

The Drinking Water Safety Act

J A Y S I M P S O N

I. INTRODUCTION

Today, bottled water is ubiquitous. Whether a fashion statement, a taste preference, or a lack of trust in the kitchen tap, it seems everyone is drinking it. Many consumers do consider it safer than what comes from their faucets, but is this the case? Under current Manitoba regulations, tap water may actually be better,¹ but soon both will be subject to the same control regime. *The Drinking Water Safety Act*²—not yet proclaimed but given Royal Assent on 9 August 2002—is about to bring Manitoba to the forefront of drinking water protection in Canada. Arising from a substantial review of the status quo, the *Act* broadens the scope of the existing regulatory regime. It does so by mandating the regulation of semi-public water systems and opening the door to oversight of private systems as well. It also expands the ambit of regulation to cover water sources, in addition to supply systems. The *Act* will establish standards for safe drinking water and provides an enforcement mechanism, including orders, offences and whistleblower protection, to ensure its provisions are met. Complementing the enforcement provisions is an appeal process to ensure that they are fairly implemented, and a cost recovery scheme to pay for it all. Last, but by no means least, *The Drinking Water Safety Act* creates the Office of Drinking Water, a single focal point to coordinate all drinking water safety issues.

This paper will examine the origins of *The Drinking Water Safety Act* to show its genesis and rationale. It will also discuss the drafting of the legislation, examine key issues that arose during its creation, and look at its progress through the legislature. Some comments on the content of the *Act* will also be provided. The aim of the paper is to explain how and

¹ Manitoba Drinking Water Program Review: Report of the Public Consultation (Ottawa: Canadian Water and Wastewater Association, 31 March 1999) at 8 [Report of the Public Consultation].

² S.M. 2002, c. 36, C.C.S.M. c. D101 [the *Act*].

why this *Act* has come to be, what it will do for Manitobans, and why it is important.

II. BACKGROUND

The safety of drinking water in Manitoba is presently legislated by *The Public Health Act*.³ This *Act* became law in 1965, and much of its content regarding drinking water has not been substantially amended since. Upon this aging foundation are built three regulations that have formed the real structure of the drinking water regulatory regime since 1988. These regulations are Man. Reg. 330/88R.—*Water Supplies Regulation*, Man. Reg. 331/88R.—*Water Works, Sewerage & Sewage Disposal Regulation*, and Man. Reg. 326/88R.—*Protection of Water Sources Regulation*.⁴ Still in effect, these regulations provide a reasonable framework to ensure the safety of Manitoba's drinking water. They do have significant limitations, however. In particular, the *Water Supplies Regulation* only governs public water systems, leaves considerable discretion to the Medical Officer of Health, and reflects dated technology.

Officials in Manitoba Health and Manitoba Conservation (then Environment) were not unaware of these limitations. In June 1998, the Canadian Water and Wastewater Association (CWWA) was contracted by the two departments to conduct a public consultation on the Manitoba drinking water program. The objective of this study was:

[T]o determine if and how the current program regulating drinking water supplies in the Province might be changed to maintain its relevance, efficiency and effectiveness in assuring Manitobans continue to receive high quality drinking water within the reality of fixed or reducing resource allocations.⁵

CWWA marshalled a substantial consultation group representing industry, business, relevant professions, consumers, water utilities, educational institutions and various levels and branches of government. This group assessed the drinking water programs in Manitoba and other jurisdictions, prepared a consultation document on possible alternatives, and then conducted town hall meetings in Swan River,

³ R.S.M 1987, c. P210, C.C.S.M. c. P210; the original statute was *The Public Health Act*, S.M 1965, c. 62.

⁴ There are several other acts, regulations and guidelines that pertain to drinking water safety in Manitoba, but these three are the main ones. For a more complete list, see Manitoba, Legislative Assembly, Office of the Chief Medical Officer of Health "Drinking Water Advisory Committee Report" (6 November 2000) at 36–37, [online: <http://www.gov.mb.ca/health/publichealth/cmoh/docs/DWAC_report.pdf>](http://www.gov.mb.ca/health/publichealth/cmoh/docs/DWAC_report.pdf) [DWAC Report].

⁵ Report of the Public Consultation, *supra* note 1 at i.

Brandon, Morden, Winnipeg, Steinbach, and Thompson. This was followed by a second report based on the town hall meetings, additional consultations and the eventual preparation of recommendations for change.⁶ This process culminated in the submission of the *Manitoba Drinking Water Program Review: Report of the Public Consultation* on 31 March 1999. This report contained 23 recommendations, including one pertaining to legislative amendments:

The *Public Health Act* (and Regulations) be revised to provide a single legislative, policy and program focus for drinking water that would encompass all potable water supplies including, bottled water, trucked water and private supplies used for potable purposes. The revision would provide for the establishment of water quality standards, outline the responsibilities of the stakeholders in the provision of drinking water, provide for regulations as necessary, ensure appropriate administrative and sanctioning powers for public health inspectors and for a new and appropriate range of penalties.⁷

Further, the report provided a detailed, four-page outline of proposed legislation to address drinking water in a revised *Public Health Act*.⁸

The next step in the development of *The Drinking Water Safety Act* came on 9 June 2000, when the Ministers of Health and Conservation established the Drinking Water Advisory Committee. The mandate of this committee was to make recommendations on water sampling, testing, reporting and appropriate follow-up action. Interestingly, the committee was not charged to examine the protection of water sources or the state of water systems infrastructure.⁹ The committee identified that Manitoba has over 350 public drinking water systems, about 2 000 semi-public water systems, and some 50 000 private systems, mostly wells.¹⁰ Among the 2 000 semi-public systems, the committee estimated there to be 20 hospitals, 70 daycares, 100 schools, 800 restaurants and 300 community wells. None of these semi-public systems are effectively regulated by existing regulations.¹¹ The committee made 29 recommendations that addressed five main points:

- The need for one drinking water coordinating centre in Manitoba

⁶ Report of the Public Consultation, *supra* note 1 at 3.

⁷ *Ibid.* at 28.

⁸ For the full text of this outline, see the *Report of the Public Consultation*, Report of the Public Consultation, *supra* note 1 at 32–35.

⁹ *DWAC Report*, *supra* note 4 at 2.

¹⁰ *Ibid.* at 2. A semi-public water system is defined as a system of fewer than 15 connections that is used to serve the public. Examples include schools, restaurants, hotels, correctional institutions, camps and mines whose water is supplied from a well.

¹¹ *Ibid.* at 19, 27. Water sampling for semi-public systems was described as “voluntary.”

162 Underneath the Golden Boy

- The need to enhance the Province's program for private well water testing
- The need to regulate and monitor semi-public water systems and strengthen the regulation and monitoring of public water systems
- The need to improve education, training, communication and standards in all aspects of the Manitoba drinking water program
- The need for adequate resources to make the system work better¹²

In parallel to the development of this report, other events also drove this process forward. In May 2000, the peaceful town of Walkerton, Ontario became the focus of national concern, both in the media and in public health circles. A water-borne outbreak of *E. coli* rampaged through the town, propagated by the public drinking water system. In the space of two weeks, 2 300 people fell ill and, tragically, seven died.¹³ The breakdown of drinking water safety in Walkerton had many causes, including fraudulent operation of the water supply system, inadequate operator training and knowledge of health risks, lack of appropriate detection technology and water source testing, ineffective data management and oversight by governmental authorities, and an insufficient hazard notification scheme.¹⁴

A similar crisis followed one year later in May 2001, this time in North Battleford, Saskatchewan. Once again, thousands of people became ill and four died from drinking unsafe municipal water. The culprit in this case was *cryptosporidium*, a parasitic protozoa that caused some 400 000 people to get sick and killed approximately 100 people, mostly elderly or those with immune deficiencies, in Milwaukee, Wisconsin in 1993.¹⁵ Many of the root causes of the North Battleford outbreak were similar to those of Walkerton: dated technology, substandard knowledge and training, inappropriate standards and insufficient governmental oversight.¹⁶ In both instances, the effect of government budget cuts and the need for regulatory reform were also cited.¹⁷

¹² *Ibid.* at 6.

¹³ Ontario, Legislative Assembly, Ministry of the Attorney General, "Part One: A Summary – Report of the Walkerton Inquiry: The Events of May 2000 and Related Issues" in *Reports of the Walkerton Inquiry* (2002), (2002), online: <www.attorneygeneral.jus.gov.on.ca/english/about/pubs/walkerton/part1/wI_summary.pdf> [*Walkerton Report*].

¹⁴ *Ibid.* at 13–35.

¹⁵ "Cryptosporidium," *CBC News Online*, (May 2001), online: [CBC News <http://www.cbc.ca/news/background/health/cryptosporidium.html>](http://www.cbc.ca/news/background/health/cryptosporidium.html).

¹⁶ Saskatchewan, Legislative Assembly, "Report of the Commission of Inquiry into matters relating to the safety of the public drinking water in the City of North Battleford, Saskatchewan - Part VIII Summary of Findings " in *The North Battleford Water Inquiry* (28 March 2002), online:

III. LEGISLATIVE HISTORY

With all these wheels turning, Manitoba's legislative machine sparked into life. Three options were considered for replacing the existing regulatory scheme: rewrite *The Public Health Act*, replace the existing regulations with one large, updated drinking water regulation, or create a stand-alone Act governing drinking water safety.¹⁸ In deciding this issue, government officials considered the schemes in several other jurisdictions, both in Canada and the United States. In particular, the post-Walkerton regulations in Ontario¹⁹ were reviewed, as well as a draft bill from British Columbia.²⁰ However, due to the individual nature of each province's legislative architecture, little could be imported directly into any new Manitoba statute or regulation. Whichever way the government chose to proceed, it would be a largely original, Manitoba creation.

The decision on which option to pursue was heavily influenced by *The Security Management (Various Acts Amended) Act*.²¹ Drafted in response to the terrorist attack of 11 September 2001, this *Act* made substantial security-related amendments to nine separate acts. Roughly half of the *Act* is taken up by Part 8, which amends *The Public Health Act*. The effect of this was to fix many of the most significant provisions of that *Act* that had been suffering from old age. As a result, there was less need to overhaul the entire *Act*, thus downplaying one of the three options to address reform of the drinking water regime. Given the substance and volume of drinking water matters to be addressed, Legislative Counsel favoured a separate piece of legislation over a large regulation pursuant to *The Public Health Act*. The government

<<http://www.northbattlefordwaterinquiry.ca/final/showpage.asp?id=102>> [*North Battleford Report*].

- ¹⁷ *North Battleford Report*, *Ibid.* at Part VII Regulatory Reform, online: <<http://www.northbattlefordwaterinquiry.ca/final/showpage.asp?id=101>>; Walkerton Report, *supra* note 13 at 4-5 and 34-35; and Walkerton Report, *supra* note 13 at Chapter 15 Summary of Recommendations at 499, 501 and 503, online: <www.attorneygeneral.jus.gov.on.ca/english/about/pubs/walkerton/part1/wI_summary.pdf>.
- ¹⁸ Interview of Mr. Glen McLeod, Manitoba Legislative Counsel (6 November 2002).
- ¹⁹ *Drinking Water Protection Regulation – Larger Waterworks*, O. Reg. 459/00, and *Drinking Water Protection Regulation for Smaller Waterworks Serving Designated Facilities*, O. Reg. 505/01.
- ²⁰ Bill 20, *Drinking Water Protection Act*, 5th Sess., 36th Leg., British Columbia, 2001. This was a bill of the then NDP government that was quite comprehensive. However, the Bill was not enacted in its draft form, as it was substantially reduced in scope by the subsequent Liberal government before being passed as *The Drinking Water Protection Act*, S.B.C. 2001, c. 9, and McLeod, *supra* note 18.
- ²¹ S.M. 2002, c. 26.

concluded, and in February 2002 the final decision was made to proceed with a distinct Act governing drinking water safety.²²

IV. DRAFTING

The Drinking Water Safety Act was drafted between late April and mid June 2002. The *Act* went through nine drafts, each of which was the product of a drafting committee that included Legislative Counsel and various subject matter experts from the Health and Conservation departments and other interested government elements. Many of these experts had been involved in the Drinking Water Advisory Committee and in the government's consideration of the public consultations conducted as part of the Manitoba Drinking Water Program Review. Several also had regular operational duties that meant they were fully up to speed on the impacts of both the Walkerton and North Battleford tragedies. In other words, all the right players were at the table and ready to proceed.²³

The drafting process appears to have been very effective. Committee meetings were frequently long, but thorough. As a result, the actual drafting of the legislation went very smoothly. Further, every second or third draft was circulated to Health and Conservation field officers for a "reality check." This ensured that what was being drafted was actually workable in practice.²⁴

There was a strong emphasis on plain language drafting of the *Act*, which is apparent in the finished product. Centred headings are used throughout and the language is plain and clear. Structurally, the most significant elements of the *Act* are sequenced early in the *Act*, while supporting provisions primarily of interest to public officials are found towards the end. Further, lengthy sub-sections have been broken into numerous sub-sub-sections for simplicity.²⁵ On the other hand, lower order sub-divisions, a sign of complexity, are very rare. The overall effect is a positive statute that is clear and relatively easy to understand.

Each of the nine drafts was drafted in English and translated into French, as opposed to waiting to translate only the final product. Legislative Counsel noted that this was the normal approach.²⁶ The French and English texts are generally equivalent, although there are a couple of differences. In s. 24 of the *Act*, the English text states that a

²² McLeod, *supra* note 18.

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ *Ibid.*

laboratory that has conducted an analysis and found a serious health risk must advise the water supplier of “the circumstances of the analysis,” whereas the French text uses the term “résultats.” “Résultats” would normally translate to “results” in English, while “the circumstances of the analysis” would translate to “les circonstances de l’analyse” in French. Although the gist of what is required is clear, the specific terminology is somewhat inconsistent. The English version should probably read “results” as well. The French text in s. 39(1)(t) is superior to the English version, which would read better as “respecting the use of water from, and the siting, construction, maintenance, decommissioning, sealing and abandonment of wells constructed for domestic purposes.”

Finally, there is an apparently substantial difference in wording in s. 41. To be strictly equivalent to the English text, the French version ought to read something to the effect of “L’article 13 de la *Loi sur les eaux souterraines et les puits* est modifié par adjonction, après “la *Loi sur les droits d’utilisation de l’eau*”, de “la *Loi sur la qualité de l’eau potable*.” However, this difference was deliberate and justified. The reason for the difference is that the translators noted an error in the existing French version of s. 13 of *The Ground Water and Water Well Act*.²⁷ The French version of s. 41 of *The Drinking Water Safety Act* corrects this error, in addition to providing the French equivalent of the English text in s. 41. This means of correcting existing errors is not uncommon.²⁸ One final point of note is how imperative text is translated within the *Act*. In the English text, the verb “must” is regularly used, whereas the French text uses verb tense and construction to convey the imperative, without use of the equivalent verb “devoir.” Despite the different approaches, both are correct and the meaning of the text is the same.²⁹

V. THE ACT – KEY FEATURES AND ISSUES

The Drinking Water Safety Act is a mid-sized *Act*, but one that is very comprehensive. Its scope deals with essentially all significant issues relating to drinking water safety. The *Act* is subdivided as follows:

- Interpretation
- Supply Sources
- Drinking Water Quality

²⁷ C.C.S.M. c. G110.

²⁸ E-mail from Mr. Glen McLeod, Manitoba Legislative Counsel, 29 November 2002.

²⁹ The author is indebted to Anne-Marie Ouimet, a translator with the Translation Bureau, Public Works and Government Services Canada, for her assistance in assessing and suggesting improvements in the translation of this legislation.

166 Underneath the Golden Boy

- Drinking Water Quality
 - Standards
 - Office of Drinking Water
 - Construction and Alteration of Water Systems
 - Operating Licences for Water Systems
 - Assessments of Water System
 - Infrastructure and Water
 - Drinking Water Safety Orders
 - General Provisions About Orders
 - Appeals to the Minister
 - Boil Water Advisories
 - Disinfecting Water
 - Sampling, Analysis and Reporting
 - Records
 - Database
 - Entry and Inspection
 - Non-Potable Systems
 - Offences and Penalties
 - Reporting of Violations
 - General Provisions
 - Regulations
- Consequential Amendments and Coming Into Force

The *Act* does several key things. First, it provides for specific water quality standards to be promulgated in regulations. These standards are binding on all public and semi-public water systems. Such standards were in issue in both Walkerton and North Battleford. Drinking water quality is constitutionally a matter of provincial jurisdiction. Rather than binding standards, Health Canada has produced a publication called *Guidelines for Canadian Drinking Water Quality*.³⁰ Although it contains technical ‘standards’ for drinking water quality, it is written as a guideline and not in a format conducive to creating prohibitions.³¹ Provincial governments, including Manitoba, have tended to follow these standards, but without necessarily having properly crafted regulations in place to enforce them. In the words of the Drinking Water Advisory Committee, “[p]resently there are no legal standards for

³⁰ “Guidelines for Canadian Drinking Water Quality – Supporting Documents,” online: Health Canada <http://www.hc-sc.gc.ca/ewh-semt/pubs/water-eau/doc_sup-appui/index_e.html>.

³¹ McLeod, *supra* note 18.

drinking water in Manitoba.”³² *The Drinking Water Safety Act* addresses this by providing for regulations that will establish such standards.

The extension of these standards to semi-public water systems is also a major step forward in ensuring drinking water safety. As previously noted, such systems are not effectively regulated under the current legislative scheme. Although of no import to Winnipeggers, the protection this will provide to rural Manitobans cannot be understated. In particular, the regulation of water quality in the 20 hospitals, 70 daycares and 100 schools identified in the report of the Drinking Water Advisory Committee will help to ensure the safety of those most susceptible to water-borne pathogens, being the sick, elderly and youth.

One issue the drafters of *The Drinking Water Safety Act* struggled with was how far the legislation should go in protecting private water systems. Balanced against the obvious security benefit were serious issues of privacy and cost.³³ The latter would affect both users and the provincial enforcement capability. The CWWA public consultations recommended that the regulatory program encompass all drinking water sources and supplies.³⁴ In the end, the *Act* reaches a compromise. First, it ensures that any voluntary testing of private systems that is done is reported to provincial officials. Second, it provides for regulations that can extend mandatory testing to private systems and water sources, under circumstances to be identified in the regulations. Such regulations can be tailored to specific geographical areas or water sources, thus providing maximum flexibility.

A second key feature of the legislation is the establishment of the Office of Drinking Water. This office is intended to provide a single focal point for coordination of all drinking water safety issues. It will administer and enforce the *Act*, make available its expertise, provide education and information to water suppliers and the public, and act as liaison both within and outside the provincial government. Such an office was recommended during the CWWA public consultations, citing a need to establish a “critical mass” of expertise.³⁵ Once again, the lack of such a central organization was a contributing factor to the events in both Walkerton and North Battleford.

Although the recommendation to establish the Office of Drinking Water was followed through in the legislation, some aspects of it have been rejected. In particular, the *Report of the Consultation* noted that the

³² *Supra* note 4 at 22.

³³ McLeod, *supra* note 18.

³⁴ *Supra* note 1 at 19.

³⁵ *Ibid.* at iii, 21, 22.

required critical mass would be “hard, if not impossible to achieve when the resources are split between two Departments and between Headquarters and Regional Office units, and in particular where Regional Office units have multiple purpose functions and responsibilities.”³⁶ As to whether the office should be part of Manitoba Health or Manitoba Conservation (then Environment), this report went on to state that “The provision of potable drinking water is a public health concern. While elements of a drinking water system may have environmental concerns, these concerns do not merit inclusion of the major elements of the drinking water program in that Department and may result in a confusion of priorities.”³⁷ Interestingly, *The Drinking Water Safety Act* was sponsored through the legislature by the Minister of Health, but the Office of Drinking Water is being established in Manitoba Conservation. Furthermore, despite the CWWA’s concerns over “multiple purpose functions and responsibilities,” it appears that the persons assigned as Drinking Water Officers will be those who already have other public health and environmental inspection and monitoring responsibilities.³⁸ The Drinking Water Office will succeed in centralizing some resources, but Health and Conservation remain “joined at the hip”³⁹ and it appears the Drinking Water Office will not change that.

The Drinking Water Safety Act achieves a commendable balance between provisions within the *Act* itself and issues left to the regulations. One of the latter is the testing and monitoring of water sources, another major step forward encompassed by this legislation. Source protection was another major issue, both in Walkerton and, particularly, in North Battleford.⁴⁰ The main policy issue at stake is cost, which could be quite substantial to water system operators, depending on the nature of the water source and the frequency and nature of

³⁶ *Ibid.* at 22.

³⁷ *Ibid.* at 21.

³⁸ McLeod, *supra* note 18.

³⁹ *Ibid.*

⁴⁰ In a special report comparing North Battleford with Victoria, B.C., the first difference highlighted by Victoria’s Capital Regional District was source protection: “The source of Greater Victoria’s drinking water is Sooke Lake Reservoir which is located in a watershed that is owned by the CRD and is off limits to the public. This pristine water source is an important barrier against contaminants and provides a much greater assurance that Greater Victoria’s drinking water will remain uncontaminated. Unfortunately, this type of barrier is not available to North Battleford as they get their drinking water from the North Saskatchewan River.” “issues raised by the North Battleford Cryptosporidium Outbreak”, online: CRD Water Department News <<http://www.crd.bc.ca/water/waterquality/northbattleford.htm>>.

testing required. As the regulations on this issue have yet to be produced, it is unclear how far the province will eventually go. The *Act* does reveal that sources of bulk and bottled water are of interest,⁴¹ and Legislative Counsel also raised concerns about flooding and abandoned wells in the Red River Valley.⁴² The scope of source protection in the *Act* has been left very broad, and the very fact that it has been included at all is a definite step ahead.

The Drinking Water Safety Act also encompasses two other key features that were at issue in Walkerton. The first of these is the creation of a drinking water quality database. Once again, the CWWA public consultation identified this in a recommendation to facilitate reporting, information sharing and public oversight.⁴³ In Walkerton, there was also an issue of source vulnerability information lost or forgotten between the time of the contaminated well's construction in the 1970s and the date of the incident.⁴⁴ The *Act* permits a database for the primary purposes of "monitoring and tracking drinking water analyses, and in identifying drinking water quality trends and risks," although it does also provide for reports to the public.⁴⁵ Of note, although the *Act* is only permissive as regards a database, the wording used was chosen to provide flexibility during the initial stages of implementation. The government definitely intends to field such a database.⁴⁶

Coupled with this database is a very strong reporting regime. Essentially, all testing and monitoring must be reported. This extends even to private water systems, both in terms of any testing undertaken voluntarily and in terms of mandatory testing ordered under the regulations. Laboratories must report all results to designated public officials, who in turn must notify the water supplier if there is any non-compliance or health risk. In case of the latter, reporting must be in person or by a "live telephone conversation" – voicemail is not enough.⁴⁷ This scheme corrects one of the Walkerton deficiencies caused by the privatization of laboratory services, whereby the lab was required to report to the water supplier, but not necessarily to public health officials.⁴⁸

⁴¹ *Supra* note 2, ss. 39(1)(u) and 39(1)(v).

⁴² McLeod, *supra* note 18. See also s. 39(1)(t) of the *Act*.

⁴³ *Supra* note 1 at 23.

⁴⁴ Walkerton Report, *supra* note 13 at 18, 29.

⁴⁵ *Supra* note 2, ss. 26(1) and 26(4).

⁴⁶ McLeod, *supra* note 18.

⁴⁷ The *Act*, *supra* note 2, s. 22.

⁴⁸ *Walkerton Report*, *supra* note 13 at 4-5.

In developing this reporting program, privacy was once again a key issue. This arose due to the plan to incorporate all reporting in the water quality database, and was compounded by the intent to offer that data to other jurisdictions and the public. The *Act's* stand on this is unequivocal – privacy takes a back seat to public health and safety. In several sections, the *Act* notes that personal, proprietary or otherwise confidential information may be recorded, entered into the database and disclosed to other agencies.⁴⁹ There is one significant limitation to this, which reads “[d]espite subsection (1), only a medical officer or a person authorized by a medical officer may require the production of personal health information or a document or record containing personal health information.”⁵⁰ This balancing of interests should prove sufficient to address any *Charter*⁵¹ scrutiny of the privacy issue.

One of the important features of *The Drinking Water Safety Act* is rather rare in Manitoba legislation. This is the “whistleblower protection” that is built into s. 33 of the *Act*. This section permits any person, acting on a reasonable belief that a violation of the *Act* has occurred, to report the circumstances to public officials. As long as such persons act in good faith, they are legally protected from any action, proceeding, adverse employment action, harassment or interference. This protection also extends to the disclosure by the whistleblower of personal, proprietary or confidential information.⁵² The inclusion of these provisions in the *Act* likely arose out of the Walkerton tragedy, as the major break in that case only occurred after an employee within the water plant tipped officials to earlier failed lab tests.⁵³

One final feature of interest is the appeal mechanism built into the legislation. A person affected by one of various orders under the *Act* may appeal the decision to the Minister within 14 days.⁵⁴ What is of interest is not so much the appeal mechanism itself, but its background. During the drafting of the legislation, there was an issue regarding to whom appeals should be directed. Three options were considered: the Minister, the Court of Queen’s Bench, and a board or commission. It was thought there would be too many minor concerns appealed to make the courts viable. Consideration was given to the fact that appeals under *The Environment Act*⁵⁵ and *The Dangerous Goods Act*⁵⁶ were to the

⁴⁹ *Supra* note 2, ss. 22(4), 26(4), 28(1)(e) and 33(2).

⁵⁰ *Supra* note 2, s. 28(2).

⁵¹ *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11.

⁵² *Supra* note, s. 33.

⁵³ Walkerton Report, *supra* note 13 at 11.

⁵⁴ *Supra* note 2, s. 16(1).

⁵⁵ C.C.S.M. c. E125.

Minister. In the final analysis, consistency and common sense drove the selection of the Minister for this purpose. However, to preserve flexibility, s. 16(4)(d) of the *Act* permits the Minister to “refer the matter to the Clean Environment Commission established under *The Environment Act* for its advice and recommendations, before making a decision or order” under the preceding clauses of the section.⁵⁷

VI. PROGRESS THROUGH THE LEGISLATURE

The Drinking Water Safety Act was introduced to the legislature as Bill 36 and was given first reading on 18 June 2002. A motion for second reading occurred on 23 July 2002, and second reading actually occurred on 31 July 2002, at which point it was referred to committee. The Standing Committee on Law Amendments reported on it on 8 August 2002, and it was given third reading and approval on the same day. Royal Assent followed the next day. Throughout its short life before the Assembly, the *Act* was subject to little debate. The Minister of Health sponsored the bill and provided a descriptive speech as to the bill’s merits on 23 July 2002. This was followed by a response from Mr. David Faurischou, who spoke not to the bill itself but to staffing levels for health officers who would be enforcing the legislative regime.⁵⁸ Similarly, the focus of debate following the report of the Standing Committee on Law Amendments on 8 August 2002 was also on potential staffing, this time raised by Mr. Glen Cummings.⁵⁹

This minimal legislative debate is understandable in light of the origins and nature of the *Act*. Considerable public input had been garnered through the Manitoba Drinking Water Program Review, and the Drinking Water Advisory Committee had provided substantial internal review. The latter had also paid close attention to the events in Walkerton, while the drafting occurred in the midst of the North Battleford situation. In conjunction with all this, there is the simple fact that no one in government, the opposition, or the public could rationally oppose the aim and objectives of the bill.

⁵⁶ C.C.S.M. c. D12.

⁵⁷ *McLeod*, *supra* note 18.

⁵⁸ Manitoba, Legislative Assembly, *Hansard (Debates and Proceedings)*, (23 July 2002) (Hon. D. Chomiak and D. Faurischou).

⁵⁹ Manitoba, Legislative Assembly, *Hansard (Debates and Proceedings)*, (8 August 2002) (G. Cummings).

VII. PRESS SCRUTINY

The overwhelmingly positive nature of this legislation also explains the almost total lack of media coverage concerning the bill. The one exception is an article in the *Winnipeg Free Press* on 3 July 2002, entitled “Manitoba pumps up water rules.”⁶⁰ The article was very favourable to the new law, and reads not unlike the Minister’s speech upon second reading. The article draws on comments from both the Ministers of Health and Conservation and does a good job of outlining the essential provisions of the bill. It certainly does not, however, add any debate.

VIII. CONCLUSION

The Drinking Water Safety Act has substantial merit in addressing public health concerns relating to drinking water safety. It takes important steps forward regarding the coordination, regulation and monitoring of all drinking water systems in Manitoba. In particular, the extension of the legislative regime to include semi-public systems and the adoption of binding provincial standards for drinking water quality are major advancements. This legislation includes provisions to address all the substantial concerns arising out of the tragic events of Walkerton and North Battleford. If implemented effectively, *The Drinking Water Safety Act* should go a long way to ensuring clean, safe drinking water for all Manitobans.

⁶⁰ Mia Rabson “Manitoba pumps up water rules” *Winnipeg Free Press* (3 July 2002).