

The Wildlife Amendment Act

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I. INTRODUCTION

THE WILDLIFE AMENDMENT ACT¹ was introduced into the Manitoba Legislative Assembly on 14 December 1999. Media reports suggest this legislation was in response to pressure from interest groups who wanted to prohibit a relatively new and growing industry, “penned hunting”. The practice involves hunting wild animals within fenced acreages of various sizes and terrains.

During the September 1999 provincial election, all three parties promised to ban this type of hunting in Manitoba.² Bill 5 was the quick response to this promise by the victorious NDP government. The legislation passed third reading 16 August 2000 without consensus amongst the parties. The Conservatives and Liberals now appear to support the idea of a regulated industry as opposed to dismantling the industry. *The Wildlife Amendment Act* received Royal Assent on 17 August 2000, but it will not be proclaimed into force until accompanying regulations are developed and attached to the enabling legislation.

II. BACKGROUND

THE PRESENT WILDLIFE ACT³ prohibits “captive hunting” of native wild species such as bear or moose; those species listed in its Schedule A. It does not, however, prevent the hunting of non-indigenous species such as wild boar, fallow deer, or Plains bison in penned areas. The prior Conservative government of Manitoba had initially told the public that “captive hunting” of these species was illegal

¹ Bill 5, *The Wildlife Amendment Act*, 1st Sess., 37th Leg., Manitoba, 2000 (S.M. 2000, c.10, n.y.p.). Bill 5 was sponsored by the Honourable Mr. Lathlin.

² H. Fallding, “Penned-Hunting” *The Winnipeg Free Press* (19 October 1999), online: QL (CPN).

³ *The Wildlife Act*, C.C.S.M. c.W130.



under the Act, but they later declared it a “grey area” upon further investigation.⁴ Five operations are running in Manitoba at this time and most supplement an operator’s other agricultural or outfitting ventures. These five do not include First Nations’ operations that were alluded to in the committee hearings held on Bill 5. One operator stated that several elk hunting operations are either operating or in the process of being set up near Brokenhead, Manitoba. The provinces of Saskatchewan, Alberta, Ontario, Nova Scotia and Quebec allow this industry.⁵ Saskatchewan estimates that fourteen million dollars profit has come into the provincial economy from this industry in the past few years. Supporters of the industry in Manitoba want access to this lucrative market.

The Humane Society of Winnipeg and the International Federation for Animal Welfare (“IFAW”) are pointed to by operators, the official opposition, and other interested parties as responsible for the proposed ban. The present government, in turn, states that the legislation originated in its “own caucus” after consultations with “hunters, trappers, and conservationists.”⁶ This is an interesting statement considering the lack of support shown for the legislation by these groups in public hearings. The Honourable Oscar Lathlin, Minister of Conservation, also describes the purpose of the legislation as related to conservation in addition to humane hunting. It is difficult to see how conservation of non-indigenous species is in issue—their numbers only rise by breeding in a protected habitat, out of the range of their natural predators.

A media report states that the Humane Society did deposit over 2500 videos to residences in Winnipeg, prior to the election, depicting “captive hunting” scenes.⁷ This was an attempt to get public support for prohibiting legislation and a government that would back it. The article also states that Vicki Burns (Executive Director, Humane Society of Winnipeg) was granted an audience with the NDP government to lobby for a ban on “penned hunting.”

Rob Sinclair, of the IFAW, affirmed that \$18 000 has been spent to date on his organization’s lobbying effort against a “guaranteed kill.” He claimed that if the NDP retreated from its election promise, “they would have a fight on their hands.”⁸ These two groups were noticeably absent from the public committee hearings on *The Wildlife Amendment Act*. It is interesting to note that the US

⁴ “Enclosed Hunting” *National General News* (28 May 2000), online: QL (CPN).

⁵ Falding, *supra* note 2.

⁶ Manitoba, Legislative Assembly, *Debates* (14 December 1999) (The Hon. O. Lathlin).

⁷ A. Bray, “Activists pick election season to launch animal-rights drive” *Winnipeg Free Press* (8 September 1999), online: QL (CPN).

⁸ *Ibid.*

Congress and Senate came to consider similar legislation after pressure from animal activist groups.⁹

The only government supporter present at the hearings was the Manitoba Wildlife Federation (“MWF”). Its spokesperson claimed to represent 1400 hunters who supported the legislation, but this figure was later disputed. An operator, present at the hearings, claimed that only 40 members of the MWF were involved in meetings on the issue and that the spokesperson’s view was not representative of the larger membership.

III. BILL 5, THE WILDLIFE AMENDMENT ACT

THE SOURCE OF ITS INITIATION ASIDE, the purpose of the proposed legislation was stated by the Minister of Conservation at the opening of the second reading of Bill 5 on 26 April 2000. The Honourable Oscar Lathlin said, “[t]he purpose of this bill is to enable the regulation or the prohibition of the activity of penned hunting in Manitoba.”¹⁰ [Emphasis added]

In the explanatory note accompanying Bill 5, however, three key issues are listed as addressed by the Act.

The definition of wildlife from the present *Wildlife Act* is amended to include dead wildlife, hybrid descendants, eggs, sperm, embryos and body parts of wildlife or exotic wildlife.¹¹ This amendment appears to have little to do with prohibition of “penned hunting” and more to do with regulating an industry. The phrase “exotic wildlife” is added to almost every clause of the original Act. This additional category encompasses in its definition animals not listed in Schedule A of the original Act. It also brings more within its scope than supposedly intended by the government.

The Avicultural Advancement Council of Canada (“AACC”), representing various exotic bird breeders and pet owners in committee hearings on 19 July 2000, suggested this wide definition comes out of endangered species legislation.¹²

The AACC expresses concern that such legislation is traditionally aimed at achieving a total ban on possession, trade, and sale of foreign species including parrots, canaries, and budgies. The exotic bird breeding industry in Manitoba is the largest of its kind in Canada. After hearing the AACC’s concerns about the unnecessary scope of Bill 5, the NDP, and the Minister of Conservation in

⁹ “Canned Hunts” *Foreign General News* (15 January 1996), online: QL (CPN).

¹⁰ Manitoba, Legislative Assembly, *Debates* (26 April 2000) (The Hon. Oscar Lathlin).

¹¹ *The Wildlife Amendment Act*, *supra* note 1.

¹² Manitoba, Legislative Assembly, *Debates* (19 July 2000)(A.A.C.C.).



particular, did not offer any explanation of the applicability or necessity of the language referred to above.

Bill 5 does not define “exotic wildlife” with much precision though the term is central to its purpose. It also does not clarify the concept of indigenous. How long is an animal present in Manitoba before it is indigenous? Some species of deer in Manitoba, like the moose in the Yukon, did not live here a century ago.

John Gerrard, the lone Liberal opposition critic, raises this ambiguity as an issue.¹³ He queries whether a bison that was once indigenous, then extinct in the area, and then reintroduced for agricultural purposes, is indigenous or not.

Bill 5 continues to ban “captive hunting” of wildlife as found in Schedule A of *The Wildlife Act* and *could* prohibit hunting of “exotic wildlife” enclosed by fences. The bison is not on Schedule A, but the “captive hunting” of this animal could be banned if it were labelled an “exotic wildlife” species under the amended legislation. Subsection 11(2)(k) of Bill 5 reads that the minister is authorized to “regulat[e] the use and management of, and the hunting, killing, trapping of wildlife or exotic wildlife.”

This query of whether certain species are considered indigenous was not answered. And, it is essentially moot for new regulations, yet to be developed, could address the “penned hunting” of bison regardless of its designation as indigenous or exotic.

The Wildlife Amendment Act also allows the government to fully regulate the possession and breeding of any species for any purpose, including trade. But, “exotic” animals used for purposes other than “captive hunting” are already regulated under Manitoba’s *Animal Care Act*, *The Livestock Industry Diversity Act*, and *The Agriculture Act*.

Subsection 11(4)(o) of *The Wildlife Amendment Act* allows the government to regulate “the use of blinds, decoys, baits, attractants and chemical immobilization agents in the hunting, trapping, capture, observation, feeding, care, possession or husbandry of wildlife or exotic wildlife.” Is this extensive regulation necessary to ban “penned hunting?” The language will certainly cause problems in the statutory interpretation of jurisdiction for these overlapping pieces of legislation.

It may not pose a problem with the present government’s players, but how are stakeholders supposed to plan their affairs for the future? The implementation of strict liability offences for breaches of regulations, yet to be developed, is not something to leave unclear or open to reinterpretation.

Bill 5 also cites the protection of livestock, crops, property, and people from “exotic wildlife” as part of its mandate. This concern may be valid considering

¹³ Manitoba, Legislative Assembly, *Debates* (22 June 2000) (The Hon. J. Gerrard).

the report of 200 wild boars loose near the Crocus Grove Nudist Resort in 1998.¹⁴ Wild boars are not friendly animals by nature.

What does this all have to do with “penned hunting?” The government asserts that regulation of possession of “exotic wildlife,” in all of its states, is necessary to regulate “captive hunting.” They, however, have not explained why it is necessary to do so. Are the parrot, wild boar, and reptile owners, who sell animals as pets or livestock, endangering anyone?

If the aim of Bill 5 is to ban “penned hunting” then it should be aimed at that activity, its operators, and their customers. Safety, health, husbandry, and trade are already regulated by other legislation.

IV. STAKEHOLDER INTERESTS

THE SPECIFIC CONCERNS OF EXOTIC PET OWNERS and breeders, elk and bison ranchers and their associations, relate to the sweeping powers given to the Minister of Conservation.

Regulations can be developed without public or legislative debate. This uncertain process leaves their industries in a state of uncertainty. Any potential debate on regulations is within the discretion of the minister and not under any mandate for public discussion in the Assembly or further committee hearings.

A ban or strict regulations can affect stakeholders personally, as well as their investors and creditors. Until now, the “exotic wildlife” hunting farms have been legal and profitable businesses. Under Bill 5, they are potentially illegal or to be governed by overlapping legislation. For the bison and elk farmers, as well as the pet breeders and hunting outfitters, it could be the end of their business. Even if “captive hunting” is only a portion of their business, a ban could easily end a farming life already in tenuous existence.

Having possession, alone, within regulatory grasp has pet owners disturbed. Parrots form close family bonds and live up to one hundred years. The fear of losing one is like losing a family member.

Those in the business of “captive hunting” expressed passionate concern that their substantial investment, financial and personal, is being endangered without real consultation. Only one of the three operators present at the committee hearings had received any literature from the government on its proposed action. Will expropriation take place? What type of notice will be given? What kind of compensation, if any, is being contemplated?

It was suggested by two operators at the committee hearings that First Nations operators are not in support of the legislation. A private citizen and operator, Peter Kalden, referred to a meeting in which it was stated that a First Nation would “go ahead with [penned hunting], regardless of the bill.” Kalden

¹⁴ Manitoba, Legislative Assembly, *Debates* (15 June 2000).



continues, "they have two shooting preserves for elk in place. They are presently building another two. I am just saying ... they will not abide by that law."¹⁵ He was referring to the Western Tribal Council who has approved his operation on principle after visiting the site. The Council sent letters of support with Mr. McRorie, another operator, to the committee hearings. It should be noted that the government has not visited his operation after receiving several invitations.¹⁶ And, the question should be asked—are there potential *Charter* litigation issues involved in First Nations diversifying into "captive hunting?" Will the legislation and regulations apply? *Delgamuukw v. B.C.*¹⁷ held that consultation is mandatory before any infringement of Aboriginal rights, protected under s. 35(1) of the *Constitution Act, 1982*,¹⁸ takes place.

The necessity of the legislation is a reappearing issue throughout the debates. The wording, however, of Bill 5 does not reflect its topic and alleged purpose. The AACC states on its website and in their committee presentations that they asked the Minister of Conservation where the content of the legislation came from and they have received no reply.¹⁹ They also suggest that the wording of Bill 5 is virtually identical to a proposed Toronto by-law that councillors withdrew after intervention by the AACC where they voiced concerns regarding its scope.

I contacted the Legislative Counsel office for information on the origin of the legislation. The new environmental drafter told me the individual who drafted Bill 5 is no longer with the department. Recently, however, a Wildlife Branch delegate called and told me that he had been involved in developing the legislation and that he would work on answering my questions as soon as possible.²⁰ To date, I have not received responses to my questions: what is the government's position on the applicability of existing pieces of legislation to "captive hunting?" Could simple additions be made to Schedule A of the existing Act? Was this considered and if not, why not?

Some critics of the legislation suggest that real consultation with the groups affected, especially operators, would reveal a viable industry. It can supplement existing agricultural and outfitter incomes, bringing in millions to the province. And, it is difficult to argue with the suggestion that hunting an elderly bison

¹⁵ *Debates* (19 July 2000), *supra* note 12 (Peter Kalden).

¹⁶ *Ibid.* (Mr. McRorie).

¹⁷ *Delgamuukw v. B.C.*, [1997] 3 S.C.R. 1010, online: QL (SCJ).

¹⁸ *Canadian Charter of Rights and Freedoms*, s.35 (1), Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11.

¹⁹ Avicultural Advancement Council of Canada, online:
<<http://www.islandnet.com/~aacc/final.htm>> (date accessed: 20 October 2000).

²⁰ G. Gordon, Wildlife Branch, Government of Manitoba (November 2000).

bull on 600 acres of rough terrain is less humane than shipping it eight hours in a truck, to be funnelled into a slaughterhouse and ground into sausage.

An operator, Mr. McRorie urges, “It is so much more humane to have harvest preserves than slaughter plants. Please take the time to become educated before you act on public perception.”²¹ An American or European hunter is willing to pay up to \$3 000 (US) for a seven to nine day hunting trip, sometimes still to leave with nothing.²² In contrast, there does not appear to be a balanced attitude shown in the House debates. For example, one NDP Member comments: “they are principally interested in killing, Mr. Deputy Speaker ... they take pleasure in the act of killing ... you are a feral beast, to be precise, if you take pleasure in the actual kill.”²³

V. PUBLIC CONSULTATIONS

PRIOR TO DRAFTING THE LEGISLATION, public consultations had been scheduled to take place throughout Manitoba in areas where people would be affected by the change in rules. Ten areas had taken steps to organize the meetings when the government cancelled them without explanation. No formal public consultation would take place before the bill was drafted. An explanation was not provided to the official opposition leader, Gary Filmon,²⁴ for the cancellations despite requests.

Mr. Filmon refers to a memo he received from a Natural Resources officer in his department, which stated, “the word received was that the Department executive was experiencing a degree of discomfort with this topic and we were advised that no public meetings will be held until after the second reading.”²⁵ When Mr. Filmon repeatedly asks Mr. Lathlin why the meetings were cancelled, Mr. Lathlin does not reply. Rather, he states that at “the second reading; there will be an opportunity” and then later, “during the time that the regulation will be made, the public will be consulted.”²⁶ This statement does not dispel the fear that the government has an alternate agenda for Bill 5.

²¹ *Debates* (19 July 2000), *supra* note 12.

²² “Enclosed Hunting” *National General News* (28 May 1999), online: QL (CPN).

²³ Manitoba, Legislative Assembly, *Debates* (27 April 2000) (Mr. Nevakshonoff).

²⁴ Manitoba, Legislative Assembly, *Debates* (2 May 2000).

²⁵ *Ibid.*

²⁶ *Ibid.*



The Minister of Conservation also comments that “most Manitobans have expressed their displeasure with the practice of penned hunting,”²⁷ but he does not explain the factual basis for this opinion.

VI. BILL 5 COMMITTEE HEARINGS

IN ADDITION TO NOT VISITING OPERATIONS upon invitation, no one from the government gave adequate notice to stakeholders of the one public forum on Bill 5, committee hearings. The hearings were scheduled on a Wednesday evening in harvesting season. Most stakeholders live and work in rural areas of the province. They need time to make travel, work-related, and family arrangements in order to reach hearings. They also need time to prepare effective submissions.

Mr Farmer, the owner and operator of Stonewall Elk Ranch, and vice-president of the Manitoba Elk Growers Association “got two days notice on this.” He states his frustration: “I missed all day yesterday out harvesting hay. It rained last night, so I am out of luck today, and now you cannot even afford more than ten minutes to hear my presentation.”²⁸ He had twice called the minister for a private and did not receive a reply on either occasion. Mr. Sheldon Wiley, owner of a family operation, Wild Things Outfitters, states, “all through this process of Bill 5, never once, as some of my counterparts have mentioned, have we ever been contacted.”²⁹ Larry and Audrey Stoski of Wilson River Bison in Gilbert Plains, Manitoba, sent in a written submission due to lack of notice. “I will be unable to attend the third reading of Bill 5 this evening due to lack of notice”³⁰ states Mr. Stoski.

The NDP government, in response to these concerns, state that forty-eight hours is the standard notice for hearing dates. They do not, however, address questions of who was notified, or how notification took place. I posed these questions to the Wildlife Branch, but have received no reply.

The government largely ignores all of the concerns discussed, repeating only that the purpose of *The Wildlife Amendment Act* is to prohibit “penned hunting”. They cancelled the public consultations and gave little substantive value to the committee hearings. For example, Ms. Wowchuk (Minister of Agriculture), in the question portion of the hearings, asks an operator, “do you have elk on your operation or is it wild boar or is it both on your operation?”³¹

²⁷ *Ibid.*

²⁸ *Debates* (19 July 2000), *supra* note 12 (Mr. Farmer).

²⁹ *Ibid.* (Mr. Willey).

³⁰ *Ibid.* (Mr. and Mrs. Stoski).

³¹ *Ibid.* (Mr. McRorie).

Mr. McRorie, to whom she was speaking, had made it clear in his presentation that he dealt in wild boar, as a farmer and an outfitter for “captive hunting.”

The government says that widespread public consultations will take place on the regulations once the enabling legislation is passed. Why was the enabling legislation being passed without the regulations drafted for viewing? This question was not answered in the debates or hearings. The Minister of Conservation, in fact, did not say one word throughout the hearings. Other NDP representatives continually repeated their philosophical position on what they saw as an ethical issue and reaffirmed their election promise to ban “penned hunting.” This type of process, as representative of governmental responsiveness to the public, is without substance.

Committee hearings prompted little honest debate as government players themselves exchanged attacks and reiterated points made. Although the interested parties produced informative submissions, both oral and written, there was little response from the government. The opposition used the opportunity to change their position on “penned hunting” post-election. They seem to now support a regulated industry.

Mr. Penner, a Conservative MLA, asks an operator; “I had opportunity to travel to the Ukraine, which was formerly a country of Russia ... they were given legislation and told not to worry about this. Then when the legislation was brought to bear, the true controls were brought in. I am wondering whether you see this kind of attempt being made here?”³² Insinuations of deception served no other purpose than to discredit the NDP.

The Standing Committee on Public Utilities and Natural Resources heard from a total of eleven private citizens—pet owners and breeders, outfitters, and operators—as well as from the Manitoba Bison Association, the Manitoba Elk Growers Association, the AACC, the Manitoba Wildlife Federation, the R.M. of Rossburn, the Manitoba Farm Animal Council, the Manitoba Canary and Finch Club, and the Parrot Association of Canada. The interested parties gave presentations that were limited to ten minutes for presentation and ten minutes for questions, with out-of-town guests going first. The time restrictions on presentations were passed on motions and were necessary due to the number of presenters and the limited meeting time. It was not clear whether more time could be allotted over more days or who decides the number of days necessary for the hearings.

John Gerrard demonstrated genuine effort at substantive debate prior to and during the hearings. He asked relevant questions about the viability of the industry in Saskatchewan, the size of penned area operators would consider reasonable, and the kind of terrain that was operational. He asks of one speaker: “what kind of evidence would you think the government should look to in

³² *Ibid.* (Mr. Penner).



terms of evidence that penned hunting should be banned?"³³ Mr. Gerrard also expresses concern for the individual stakeholders; "I think you have spoken eloquently and passionately, and thank you. May be you could tell us a little bit more about the operation you have got and your hopes for building the operation."³⁴

Outside of the committee hearings, it does not seem that much consultation took place. The Manitoba Bison Association had requested a meeting with the Minister of Conservation in November 1999 and did not receive one until May, long after the legislation was drafted. The Elk Growers Association requested a meeting and never received one or even a reply from Mr. Lathlin's office. All together, not one group, individual or operator present at the committee hearings, clearly supported this legislation. And, many did not have adequate access to their representatives or the Assembly to have their concerns addressed.

VII. AMENDMENTS TO BILL 5

AFTER THE EXTENSIVE INFORMATION PROVIDED to the committee by the presenters on legal opinions, lack of necessity for the legislation, uncertainty of investors, ignored invitations to visit facilities, requests to consult Saskatchewan industry players, heart-felt pleas of livelihoods in danger, concern over lack of real consultation, over-inclusive language, and lack of support for the legislation, the minister enacted one immediate amendment—an addition to Bill 5:

1.1 Purpose of Act: The purpose of this Act is to provide for the regulation of captive hunting of animals without affecting the division of responsibilities within the government of Manitoba relating to the regulation of animals and activities involving animals.³⁵

This addition was reiterated and passed upon a motion during the committee reporting stage on 24 July 2000. It addresses the concerns of pet owners and "exotic wildlife" breeders; they are now clearly outside the legislation's mandate.

Bison and Elk farmers have their concerns addressed by the addition, to a point. Their farming of animals for meat and by-products remains under the jurisdiction of the Ministry of Agriculture. What about the problem of overlapping jurisdictions? Bill 5 clauses, mentioned earlier in this paper, are

³³ *Ibid.* (The Hon. Jon Gerrard).

³⁴ *Ibid.*

³⁵ Amendment proposed 20 July 2000, immediately after the conclusion of committee submissions; *The Wildlife Amendment Act*, *supra* note 1 at s. 1.1.

broad and vague and lines of jurisdiction are usually carved out from the distinctive content of legislation. When two and more pieces of legislation address the possession, trade, breeding, hunting and public safety aspects of the same animals, the lines of jurisdiction are not clear.

Jurisdiction confusion may pose the danger of conflicting regulations and responsibilities relating to a farmer's livestock or an operator's stock. As well, enforcement problems could occur when those responsible for enforcement are not sure of the proper enabling legislation and regulations to apply in a given set of circumstances. Some parties pointed out that they use baits, as referred to in Bill 5, on their farms as part of husbandry—is this to be regulated by the Ministry of Agriculture or Conservation?

Those farmers who wish to diversify by putting old livestock into enclosed wilderness for hunting and those who operate outfitting operations with captive wild boar or fallow deer did not have their concerns addressed by the amendment. They have grown businesses that rely on word-of-mouth reputations and repeat customers. While building, they made substantial capital investments into their operations and building of client bases. All of this investment was made while the business was legal, yet the topic of compensation was never addressed during the committee hearings or in any correspondence.

The amendment says *The Wildlife Amendment Act* is to regulate “penned hunting”, but could a complete ban be inevitable? Is there still hope for a regulated industry, with reasonable guidelines? Public consultations on accompanying regulations were announced 8 October 2000,³⁶ but the specific dates, locations, and format are unknown. Who will be invited to the table? What notice will they have? What role will their recommendations take on, if any?

The amendment does appear to be “surface bargaining”³⁷ when in reference to the agricultural and outfitter communities. The purpose of the Act remains unclear—will there be a ban or a regulated industry?

V. CONCLUSION

THE WILDLIFE AMENDMENT ACT, as passed, is poorly drafted legislation. It is most likely cut and pasted from another jurisdiction and from another type of legislation not dealing with “penned hunting.” There is no other provincial legislation specifically aimed at this industry. The key fault of the legislation is

³⁶ CBC Radio Winnipeg, AM 990, noon news; Minister of Conservation (8 October 2000).

³⁷ A concept referred to in labour negotiations where the offers are procedural filler without any value to the other party.



the absence of the goal stated in debate. The Act does not ban “penned hunting” but only creates the authority to regulate the industry.

The ramifications of the ensuing regulations are indeterminate. They could be costly and complicated due to problems of jurisdiction. All future regulations come under the direct control of the Minister of Conservation. The responsibility, however, for failed or ineffective legislation due to court challenges or confusion, lies with the taxpayer. This legislative exercise, to date, could represent a lot of time and money being spent for nought.

The debate surrounding the legislation was grossly one-sided. The opposition and interest parties queried yet received no response from the government as to their key concerns. The right questions were asked, but true consultation was sabotaged by cancellations of meetings with stakeholders, a continuing refusal to answer questions, poor notice of committee hearing dates necessary for adequate preparation and participation, time limits on presentations, and a general lack of respect for the potential of this industry and those struggling to maintain a family farm or business. This last issue of diversification is especially pertinent to Aboriginal communities where reserve land is of little other use and the economic resources within their control are severely limited.

I have requested information on why the initial consultations were cancelled, who requested meetings with the minister and who received one, copies of written submissions received and Ministry letters sent out, the origin of the wording and necessity of the legislation, the absence of questions posed by the Minister of Conservation during the committee hearings, compensation discussed behind the scenes, future First Nation consultation, legal opinions sought, the potential applicability of existing legislation, and the reason for the regulations not being presented with Bill 5 before it was enacted. I have not received a reply as of this time. Perhaps there is still time to achieve a regulated and viable “captive hunting” industry. For now, farmers, operators, and their investors are in limbo.

POSTNOTE: JUNE 2001

ON 21 DECEMBER 2000, I received responses to questions I had posed to Chris Holoboff of the Avicultural Advancement Council of Canada (“AACC”) and Gordon Graham of the Wildlife Branch, Government of Manitoba. They are reproduced below:

Chris Holoboff—AACC:

I will deal with your points in the order raised. The Toronto bylaw was not almost identical—it was in fact completely different. What Toronto tried to do was pass a bylaw that prohibited the keeping of certain

animals in the City and then made a list of Prohibited Animals, which included almost every species of bird (and others).

Manitoba merely amended its Act to include “exotic wildlife” in the definition of animals that you cannot keep in the province. (Note that Toronto’s bylaw was not restricted to “wild” animals—it even included domesticated species like many parrots.)

I suspect that Manitoba’s amendments came from the animal activists who constantly lobby governments to pass restrictive laws banning the keeping of all animals. Their philosophy is that humans should not keep animals for any purpose whatsoever, whether as pets or otherwise. They have been known to release other people’s animals into the wild that have no chance of survival in the belief that “one hour of freedom is better than a lifetime of captivity.” Some of these groups include PETA, Animal Alliance of Canada, International Fund for Animal Welfare, Zoocheck and Canadian Federation of Humane Societies, among others.

A local bird breeder in Manitoba stumbled across Bill 5 and alerted us. We found out about the committee hearings by making our own enquiries of the government. We received no notice of the bill from the government and they gave us only 18 hours notice of the committee hearing!! - not a lot of time to get from Toronto and Victoria. In fact, as I pointed out to the committee, not even enough time (to prepare and attend) if you lived in Winnipeg. Their response—“that’s the way we do it here.”

No one from the avicultural community in Canada was involved in the drafting of the legislation because we were not informed of it. The only public input that it received (other than direct lobbying by the activists) was at the committee level, well after it was “carved in stone.” The government did not inform us or any Manitoba members of the AACC of Bill 5 before its introduction.

We have not yet received any notice of public consultations on the regulations to be drafted, although we have asked to be notified and allowed to participate. The content of the regulations could be in fact more important than the Act itself. Our concerns were completely ignored by the committee and by the government. I do not think they understood the real effect of this legislation and kept saying, “it only applies to penned hunting.” They could not (or would not) understand that “penned hunting” does not even appear in the legislation. There is definitely an underlying agenda to this legislation - the agenda of the animal activists. It would be interesting to see if one could trace the



history of the bill and find out who exactly proposed the “exotic wildlife” definition. “Wild by nature and not indigenous to Manitoba” includes, by the way, chickens, turkeys and most other domesticated animals.

You might want to check out a couple of websites for additional information. The Parrot Association of Canada (<<http://www.parrotscanada.org>>) has a legislative page with extensive information on this topic. Also, the Avicultural Advancement Council of Canada (<<http://www.islandnet.com/~aacc>>) has some good links.

Gordon Graham, Wildlife Branch, Government of Manitoba:

Further to your e-mail to the Minister of Conservation and our subsequent telephone discussion on November 14, 2000, following is our response to your questions concerning the legislative process associated with Bill 5, *The Wildlife Amendment Act*.

How and when did the need for this legislation come to the attention of the government? If there were lobbying efforts, who was involved?

This bill was introduced in response to public concerns being voiced over the ethics of hunting of any animal that is wild by nature while it is in captivity. The issue was originally raised as a result of advertisements for the hunting of bison and wild boar, both typical examples of animal species that are wild by nature, not only biologically, but also in law and in the minds of the public. These were brought to the attention of the department in the belief that the activity contravened *The Wildlife Act*. The publicity resulting from the illegal capture of elk by John Eisner of Minitonas and the associated public notice, which stated that penned hunting of wild animals was not acceptable, may have contributed to this concern.

Activities such as those described led to stakeholders such as, but not limited to, the Winnipeg Humane Society, the Canadian Federation of Humane Societies, the Manitoba Wildlife Federation and the general public making this an issue during the 1999 provincial election campaign. This led to all three of the major political parties promising to prohibit penned hunting if their party formed the next government. There may have been other lobby groups involved, but if so, they were never identified by the media or in the correspondence received at this office.

Where did the content of the legislation come from - another jurisdiction and if so, where?

The definitions and other basic issues addressed by the bill already existed either in *The Wildlife Act* or the regulations made there under.

Why were the public consultations, scheduled prior to the legislation being introduced, cancelled?

The changes proposed in Bill 5 were administrative in nature, did not make substantive changes to *The Wildlife Act* and did not establish a prohibition in any form. It is not customary to consult (the public) on administrative items of this nature since debate in the Legislature and review by the standing committee after second reading has been viewed as adequate (consultation).

Who was contacted about the committee hearings, how and by whom? Is 48 hours or less notice standard practice?

Standing committee meetings are called at the discretion of the Government House Leader and announced in the House. The Clerk of the Legislative Assembly then calls all those parties that are registered as presenters and advises of the meeting date. It is our understanding that there are no prescribed time leads or limits for such matters, i.e., this is at the discretion of the government.

Did any interested parties contact you prior to the introduction of the legislation or the committee hearings with concerns and if so, who? What were there concerns? Did you meet with any of them, and if so, who, and if not, why not?

Several parties had contact with the department on one or more occasions and at one or more levels prior to introduction of the bill and the committee hearings. This included agencies such as the Manitoba Bison Producers Association, the Manitoba Elk Growers Association, and the Parrot Association of Canada. It was the perception of these stakeholders that the bill encompassed species and activities not currently within the scope of the Act or exercised powers that the government did not have. Meetings were arranged with those who asked for them with those attending on behalf of Manitoba Conservation determined by the nature of the inquiry.

Is it usual that the minister leading legislation does not ask questions at the committee hearings?

The protocols for committee hearings do not set any standards for the questioning of presenters. Questions are usually asked for the purpose of clarifying a point or statement rather than from the perspective of



making a statement. If the listener understands the presenter's point, there is no benefit to be gained from asking further questions.

Were First Nations consulted prior to the legislation being enacted? Were they notified of the hearings? If not, why not?

All stakeholders were given equal consideration prior to and during the enactment of Bill 5.

Has the issue of compensation, in face of a ban on captive hunting, been addressed by the government?

The department is aware that some operators may view a prohibition on captive hunting as a form of expropriation and that under certain circumstances some level or form of compensation may be payable.

Was the existing Wildlife Act or other pieces of legislation available to address the issues surrounding penned hunting? If not, why were they inadequate?

The authority to regulate exotic wildlife already existed within *The Wildlife Act*, but in a somewhat obscure fashion, that is, in sections and terminology not used consistently elsewhere to confirm regulation-making powers. Amending the definition of "wildlife" was necessary for consistency with the definitions of "wild animal" and "exotic animal". It was also the simplest way to eliminate drafting inconsistencies in the use of these terms in the regulation making powers of the *Act*. This was not a new definition; the definition of "exotic animal" being moved from the regulation into the *Act* and renamed as "exotic wildlife". This change was mandatory to enable a compliance function, not only for Bill 5, but for the existing Exotic Animals Regulation, and to also reflect that the scope and intent of the *Act* is to apply only to wildlife, albeit in the global context. This was deemed to be the simplest, most economical approach and one that recognized the biological, legal and perceptual status of the animals involved as well as the historical division of responsibilities between Manitoba Conservation and Manitoba Agriculture.

Was independent legal advice sought before drafting the legislation? If so, what was the opinion given?

Legal counsel for the department was consulted prior to and in the course of drafting the amendment. The opinion of counsel supported the analysis and recommendations from staff.

Have arrangements been made for public consultations on the regulations to accompany the Act? If so, where and when will they take place? Who will be consulted and how will they be notified?

Public consultation meetings were held with stakeholders at six strategic locations throughout Manitoba in late November and early December, 2000 at the request of the Minister of Conservation. The purpose of these meetings was to inform the public on the status of Bill 5 and to seek input from stakeholders with respect to the development of regulations to prohibit the hunting of wildlife in captivity. Stakeholders were notified of the meetings by publishing notice in local newspapers. Input was expected from, in no particular order, elk producers, wild boar producers, bison producers, hunt farm operators, outfitters, organized hunter groups, First Nations, animal welfare groups, local governments and the general public.

Do you see any potential court challenges to the legislation as it stands?

The potential for a court challenge is generally present regardless of the issue (addressed by the legislation). One of the primary purposes for rewriting the various sections in the Act was to remove ambiguities or appearances of contradiction thus eliminating the potential for legal challenges on the basis that the minister does not have the authority to prohibit or regulate such matters.

Was legislative counsel directed as to the content of the legislation? How many drafts were made of the legislation?

It is standard protocol for the Management Authority to outline or direct Legislative Counsel in the course of drafting legislation. Since the changes to the Act were relatively simple and straight forward, about four drafts were made.

Why were the regulations not included in the legislation and available for comment at the hearings, prior to the bill's enactment?

It is generally not the custom to have regulations developed for simultaneous implementation with a bill unless there is a prohibition in the bill that will come into effect on the date that the bill is proclaimed. Developing the regulations after the content of the bill had been addressed was deemed to be a means of enabling stakeholders to give more consideration to the closing out process associated with the prohibition of hunting captive wildlife.



Why is there no definition of “pen”, “exotic” or “indigenous” in the legislation?

Legislation drafting protocols require only those words whose meaning is intended in a manner different from common usage to be defined, i.e., if a word is not used in the legislation, it is not defined. The word “pen” does not appear in Bill 5 while the other two words are used within the context of every day language, that is, as defined in any common dictionary.

Were references to dead wildlife, embryos, sperm, and hybrids necessary to the legislative goal?

These terms may not have had a critical impact on achieving the objective of this legislation in the short term if they had been left out. However, by including them, they not only create consistency with the definition of other animal classes or types, but also strengthen support for existing regulations and eliminate a potential point of contention in the mid and longer term.