficulty. The quality of the drafting work was even the topic of notice in the legislature, and was lauded by one opposition member:

I would commend the department for the drafting of this bill. I think this bill is well done and could be used as an example as to how to craft legislation in such a manner that it can be acceptable in a significantly broad base ... I think there could be consistency drafted into all the bills that would reflect what is being reflected here. I commend whoever drafted this bill for drafting it the way it was done.

B. Second Reading

On 5 June 2002, Bill 11 was read for a second time. It was in this address to the House that the Minister of Agriculture specifically referred to the foot-and-mouth crisis in Great Britain as a motivating factor for bringing in this legislation. In her speech, Minister Wowchuk made it clear that though the province’s powers were limited in scope due to jurisdictional issues, they were greatly needed. Many diseases were under federal authority and this amendment was “intended to provide a response to a broad range of animal disease issues in Manitoba where there is no federal program, or where the federal program is inadequate for local needs.” She specifically stated that the CFIA has the regulatory authority to deal with federally reported diseases. The aim of

37 Ibid.
39 Wowchuk, supra note 12.
the amendment was not to compete with the CFIA, but rather to enhance the province’s own powers in a supporting role and as a partner with the CFIA in foreign animal disease preparedness and management, with the goal of “simply solidifying and clarifying [the province’s] role in the provincial disease control and management area.”

C. Debate on Second Reading

On 25 July 2002, the House debated the second reading of Bill 11. This is where confusion over the powers the provincial government has under this legislation begins. All opposition members who spoke to the bill were overwhelmingly in favour of it. It is very rare in politics to witness this level of agreement and support for a government bill by the opposition. Though it is clear that the CFIA has the authority to deal with foreign animal diseases, Conservative Party Agriculture Critic, Jack Penner, believes that the subject of animal diseases control is a provincial matter. Somewhat confusing is his assertion that this legislation results in the legal right of the province to order the federal government to confine animals in Riding Mountain National Park immediately, as well as bearing all the costs associated with the confinement, eradication and elimination of the diseases in the park. This is fully contradicted by the CFIA, who state that the province doesn’t have the jurisdiction to do that, as Parks Canada has full jurisdiction over their own lands. Yet Mr. Penner still asserts that the province can now force the federal government to act. By repeatedly pointing out that the province now has the power to do something (which in reality the province does not), the opposition will be able to shout and scream when the Minister doesn’t use that illusory power to stamp out the incidence of tuberculosis in Riding Mountain National Park. According to the CFIA, this could very well be an example of political posturing by the opposition party.

40 Ibid.
41 Interview of Blaine Thompson, Regional Veterinary Specialist, Canadian Food Inspection Agency (31 October 2002) [Thompson].
43 Ibid.
44 Thompson, supra note 41.
47 Thompson, supra note 41.
D. Committee of The Whole and Report Stage

Bill 11 headed immediately into committee, where there was very little discussion. The bill was passed clause-by-clause and reported back to the House without any amendments.

E. Third Reading

At this stage, the opposition slapped each other on the back on a job well done and on the level of cooperation that abounds when a bill of such importance comes before them. Royal Assent was given a few minutes later, and the bill came into full effect.

IV. Conclusion

The Animal Diseases Amendment Act gives the Provincial Veterinary Service expanded powers of quarantine and control over the movements of animals. It significantly increases the penalties imposed against someone violating the Act. The amendments also allow the government, after a disease outbreak, to notify others with animals of the risk. In addition, the Minister is authorized to enter into joint programs with other stakeholders, an area historically in the domain of the federal government.

The impetus behind these amendments may have been a combination of the outbreak of foot-and-mouth disease in Great Britain, and the ongoing problem of tuberculosis in Riding Mountain National Park. On the surface, these amendments will not have any significant impact on either of these issues. Foot-and-mouth disease is a condition that is reportable under the federal Health of Animals Act and is therefore under federal jurisdiction. If there were an outbreak in Manitoba, the federal agencies would be in control, as their mandate clearly gives them the power to eradicate foreign diseases. These amendments address the underlying fear of Veterinary Services regarding the lack of certainty as to how and when the federal government would react.

The possibility of the province taking the lead in addressing the tuberculosis problem in Riding Mountain National Park is also remote. The park is federal crown land, and as such the province doesn’t have the jurisdiction to force the federal government to do anything in the park. In each of these cases, the legislation could only be used as an add-on to what the federal government is doing. An example of this may be to expand the area that animals couldn’t move in or out of, or perhaps impose harsher control measures.48

48 Ibid.
This legislation seems appropriate given the province’s fears and concerns about animal diseases and how they are to be controlled. Much of this amendment is of a defensive nature, enabling the province to respond in a sufficient manner if the federal government can’t—or won’t—adequately address the issue as it arises.

The threat of these horrific diseases spreading to Manitoba is real, and the fact that such an occurrence would be devastating to the very important and valuable livestock industry is not debatable, given the result from Great Britain. Perhaps the real impetus behind this bill is the desire to portray Manitoba as taking a proactive stance in the fight against these diseases. As Minister Wowchuk pointed out, “We’re in a global market and everyone watches what’s happening very closely.”49 In the end, it may be that this legislation is as much about *image* control, as it is about *disease* control.

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