

# The New West: Bill 202 and Manitoba's Future in the New West Partnership

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J O S H U A M O R R Y

## I. INTRODUCTION

Bill 202, *The Participation of Manitoba in the New West Partnership Act*,<sup>1</sup> is a Private Member's Bill introduced by Progressive Conservative (PC) MLA Heather Stefanson in the Fourth session of the Fortieth Legislature of Manitoba. It is the fourth time that the Opposition has attempted to pass such a bill.<sup>2</sup> If the Bill were to be enacted, within one year of its coming into force, the Government of Manitoba would be compelled to "communicate [with the governments of British Columbia, Alberta and Saskatchewan]...the desire of the government to join the New West Partnership and its intention to commence negotiations with those governments as soon as possible."<sup>3</sup> While the Bill has not yet faced second reading, it is clear that the current Government does not support the Bill, and it seems to be intended more to influence public opinion than to compel executive action.

This paper will begin by providing a brief history and outline of the New West Partnership (NWP). It will then look at the Government of Manitoba's view of the NWP, and the three other NWP Bills that the PCs have proposed. Finally, this paper will examine Bill 202 itself, focusing on the arguments presented in favour of and against the Bill by both the Government and Opposition. While some of the benefits and drawbacks of the NWP will be evaluated, it is not the purpose of this paper to determine whether the NWP would be good for Manitoba in any objective

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<sup>1</sup> Bill 202, *The Participation of Manitoba in the New West Partnership Act*, 4th Sess, 40th Leg, Manitoba, 2014 [Bill 202].

<sup>2</sup> Kristin Annable, "Manitoba should join New West Partnership: Tories", *Winnipeg Sun* (2 December 2014), online: <[www.winnipegsun.com](http://www.winnipegsun.com)>.

<sup>3</sup> Bill 202, *supra* note 1.

framework. This paper is mainly concerned with a study of the legislative process of Bill 202.

## II. THE NEW WEST PARTNERSHIP

### A. History

The NWP is an economic partnership between the provinces of British Columbia, Alberta, and Saskatchewan, a region of nine million people with a combined GDP of more than \$550 billion.<sup>4</sup> It consists of the Trade Agreement, the International Cooperation Agreement, the Innovation Agreement, and the Procurement Agreement.

The stated goals of the NWP are to “(1) improve competitiveness and productivity, (2) attract business, investment and talent, (3) support and build capacity for innovation, (4) strengthen and diversify the economy of the region, and (5) achieve efficiencies and cost savings.”<sup>5</sup>

### B. The Trade Agreement

The Trade Agreement builds on the *Agreement on Internal Trade* (AIT), an agreement ratified by every Canadian province in order to “foster interprovincial trade by addressing obstacles to the free movement of persons, goods, services and investments within Canada.”<sup>6</sup> The Trade Agreement is a “trade enhancement arrangement,” enacted pursuant to Article 1800 of the AIT.<sup>7</sup> It is the third such trade enhancement agreement to have been entered into, following the *Alberta-British Columbia Trade, Investment and Labour Mobility Agreement* (TILMA), and the *Trade and Cooperation Agreement between Quebec and Ontario*.<sup>8</sup> Manitoba is the only mainland province not to be covered by a trade enhancement arrangement pursuant to the AIT. During the most recent provincial election in Ontario, the PC Opposition Leader Tim Hudak announced

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<sup>4</sup> Saskatchewan, Media Release, “Saskatchewan, Alberta and BC Launch New West Partnership” (30 April 2010), online: <[www.Saskatchewan.ca](http://www.Saskatchewan.ca)>.

<sup>5</sup> Saskatchewan, “Canada’s New West Partnership” (2010), online: <[www.gov.sk.ca/nwp](http://www.gov.sk.ca/nwp)> [NWP].

<sup>6</sup> *Agreement on Internal Trade*, 18 July 1994 (entered into force 1 July 1995), online: <[www.ait-aci.ca/wp-content/uploads/2015/08/ait\\_en.pdf](http://www.ait-aci.ca/wp-content/uploads/2015/08/ait_en.pdf)> [AIT].

<sup>7</sup> *Ibid* at art 1800.

<sup>8</sup> Robin Hansen & Heather Heavin, “What’s New in the New West Partnership Trade Agreement? The NWPTA and the Agreement on Internal Trade Compared” (2010) 73 Sask L Rev 197 at 200.

that if he were to be elected Premier, even Ontario would join the NWP; he ended up losing the election and the Liberal Government has made no efforts to join.<sup>9</sup>

In supporting the NWP, the Manitoba Chamber of Commerce has stated “progress [with the AIT] has been frustratingly slow, with many aspects not yet agreed upon. There is also a lack of effective enforcement mechanisms, and those that exist are slow processes.”<sup>10</sup> The Chamber sees the NWP as a direct response to “this lack of progress.”<sup>11</sup> While there is talk about reforming the AIT, sweeping reform is difficult to implement, as any reform can only be made with the consent of all 13 signatory governments.<sup>12</sup>

The Trade Agreement seeks to achieve the objectives of the NWP by imposing general rules and specific requirements on the parties to the agreement. General rules include limitations on restricting trade, investment, and labour mobility,<sup>13</sup> non-discrimination between local and extra-provincial business,<sup>14</sup> and a reconciliation of those economic standards and regulations that “operate to restrict or impair trade, investment, or labour mobility.”<sup>15</sup> Article 7 imposes increased transparency measures, requiring that each signatory must provide documents requested by another signatory or interested persons in a “non-discriminatory manner.”<sup>16</sup>

The specific requirements include an investment provision, requiring each party to “reconcile their business registration and reporting requirements so that an enterprise meeting such requirements of one party shall be deemed to have met those of all other parties.”<sup>17</sup> Article 12 requires that no party can directly or indirectly provide business subsidies

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<sup>9</sup> Robert Benzie, “Tim Hudak offers details of plan for job creation, mass layoffs”, *The Toronto Star* (13 May 2014), online: <[www.thestar.com](http://www.thestar.com)>.

<sup>10</sup> Manitoba Chambers of Commerce, “2011-2012 Resolution: New West Partnership Agreement”, *MB Chamber News* (25 March 2011), online: <[www.mbchamber.mb.ca/](http://www.mbchamber.mb.ca/)>.

<sup>11</sup> *Ibid.*

<sup>12</sup> Loleen Berdahl, “(Sub)national Economic Union: Institutions, Ideas, and Internal Trade Policy in Canada” (2012) 43:2 *Journal of Federalism* 275 at 278.

<sup>13</sup> *New West Partnership Trade Agreement*, 30 April 2010 (entered into force 1 July 2010), online: <[www.gov.sk.ca/nwp](http://www.gov.sk.ca/nwp)> [*Trade Agreement*], art 3.

<sup>14</sup> *Ibid.*, art 4.

<sup>15</sup> *Ibid.*, art 5.

<sup>16</sup> *Ibid.*, art 7.

<sup>17</sup> *Ibid.*, art 11.

that advantage businesses or individuals in one jurisdiction at the expense of another party to the agreement. Article 14 builds on the AIT by imposing more stringent requirements for government procurement programs as well as the procurement operations of crown corporations.<sup>18</sup>

There is some scholarly debate about whether the Trade Agreement is markedly different from the AIT. According to Robin Hansen and Heather Heavin, there are two fundamental differences between the Trade Agreement and the AIT.<sup>19</sup> The first is that the AIT is much more limited in its scope of application than the Trade Agreement. According to Article 102 of the AIT, the agreement applies to departments, ministries and agencies of government by default, and only applies to municipal governments and Crown corporations where expressly provided for by the agreement.<sup>20</sup> In comparison, the definition section of the *New West Partnership Trade Agreement* defines a government entity as any departments, ministries and agencies as well as Crown corporations and municipal governments; all of these entities must therefore abide by the Agreement by default.<sup>21</sup> Hansen and Heavin note, however, that in certain provisions of the AIT, the scope of application is broadened to “a breadth approaching that of the NWPTA, in particular, the AIT’s investment, labour mobility, and procurement chapters.”<sup>22</sup>

The second key difference between the two agreements is that according to Article 400 of the AIT, the agreement only applies to the areas of the economy covered in Part VI of the agreement.<sup>23</sup> The *New West Partnership Trade Agreement* applies “to all sectors of the economy unless excluded.”<sup>24</sup>

There are further differences between the AIT and the *New West Partnership Trade Agreement*’s specific obligations in areas such as government investment, business subsidies, labour mobility, transportation, and energy commitments.<sup>25</sup> One key difference between the two is in the area of procurement. As outlined below, procurement

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<sup>18</sup> *Ibid*, art 14.

<sup>19</sup> Hansen & Heavin, *supra* note 8 at 203.

<sup>20</sup> *Trade Agreement*, *supra* note 13, art 102.

<sup>21</sup> *Ibid* at sec VI.

<sup>22</sup> Hansen & Heavin, *supra* note 8 at 203.

<sup>23</sup> AIT, *supra* note 6, Part VI.

<sup>24</sup> *Ibid* at 232.

<sup>25</sup> *Ibid* at 208.

comprises a large percentage of Manitoba's economy, and in a few circumstances, the NDP Government has been questioned on the transparency of its procurement policies and the competitiveness of its tendering processes.

In March 2014, the Auditor General of Manitoba conducted an audit of goods and services procured by provincial government departments. It was found that in an 18-month audit period, at least \$274 million was awarded in non-competitive contracts.<sup>26</sup> Among those contracts, 48 percent were not awarded in what the audit referred to as "acceptable circumstances."<sup>27</sup> Despite the fact that the Government's procurement manual requires that the value of non-competitive contracts be disclosed to the public, the audit found that only 13 percent of the non-competitive contract awards were recorded in a public access database within the required one month of being awarded. Many were not recorded at all.<sup>28</sup>

In practice, the AIT may have a significant effect on the way the Government of Manitoba tenders contracts. According to Hansen and Heavin, "the NWPTA extends beyond the AIT's procurement commitments in terms of its application to government agencies and bodies, and significantly decreases the applicable threshold levels beyond those set out in the AIT."<sup>29</sup> This is important because if Manitoba were to join the New West Partnership, its Crown corporations and MASH sector<sup>30</sup> would be covered more extensively by the agreement. Not only would more governmental entities be subject to a public tendering process, but these entities would also have to initiate a public tender at a lower cost threshold. The following table breaks down the cost thresholds for when each agreement requires a public tender.

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<sup>26</sup> Manitoba, Office of the Auditor General, "Waiving of Competitive Bids" (March 2014), online: <[www.oag.mb.ca/](http://www.oag.mb.ca/)> at 411.

<sup>27</sup> *Ibid* at 409.

<sup>28</sup> *Ibid* at 410.

<sup>29</sup> Hansen & Heavin, *supra* note 8 at 216.

<sup>30</sup> "MASH" is an acronym for Municipalities, School Boards, Publicly Funded Academic, Health, and Social Service Entities.

Table 1: The *Agreement on Internal Trade & the New West Partnership Trade Agreement* requirements for public tenders<sup>31</sup>

	AIT	NWPTA
Government entities including departments, ministries, boards, counsels, and committees	Applies only to select entities at the following values: \$25,000 or greater for goods \$100,000 or greater for services \$100,000 or greater for construction	Applies to all such entities at the following values: \$10,000 or greater for goods \$75,000 or greater for services \$100,000 or greater for construction
Crown corporations and government-owned commercial enterprises	Applies only to select entities at the following values: \$500,000 or greater for goods \$500,000 or greater for services \$5,000,000 or greater for construction	Applies to all such entities at the following values: \$25,000 or greater for goods \$100,000 or greater for services \$100,000 or greater for construction
MASH Sector	Applies only to select entities at the following values: \$100,000 or greater for goods \$100,000 or greater for services \$250,000 or greater for construction	Applies to all such entities at the following values: \$75,000 or greater for goods \$75,000 or greater for services \$200,000 or greater for construction

C. The International Cooperation Agreement

The objective of the International Cooperation Agreement is to encourage the parties to the agreement to collaborate “in their pursuit of international opportunities.”<sup>32</sup> The agreement itself is not legally binding, and is instead “an expression and record of the purpose and intention of the parties.”<sup>33</sup> The agreement calls for joint marketing programs targeted

<sup>31</sup> Information for table drawn from Hansen & Heavin, *supra* note 8 at 216-217.

<sup>32</sup> *Trade Agreement*, *supra* note 13 at Schedule 2.

<sup>33</sup> *Ibid.*

at foreign investors, sharing market intelligence with the other parties, and a sharing of resources in international markets.<sup>34</sup>

Within weeks of signing this agreement, the premiers of the NWP provinces went to a trade mission to China and Japan, and have hosted a reception in China for the World Economic Forum.<sup>35</sup>

#### D. The Innovation Agreement

The Innovation Agreement is a non-binding agreement phrased in vague language. The Agreement seeks to “support and build capacity for innovation,” with innovation defined as “the application of new ideas or technologies for economic and social benefit.”<sup>36</sup>

The Agreement requires the parties to “(1) share non-confidential information, evaluation and analysis on innovation activities; (2) undertake any other activities that shall advance shared innovation objectives; and (3) identify opportunities to jointly collaborate with industry, governments and other stakeholders on innovation activities.”<sup>37</sup>

#### E. The Procurement Agreement

The final component of the NWP is the Procurement Agreement, another non-binding agreement that seeks to ensure that the parties to the NWP work together in procurement to “achieve cost savings and greater efficiencies, and reduce administrative burdens for suppliers.”<sup>38</sup>

The agreement requires the parties to “(1) establish interprovincial procurement arrangements where appropriate; and (2) standardize procurement practices and template documents where appropriate.”<sup>39</sup>

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<sup>34</sup> *Ibid.*

<sup>35</sup> Canada’s New West Partnership, News Release, “New West Partnership to Host World Economic Forum Reception” (10 September 2012), online: <[www.newwestpartnership.ca](http://www.newwestpartnership.ca)>.

<sup>36</sup> *Trade Agreement, supra* note 13 at Schedule 3.

<sup>37</sup> *Ibid.*

<sup>38</sup> *Trade Agreement, supra* note 13 at Schedule 4.

<sup>39</sup> *Ibid.*

### III. THE NEW WEST PARTNERSHIP AND MANITOBA

#### A. Public Opinion

The NWP, since its inception, has been controversial in Manitoba, with battle lines being drawn largely between the political right and left, as well as the business community and the labour movement.

The current NDP Government has not been supportive of regional trade agreements, with Manitoba refusing to join the TILMA agreement, the predecessor to the NWP, in 2006.<sup>40</sup> Interestingly, the Government is not opposed to trade agreements altogether, as it was and continues to be a vocal supporter of the AIT. In fact, Manitoba's Premier Selinger sits on the steering committee of the AIT, which is currently in the process of amending the agreement.<sup>41</sup> It is noteworthy that the other provinces represented on the steering committee are Ontario, Saskatchewan, and Nova Scotia, the majority of which are governed by political parties to the left of centre.

Although there were rumours in 2010 that Manitoba had "entered into exploratory discussions aimed at joining the NWP,"<sup>42</sup> either the rumors were false, or the discussions never materialized. When questioned about why Manitoba did not join the NWP shortly after the rumours died out, Deputy Premier and Finance Minister Rosann Wowchuk responded that Manitoba was not invited to the discussions,<sup>43</sup> and that Manitoba "prefers to negotiate nationally or individually with provinces to liberalize trade barriers."<sup>44</sup> It is curious that Minister Wowchuk could claim that Manitoba was not invited when, as will be discussed below, the AIT in Article 1800(2)(c) mandates that signatories to any trade enhancement agreement, such as the NWP, extend an invitation to all other provinces to join within a reasonable period of time.<sup>45</sup> Therefore, either Manitoba

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<sup>40</sup> "Manitoba should be in this club", Editorial, *Winnipeg Free Press* (5 May 2010), online: <[www.winnipegfreepress.com](http://www.winnipegfreepress.com)> [Editorial].

<sup>41</sup> Council of the Federation, Media Release, "Premiers will lead comprehensive renewal of Agreement on Internal Trade" (29 August 2014), online: <[www.canadaspremiers.ca](http://www.canadaspremiers.ca)>.

<sup>42</sup> Martin Cash, "Manitoba exploring New West Partnership", *Winnipeg Free Press* (8 December 2010), online: <[www.winnipegfreepress.com](http://www.winnipegfreepress.com)>.

<sup>43</sup> "Manitoba must seek a seat at the table", Editorial, *Winnipeg Free Press* (3 September 2010), online: <[www.winnipegfreepress.com](http://www.winnipegfreepress.com)>.

<sup>44</sup> Editorial, *supra* note 40.

<sup>45</sup> AIT, *supra* note 6, art 1800(2)(c).



was invited to join the NWP, or the Trade Agreement was entered into in violation of the AIT.

Debates about the NWP have extended past the walls of the Manitoba Legislature and have found their way into the editorial pages of newspapers. In a piece entitled “Why the New West Partnership is a Bad Idea,” Kevin Rebeck, President of the Manitoba Federation of Labour, argued that such trade agreements “reduce different provincial regulations to the lowest common denominator.”<sup>46</sup> The Canada West Foundation, a western Canadian think-tank, countered that Manitoba’s refusal to join the NWP limits its future.<sup>47</sup> Jim Carr, then CEO of the Manitoba Business Council, stated that the Council has “expressed the opinion that it is serious that Manitoba has been left out of the New West Partnership.”<sup>48</sup> Dave Angus, CEO of the Winnipeg Chamber of Commerce, wrote that refusing to join the NWP “may be another sign that the new gateway to the west no longer begins at the Manitoba-Ontario border.”<sup>49</sup>

The merits of the NWP have been debated many times in the Legislature. In Manitoba’s 2011 provincial election, Hugh McFadyen, Leader of the Official Opposition, criticized the incumbent NDP Government for refusing to join the NWP, and stated that if elected, his government would begin the process of joining the partnership.<sup>50</sup> During the budget debates in the First Session of the Fortieth Legislature, the Leader of the Opposition proposed a motion, seconded by Ms. Stefanson, to amend the government’s proposed budget by adding a paragraph stating that the budget “fails to address the priorities of Manitobans by ... failing to encourage greater trade opportunities with Alberta, British Columbia and Saskatchewan by refusing to join the New West Partnership.”<sup>51</sup>

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<sup>46</sup> Kevin Rebeck, “Why the New West Partnership is [a] Bad Idea”, *Manitoba Federation of Labour* (13 September 2010), online: <[www.mfl.ca](http://www.mfl.ca)>.

<sup>47</sup> Roger Gibbins, “Keystone province falls out of loop”, *Canada West Foundation* (14 June 2010), online: <[www.cwf.ca](http://www.cwf.ca)>.

<sup>48</sup> Council of the Federation, *supra* note 41.

<sup>49</sup> Cash, *supra* note 42.

<sup>50</sup> Progressive Conservative Party of Manitoba, “Growing Communities: McFadyen Economic Strategy” (Winnipeg: Progressive Conservative Party of Manitoba, 2011).

<sup>51</sup> Manitoba, Legislative Assembly, *Debates and Proceedings*, 40th Leg, 1st Sess, Vol 17 (18 April 2012) at 354–355.

The current leader of the PC Party, Brian Pallister, has been calling for years for Manitoba to join the NWP.<sup>52</sup> Similar to Mr. McFadyen's budgetary amendment motion, Mr. Pallister, during the budget debates in the Third Session of the Fortieth Legislature, moved to amend the budget in a vote of non-confidence to say that "this budget neglects the priorities of Manitobans by ... continuing the Provincial Government's isolationist trade policies by failing to act on the repeated calls of the Official Opposition, leading employers and industry groups to join the New West Partnership."<sup>53</sup>

#### IV. BILL 210, FIRST SESSION OF THE FORTIETH LEGISLATURE

##### A. First Reading

Bill 210,<sup>54</sup> a Private Member's Bill, was moved by Mr. Dennis Smook, MLA for La Verendrye, and was seconded by Mr. Cliff Graydon, MLA for Emerson. It was introduced to the Legislative Assembly on May 2, 2012. The Bill was word for word the same as Bill 202, the subject matter of this paper, and would have required the Government of Manitoba to contact the NWP provinces to begin negotiations to join within one year of the Bill receiving royal assent. The motion to adopt the first reading of the Bill was accepted by the house. Mr. Smook was the only MLA to speak to the Bill at that time.

##### B. Second Reading

Bill 210 faced its second reading on May 29, 2012 with Mr. Smook providing an introduction. He discussed the merits of the partnership and the "opportunities for increased trade."<sup>55</sup> He spoke about the non-discrimination and transparency clauses in the Trade Agreement, as well as the global opportunities that the International Cooperation Agreement seeks to make available. Mr. Smook concluded his opening address by

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<sup>52</sup> "Manitoba Tories call PST increase a 'punishment'", *CBC News* (18 April 2013), online: <[www.cbc.ca](http://www.cbc.ca)>.

<sup>53</sup> Manitoba, Legislative Assembly, *Votes and Proceedings*, 40th Leg, 3rd Sess, Vol 24 (7 March 2014).

<sup>54</sup> Bill 210, *The Participation of Manitoba in the New West Partnership Act*, 1st sess, 40th Leg, Manitoba, 2012.

<sup>55</sup> Manitoba, Legislative Assembly, *Debates and Proceedings*, 40th Leg, 1st Sess, Vol 41A (29 May 2012) at 1828.

stating that he was “at a loss to understand why the NDP [is] turning down a golden opportunity to grow the Manitoba economy in such a straightforward way.”<sup>56</sup>

The Honourable Peter Bjornson, Minister of Entrepreneurship, Training, and Trade was the first to respond to Mr. Smook. He began by criticizing the Opposition for voting against NDP budgets that seek to invest in infrastructure and training opportunities. Hansard states that at this point, Minister Bjornson was interrupted by a PC member, and the Minister himself stated that he heard “one of the members chirping about, start with the New West Partnership.”<sup>57</sup> In response to Mr. Smook’s bill, the Minister argued that Manitoba is interested in a “pan-Canadian approach” much like the AIT, not a “sub-regional trade agreement.”<sup>58</sup> This echoes Minister Wowchuk’s statements to the press earlier that year. Minister Bjornson concluded by stating, “Members opposite, their focus seems to be regional; our focus is global.”<sup>59</sup>

Mr. Graydon, the seconder of the Bill, was the next to rise in its support. He discussed the merits of being able to reach the Asian markets, and the benefits of removing barriers to trade. He argued that the real reason why the Government does not support the Bill is because of the transparency requirements contained in the Trade Agreement, and this “Government has a problem with transparency.”<sup>60</sup>

Mr. Bidhu Jha, the NDP MLA for Radisson, was the next and final member to speak to this Bill. He echoed Minister Bjornson’s statements by arguing that Manitoba should focus on national trade agreements rather than regional trade agreements.<sup>61</sup>

Following Mr. Jha’s statements, the debate on the Bill was allowed to remain open, and the Legislative Assembly moved on to other business. While Manitoba’s failure to join the NWP was referred to many times by the PC MLAs, the Bill itself was not addressed again in the First Session of the Fortieth Legislature.

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<sup>56</sup> *Ibid* at 1829.

<sup>57</sup> *Ibid*.

<sup>58</sup> *Ibid* at 1828.

<sup>59</sup> *Ibid* at 1831.

<sup>60</sup> *Ibid* at 1832.

<sup>61</sup> *Ibid* at 1832–1833.

## V. BILL 203, SECOND SESSION OF THE FORTIETH LEGISLATURE

### A. First Reading

Just half a year after Bill 210's second reading, Mr. Cliff Graydon, MLA for Emerson, moved that Bill 203<sup>62</sup> be read for the first time. Bill 203 is the same as Bill 210, in both form and substance. Mr. Dennis Smook, MLA for La Verendrye, seconded the motion. The Legislative Assembly adopted the first reading on December 4, 2012.<sup>63</sup>

### B. Second Reading

Unlike Bill 210, Bill 203 was debated for months in the Legislative Assembly. Nevertheless, the arguments on both sides were fairly similar to those presented in response to Bill 210. The Government argued that Manitoba should trade with more than one jurisdiction, while the Opposition pointed to the economic benefits of being part of a robust trade agreement. At times, the debates went quite off topic, culminating in a point of order against Mr. Smook alleging that he made homophobic remarks during the debate, and a prolonged discussion about trade agreements with Bangladesh and the BRIC countries.<sup>64</sup> Bill 203 never made it past second reading, and died on the table when the Second Session of the Fortieth Legislature came to a close.

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<sup>62</sup> Bill 203, *The Participation of Manitoba in the New West Partnership Act*, 2nd sess, 40th Leg, Manitoba, 2012.

<sup>63</sup> Manitoba, Legislative Assembly, *Debates and Proceedings*, 40th Leg, 2nd Sess, Vol 33A (30 April 2013) at 833.

<sup>64</sup> "BRIC" is an acronym for Brazil, Russia, India and China. Manitoba, Legislative Assembly, *Debates and Proceedings*, 40th Leg, 2nd Sess, Vol 69A (4 July 2013) at 3026, 3030.

## VI. BILL 202, THIRD SESSION OF THE FORTIETH LEGISLATURE

### A. First and Second Reading

Bill 202<sup>65</sup> (not to be confused with the current Bill 202) was moved by Mr. Cliff Graydon and was seconded by Mr. Smook. Mr. Graydon stated, “it’s obvious that Manitoba ... has not been able to compete effectively, and this here would be a big step going forward.”<sup>66</sup> The first reading was adopted by the Legislature on November 18, 2013.<sup>67</sup>

During the second reading, Mr. Smook began by stating that “this has been before this House once before, and I’m certain that after some time to think this over and some deliberation that it’ll get full support here today I’m sure.”<sup>68</sup> Minister Bjornson, then Minister of Housing and Community Development, quipped that he “thought it was Groundhog Day—déjà vu all over again—been there done that.”<sup>69</sup> Needless to say, after debates in March and April of 2014, the government did not endorse the Bill, and it did not make its way to the committee stage.

## VII. BILL 202, FOURTH SESSION OF THE FORTIETH LEGISLATURE

### A. First Reading

Bill 202, the fourth and most recent attempt of the Official Opposition to compel the Manitoba government to begin negotiations to join the NWP, was moved by Ms. Stefanson and was seconded by Mr. Graydon. The Legislative Assembly adopted the first reading on December 2, 2014.

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<sup>65</sup> Bill 202, *The Participation of Manitoba in the New West Partnership Act*, 3rd sess, 40th Leg, Manitoba, 2013.

<sup>66</sup> Manitoba, Legislative Assembly, *Debates and Proceedings*, 40th Leg, 3rd Sess, Vol 5 (18 November 2013) at 121.

<sup>67</sup> *Ibid.*

<sup>68</sup> Manitoba, Legislative Assembly, *Debates and Proceedings*, 40th Leg, 3rd Sess, Vol 33A (20 March 2014) at 1107.

<sup>69</sup> *Ibid* at 1111.

While the merits of the Bill were not directly spoken to during first reading, it was discussed extensively during question period. When Mr. Pallister questioned Premier Selinger as to why Manitoba is the only province that refuses to work with other provinces through trade alliances, the Premier responded that the Opposition “looks after the 1 per cent” while the NDP “look[s] after the 99 percent.”<sup>70</sup>

## VIII. EVALUATION OF THE GOVERNMENT’S RESPONSE

While the Government keeps arguing that Manitoba should trade with the whole country, not just the west, there is nothing in the NWP that prevents a member from trading with other provinces. In fact, because the NWP is merely an extension of the AIT, there are no provisions that would put Manitoba at odds with the AIT provisions it already abides by. However, there may be some merit to the NDP’s opposition to the Bill, although perhaps not for the reasons the Government has given.

While it is already clear that the NWP has given its members bargaining power over the federal government for infrastructure funding,<sup>71</sup> it is difficult to find figures showing the economic impact that the NWPTA has had on Alberta, British Columbia and Saskatchewan. Moreover, those statistics that exist are hard to verify, as each side draws on studies that conform to their own viewpoint, and ignores studies that demonstrate the opposite.

A 2014 report by TD Bank’s Deputy Chief Economist argued that the NWPTA marked a “significant step forward” for small and medium-sized enterprises, 35 percent of which stated that government regulation is an obstacle for growth in inter-provincial trade.<sup>72</sup> Interestingly, the report states that Manitoba is more dependent on interprovincial trade than much of the rest of Canada, with approximately 30 percent of the province’s GDP going towards interprovincial trade, the third highest

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<sup>70</sup> Manitoba, Legislative Assembly, *Debates and Proceedings*, 40th Leg, 4th Sess, Vol 9 (2 December 2014) at 283.

<sup>71</sup> Canada’s New West Partnership, Media Release, “New West Premiers and Industry Work Together to Support Growth” (6 November 2014), online: <[www.alberta.ca](http://www.alberta.ca)>.

<sup>72</sup> Derek Burleton & Jonathan Bendiner, “Boosting Interprovincial Trade Critical to Ensuring Sustained Growth for Small Businesses”, *TD Economics Special Report* (6 October 2014), online: <[www.td.com](http://www.td.com)>.

percentage in the country behind Saskatchewan and New Brunswick.<sup>73</sup> Moreover, a Conference Board of Canada report commissioned by the British Columbia government stated that the TILMA, the predecessor to the NWPTA, would add \$4.8 billion dollars to the province's economy and create 78,000 jobs.<sup>74</sup>

Critics have questioned both the methodology and conclusions of these reports. For example, in a report entitled "The Myth of Inter-provincial Trade Barriers and TILMA's Alleged Economic Benefits,"<sup>75</sup> the Canadian Centre for Policy Alternatives (CCPA) argued that the "alleged trade distortions resulting from [trade barriers between provinces] and the supposed public benefits of removing them have been greatly exaggerated."<sup>76</sup> In fact, a 2005 report stated that interprovincial trade barriers account for only 0.05 percent of Canada's GDP (rather than the one percent that the Conference Board has cited).<sup>77</sup> Like the MFL, the CCPA argued that, because the strict enforcement mechanisms of the agreement would place a "downward pressure" on provincial standards, the social costs of TILMA outweighed any economic benefits it provided.<sup>78</sup>

What is to be made of the Government's argument that trading with specific provinces would hurt the national framework that the AIT creates? In his article "Reinvigorating the World Trade System," Professor Bryan Schwartz argues that with regard to the World Trade Organization (WTO), "The global system becomes less and less important as regional and bilateral agreements become dominant."<sup>79</sup> Professor Schwartz suggests that regional trade agreements hurt the WTO model because, amongst other problems, they unfairly exclude countries from participating. For example, the objective of free economic exchange around the world is hindered when a free trade agreement such as NAFTA does not give Peru a chance to join. Having said that, the concerns that Professor Schwartz

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<sup>73</sup> *Ibid.*

<sup>74</sup> Conference Board of Canada, "An Impact Assessment of the BC/Alberta Trade, Investment, and Labour Mobility Agreement" (2005), online: <[www.gov.bc.ca/ecdev](http://www.gov.bc.ca/ecdev)>.

<sup>75</sup> Marc Lee & Erin Weir, "The Myth of Interprovincial Trade Barriers and TILMA's Alleged Economic Benefits", Canadian Centre for Policy Alternatives (15 February 2007), online: <[www.policyalternatives.ca](http://www.policyalternatives.ca)>.

<sup>76</sup> *Ibid.*

<sup>77</sup> *Ibid.*

<sup>78</sup> *Ibid.*

<sup>79</sup> Bryan Schwartz, "Reinvigorating the World Trade System" (2013) 13 *Asper Rev Int'l Bus & Trade L* 1 at 11.

identifies in the global context do not seem to apply to subnational trade agreements. In fact, rather than displacing the principles of the WTO, such subnational trade agreements may even strengthen them. In discussing the TILMA, the Canadian Public Policy Journal referred to it as the “subnational WTO approach that will extend existing WTO disciplines to the provincial level.”<sup>80</sup> Moreover, the AIT is not as exclusive as multinational trade agreements. As mentioned above, Article 1800 of the AIT mandates that before a Trade Enhancement Agreement is enacted, “there [must be] full disclosure of the details of the arrangement to all other [provinces],” and that “the signatories to the arrangement are prepared to extend the arrangement within a reasonable time to all other [provinces] willing to accept the terms of the agreement.”<sup>81</sup>

One can only speculate about why the Government is so opposed to joining the NWP. An argument could be made that it is because a substantial portion of the NDP’s voter base includes the labour-left, which has made it clear that it is opposed to the province joining.<sup>82</sup> The Opposition may be right that the government is afraid of the increased transparency measures in the Trade Agreement, or perhaps the Government fears that efforts to increase labour mobility will result in more skilled workers leaving the province for greater opportunities further west. Perhaps they are concerned about the increased competition exposing weaknesses in Manitoba’s level of productivity. Another possible reason is that the current signatories to the NWP do not want Manitoba to join, and it would come as an embarrassment for the Government to have its rapprochement publicly refused. If the reason for the Government’s continued opposition to the Bill is that it believes the CCPA report stating that the benefits of the NWP are outweighed by its social costs, it should make its message clearer.

As discussed above, the Bill itself merely requires that the Government “communicate ... the desire ... to join the New West Partnership and its intention to commence negotiations.”<sup>83</sup> It does not actually require the Government to commit to anything further. It almost

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<sup>80</sup> John Whalley, “Disciplining Canada’s Interprovincial Barriers: The Subnational WTO as Another Option With or Beyond an Extended TILMA” (2009) 35 Can Pub Pol 315 at 315.

<sup>81</sup> AIT, *supra* note 6 at art 1800.

<sup>82</sup> *Ibid.*

<sup>83</sup> Bill 202, *supra* note 1.



seems as though it would be easier for the Government to pass the Bill and use it as an excuse to pacify the Opposition and the business community as it stalls negotiations.

Moreover, negotiation does not mean that the Government would be bound to accept the partnership in its current form. Saskatchewan was hesitant to join the partnership before commencing negotiations. In fact, Premier Brad Wall said in 2008 that his government would not join the TILMA with BC and Alberta because of its “impact on certain tax incentives and on Crown corporation subsidies.”<sup>84</sup> After negotiations commenced, the TILMA was changed to the NWP and Premier Wall entered into a partnership that was more favourable for his province than its predecessor. Of course, some alleged that the Premier skirted his promise by signing onto the TILMA and merely changing its name.<sup>85</sup>

## IX. EVALUATION OF THE OPPOSITION’S STRATEGY

It is certainly curious that the Opposition is introducing the exact same bill into every session of the Legislature. Ms. Stefanson told the *Winnipeg Sun* that in proposing the Bill, she is “always hopeful that [the NDP] will see the light of day,”<sup>86</sup> however, that is unlikely to be only reason she proposed it. Like its predecessors, there is little chance that this Bill will make it past second reading to the committee stage so long as the Selinger Government is still in power. In fact, private member’s bills in general face little chance of success, especially those that are carbon copies of bills that failed in earlier sessions of the Legislature.<sup>87</sup> Yet one can never rule anything out in politics. For example, it took the Progressive Conservatives quite a few attempts to finally pass *The Personal Information Protection and Identity Theft Prevention Act*.<sup>88</sup> Having said that, the situation with the NWP is likely different, as Cabinet has the executive authority to commence negotiations with the NWP provinces at any time. It does not

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<sup>84</sup> Angela Hall, “Sask. Premier Wall denies interest in TILMA”, *Leader Post* (16 April 2008), online: <[www.canada.com](http://www.canada.com)>.

<sup>85</sup> The Council of Canadians, Media Release, “Brad Wall breaks his promise, signs TILMA/New West Partnership” (5 May, 2010), online: <[www.canadians.org](http://www.canadians.org)>.

<sup>86</sup> Annable, *supra* note 2.

<sup>87</sup> Jason Stitt, “The Private Member Battleground: The Future of Private Member’s Bills in the Manitoba Legislative Assembly” (2013) 36:2 *Man LJ* 157 at 167.

<sup>88</sup> *The Personal Information Protection and Identity Theft Prevention Act*, SM 2013, c 18.

need legislation to permit it to do so. If this Bill were truly going to pass, the Government would likely have already begun negotiations with the NWP. This is especially true given that the Government would want it to appear as though it is acting under its own volition, not the directions of the Official Opposition.

In the Westminster System, outside of election season, the executive branch of government rarely speaks directly to the electorate about the decisions it makes. It is even rarer that the Government will speak about the opportunities it did not take. This is because in our system of “responsible government,” the Government is responsible to the Legislature, not the electorate, at least not directly. In the United States, the President or his press secretary will answer questions directly from the media. In Manitoba, the Premier is only required to respond to questions “directly” during question period. In fact, in the Canadian Parliamentary Review, the Honourable Michael Chong made the argument that the answers provided by governments during Question Period in Canadian legislatures are irrelevant because they are both “rhetorical” and “incomprehensible.”<sup>89</sup> Former British Prime Minister William Gladstone has been quoted as saying that “Honourable members are summoned [to the legislature] not to legislate or govern, but to be the constant critics of those who govern.”<sup>90</sup> This has led some to question whether there is a “lack of meaningful legislative activity undertaken by MP’s or by [legislatures] generally.”<sup>91</sup>

In the Canadian Parliamentary Review, Saskatchewan MLA David Forbes argued that private member’s bills “can serve as a catalyst for generating the discussion and motivation required to achieve [a] policy end.” Mr. Forbes went on to state, “private member’s bills can be effective tools to address emerging policy issues and gaps.”<sup>92</sup> He made reference to the fact that private member’s bills are valuable in that they force the government to address the policy issue on record in front of the media, and, more recently, social media. Kelly Blidock echoed this when she argued that private member’s bills are impactful as they force issues to be

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<sup>89</sup> Hon. Michael Chong, “Rethinking Question Period and Debate in the House of Commons” (2008) 31 Can Parl Rev 5 at 5.

<sup>90</sup> Kelly Blidock, “Exploring the Role of ‘Legislators’ in Canada: Do Members of Parliament Influence Policy?” (2010) 16:1 J of Leg Studies 32 at 33.

<sup>91</sup> *Ibid* at 32.

<sup>92</sup> David Forbes, “Are Private Members’ Bills a Useful Tool in Today’s Legislatures?” (2012) 35 Can Parl Rev 6 at 8.

debated meaningfully, garnering attention in the media.<sup>93</sup> Jason Stitt provides an excellent analysis of the strategy behind private member's bills in *Underneath the Golden Boy*. He refers to such bills as "political positioning" that keep the opposition's policy objectives in the "public's consciousness."<sup>94</sup>

## X. CONCLUSION

Regardless of Ms. Stefanson's intentions in proposing the Bill, Bill 202 and its predecessors have provided an opportunity for the Opposition to force the Government to speak directly about why it did not join the NWP. While the NDP's responses to the Bill have not always been consistent, the introduction of the Bill has forced the Government to provide statements that the media has noticed. More importantly, the media has also commented on the Government's inconsistencies. One need only look to Hansard to see the difference between the quality of responses during the first Bill 202's second reading as opposed to the discussion of the NWP during question period. During the latter, the Premier accused the Opposition of governing for the "one percent," whereas during second reading, the Government spoke directly to why Manitoba has not, and will not join the NWP.

As the Province draws closer to its next provincial election in 2016, Bill 202 has provided a clear policy statement to the Opposition's base that if elected, Mr. Pallister and his government will begin negotiations to join the NWP. Of course, whether or not Manitoba is still welcome when that day comes, or whether Alberta's new NDP government will remain in the partnership, are questions for another paper.<sup>95</sup>

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<sup>93</sup> Blidook, *supra* note 90 at 35.

<sup>94</sup> Stitt, *supra* note 87 at 169-170.

<sup>95</sup> Canadian Press, "Saskatchewan Premier to ask Notley to stay in New West Partnership" *Global News* (6 May, 2015), online: <[www.globalnews.ca](http://www.globalnews.ca)>.