

The Road to Hell: Examining *The Organic Agricultural Products Act*

M E A G H A N D A N I E L

While debating *The Organic Agricultural Products Act*¹ (“*OAPA*”) during a meeting of the Standing and Special Committee on Social and Economic Development, Mr. Goertzen, the Conservative MLA for Steinbach said, “I think we all know that a lot of bad legislation has been passed with good intentions at times.”² A particularly apt description, since the purpose of the Act is divorced from its provisions. When introducing this legislation, the Minister of Agriculture, Food and Rural Initiatives, the Honourable Rosann Wowchuk, summarized its intended function: “By creating provincial standards for organic food production in Manitoba that mirror federal standards, *OAPA* will provide the same assurance to Manitoba consumers and will assist Manitoba producers in their marketing efforts.”³ Thus characterized as a benign piece of legislation designed to fill the provincial gap left by federal regulations, in truth, the provincial legislation will only affect intra-provincial trade, targeting small-scale local producers. Once the legislation comes into force, local and commercial producers will not be uniformly assisted, but instead stratified; Manitoba consumers will derive a very limited benefit; and the environment, omitted from the stated purpose but not from the effects of this legislation, will be damaged. Despite these defects, this bill drifted from its first introduction and received Royal Assent without amendment or timely debate on its provisions.

The *OAPA* sets out a series of permissive powers for a minister. The minister who is appointed by the Lieutenant Governor in Council to administer the *OAPA* is charged with the responsibility to draft regulations that create standards for organic certification. Only producers certified in accordance with

¹ Bill 13, *The Organic Agricultural Products Act*, 1st Sess., 39th Leg., Manitoba, 2007 (assented to 8 Nov. 2007). [*OAPA*].

² Manitoba, Legislative Assembly, Standing and Special Committee on Social and Economic Development, in *Official Reports of Debates (Hansard)*, (17 October 2007) at 26 (Mr. Goertzen).

³ Manitoba, Legislative Assembly, Debates and Proceedings, in *Official Reports of Debates (Hansard)*, Vol. LVIII No. 25 (11 April 2007) at 753 (Hon. Rosann Wowchuk).

the regulations will be allowed to market or label their products as ‘organic’.⁴ The regulations could include designating a certification body;⁵ proscribing the length, renewal, suspension, and cancellation of the certification period;⁶ exempting a person or product from the Act as a whole or any part;⁷ and setting a method of appealing decisions of the certification body.⁸ To enforce these regulations, the minister may appoint inspectors who would have sweeping statutory powers of search and seizure, sanctioned to use force to complete the inspection.⁹ Individuals in contravention of the *OAPA* could be summarily convicted and face a \$20 000 fine, six months of jail time, or both.¹⁰

The *OAPA* was introduced to the House as Bill 18 on 11 April 2007. It had only reached the stage of second reading on 18 April, when the government was dissolved for the 22 May 2007 election. Though Bill 18 died, the government revived and reintroduced it to the House as Bill 13 on 2 October 2007. In her introduction of Bill 18 in April, the Honourable Rosann Wowchuk took the opportunity to explain the bill’s purpose and added two assurances that the drafting was sound. Ms. Wowchuk claimed that the standards created by the provisions would mirror federal organic standards and that local agricultural policy organizations had aided in the creation of the provisions—including the Keystone Agricultural Producers, the Canadian Wheat Board, the Organic Food Council of Manitoba, and the Organic Producers Association of Manitoba.¹¹

At the second reading on 18 April, Ms. Wowchuk elaborated on the importance of the legislation and reiterated assurances that the legislation mirrored federal standards and that the government had drafted it in consultation with local agricultural policy groups.¹² Emphasizing the relationship between consumers and producers by mentioning the growth of the organic food sector and its overall importance to the agricultural industry, Ms. Wowchuk claimed that creation of provincial standards made economic sense for Manitoba’s farmers.¹³ It is notable that at no time during the introduction of the

⁴ *OAPA*, *supra* note 2 at s. 2.

⁵ *Ibid.* at s. 3(a).

⁶ *Ibid.* at s. 3(d) and s. 3(f).

⁷ *Ibid.* at s. 19(1)(p).

⁸ *Ibid.* at 3(g).

⁹ *Ibid.* at s. 10(2).

¹⁰ *Ibid.* at s. 15(1).

¹¹ Manitoba, Legislative Assembly, Debates and Proceedings, in *Official Reports of Debates (Hansard)*, Vol. LVIII No. 30 (18 April 2007) at 753 (Hon. Rosann Wowchuk).

¹² *Ibid.* at 957 (Hon. Rosann Wowchuk).

¹³ *Ibid.* at 956-957.

bill, or at any point in Ms. Wowchuk's brief presentation at the second reading, did she mention ecological considerations.

The government's claim of consultation with local expert or experienced agricultural policy-makers is of limited value in ensuring that this legislation considers the unique needs of the Manitoba organic producers. Considering that one of the goals of the legislation is to emulate federal regulations, it is difficult to see how the Legislative Council could have also incorporated the individual opinions of local organizations. If Ms. Wowchuk's promise of coordination was true, local organizations could have only influenced the provisions as far as regulatory uniformity was maintained between federal and provincial certification standards.¹⁴

Ms. Wowchuk's first assurance is questionable; however, it is apparent on the face of the legislation that her second assurance is true. Existing federal statutes and regulations were repeatedly consulted and considered while the *OAPA* was drafted. Many provisions of the *OAPA* are directly lifted from the *Canadian Agricultural Products Act*¹⁵ and the accompanying *Organic Products Regulations*.¹⁶ The *Organic Products Regulations* also address concerns of false claims regarding organic produce by concentrating on marketing and labelling of organic goods.¹⁷ According to the regulations, use of the 'Canada Organic' logo or the designations 'Canada Organic' or 'Biologique Canada' on product labels is only permitted where producers meet the certification standards for organic production.¹⁸ The certification process is mandatory for all producers who wish to market and/or label a product as organic if that product is intended for inter-provincial or international trade. However, claims of organic content made on produce intended for trade solely within a province is not affected by the federal regulations.¹⁹

¹⁴ Manitoba, Legislative Assembly, Debates and Proceedings, in *Official Reports of Debates (Hansard)*, Vol. LIX No. 13B (2 October 2007) at 657 (Hon. Rosann Wowchuk). This assurance was referred to and likely relied on by other members of the legislature. See Manitoba, Legislative Assembly, Standing and Special Committee on Social and Economic Development, in *Official Reports of Debates (Hansard)*, (17 October 2007) at 14 where the Honourable Stan Struthers said in defence of the bill, "I want to make clear that the federal regulations that have been mentioned here by my colleague from Lakeside, these are intended to dovetail with those. It's not adding more bureaucracy. It's not all of that; it's about those working together."

¹⁵ *Canada Agricultural Products Act*, R.S.C. 1985, (4th Supp.) c. 20. [*CAPA*].

¹⁶ *Organic Products Regulations*, S.O.R./2006-338 (coming into force 14 December 2008).

¹⁷ "Organic Products" (22 December 2006), online: The Canadian Food Inspection Agency <<http://www.inspection.gc.ca/english/fssa/orgbio/otfgtspbe.shtml>>.

¹⁸ *Supra* note 16 at s. 2(1).

¹⁹ *Organic Products Regulations*, S.O.R./2006-338 (coming into force 14 December 2008) at s. 3.

Bill 13 had its second first reading on 2 October 2007. During the second reading on 15 October 2007, Ms. Wowchuk repeated parts of her speech from April and instructed the other members to consult her comments from April if they required more information.²⁰ The second reading stage is the first prospect for meaningful debate, an opportunity wasted on 15 October, as members of the Assembly were moved only to speak in favour of the legislation. Three conservative members, Ralph Eichler, the MLA for Lakeside, Peter Dyck, the MLA for Pembina, and Larry Maguire, the MLA for Arthur-Virden, spoke of their personal regard for Bill 13, with Mr. Eichler stating for the record that Bill 13 enjoyed general Conservative support. The Honourable Jon Gerrard added that it also enjoyed Liberal support, and that he was looking forward to the committee stage in order to scrutinize the details of the provisions. Mr. Eichler and Mr. Maguire both noted the existence of 200 certified farms in Manitoba, but this statistic was stated without context as neither member mentioned uncertified producers or the total number of farms in the province.²¹

On 18 October 2007, Bill 13 was set before the Social and Economic Development Committee for discussion. Mel Groening, a concerned citizen taking the opportunity to make an oral submission to the committee, was the first person to voice potential problems with the *OAPA*. An uncertified organic farmer, Mr. Groening highlighted how the *OAPA* might affect local producers, consumers, and perhaps most importantly, the environment—mentioned in the economically-focused discussion for the first time.²²

Mr. Groening brought the situation of Manitoba's small-scale, local producer to the attention of the committee, specifically; the direct, indirect and potential costs imposed by this legislation and forced certification. With this legislation, farmers and corporations will face direct costs in the certification fees—paid upfront to obtain initial certification and periodically to maintain status. Indirect costs will be incurred through loss of sales as the expenses of certification are added to the sale price of products, thus lowering their marketability. Hidden costs will also accumulate as time is wasted on the certification process—which will likely include application paperwork and detailed records of field histories.

²⁰ Manitoba, Legislative Assembly, Debates and Proceedings, in *Official Reports of Debates (Hansard)*, Vol. LIX No. 19 (15 October 2007) at 1130 (Hon. Rosann Wowchuk).

²¹ Manitoba, Legislative Assembly, Debates and Proceedings, in *Official Reports of Debates (Hansard)*, Vol. LIX No. 19 (15 October 2007) at 1331 (Mr. Eichler) and 1334 (Mr. Maguire).

²² Manitoba, Legislative Assembly, Standing and Special Committee on Social and Economic Development, in *Official Reports of Debates (Hansard)*, (17 October 2007) at 11-28 (Mr. Groening).

Certain provisions in the *OAPA* threaten the imposition of further costs on the already taxed farmer. Section 12(1) provides that the government and certification body can recover from the owner of a product:

Any prescribed fees or charges and any costs incurred by the government or the certification body in relation to anything required or authorized under this act, including, but not limited to, the inspection, sampling, testing or analysis of a place, agricultural product or other thing, or the storage, removal, disposal or return of an agricultural product or other thing, required or authorized under this Act; and the forfeiture, disposal, seizure or detention of an agricultural product or other thing under this Act.²³

Any organic producer, regardless of their marketing and labelling practices, will have apprehension regarding these potential costs. Feeding this apprehension is a presumptive provision—section 16 of the *OAPA*—which provides that a person in possession of an amount of produce greater than that which they could reasonably consume will be deemed to be “in possession of the product for the purposes of marketing it.”²⁴ As Mr. Groening noted, stockpiling organic carrots could trigger trafficking suspicions and begin the inspection, seizure, and investigation process, all of which can and will be charged to the farmer.²⁵ If one is found in contravention of the Act, a farmer could face fines of up to \$20 000.²⁶

The ability to risk or absorb these costs is directly related to the size of the producer. Organic farming is already an expensive production method:

Organic agriculture, because it doesn't rely on synthetic (chemical) inputs to control pests and weeds, is significantly more labour and management intensive. Farmers hand weed, apply mulch, and sometimes hand pick insect pests rather than spraying pesticides. Crop rotations and cover crops are also used to control pests and weeds, which means that farmers aren't earning revenue on every acre of land at all times. Organic farms are often small farms, so organic producers don't enjoy economies of scale in the same way as large industrial farms, and sometimes, particularly during the transition to being certified organic, yields are lower.²⁷

In addition to the direct costs, the ability to fulfill the paper requirements will also be related to the size of the producer; small producers are often one-

²³ *OAPA*, *supra* note 2 at s. 12(1).

²⁴ *Ibid.* at s. 16. It is worth noting the chilling effect this may have on farmers wanting to be partially organic.

²⁵ Manitoba, Legislative Assembly, Standing and Special Committee on Social and Economic Development, in *Official Reports of Debates (Hansard)*, (17 October 2007) at 12 (Mr. Groening); *OAPA*, *supra* note 2 at s. 12(2).

²⁶ *OAPA*, *supra* note 2 at s. 15(1).

²⁷ The Organic Food Council of Manitoba “Why does Organic Food Cost More?” (3 September 2007) online: <<http://organicfoodcouncil.org/costs.php>>.

farmer operations. According to the Manitoba Organic Report of 2002, most organic farms are comparatively smaller than conventional farms and therefore do not have an excess of profits with which to meet these costs.²⁸ According to Mr. Groening's experience, some small-scale farmers will not be able to afford the direct costs, much less expose themselves to the risk of inspection.²⁹

Mr. Groening used the example of certification targeted at organic Maple Sugar production in Quebec to highlight the costs associated with organic regulations. He stated organic regulation pushed nearly half of maple sugar producers to leave the industry, as "[m]any people just are afraid of legislation. They don't have time for the paperwork and they don't want the fees and they just simply drop out of production."³⁰ However, it has also been suggested that premiums paid for organic produce compensate for extra paperwork and fees.³¹

While small-scale organic farmers are often unable to afford production of official organics, corporations are embracing the label and profit it represents. According to *Business Week* magazine, corporate farmers and distributors are responsible for the exponential growth of the organic industry:

The corporate giants have turned a fringe food category into a \$14 billion business. They have brought wider distribution and marketing dollars. They have imposed better quality controls on a sector once associated with bug-infested, battered produce rotting in crates at hippie co-ops. Organic products now account for 2.5% of all grocery spending (if additive-free "natural" foods are included, the share jumps to about 10%).³²

In glib terms, *Business Week* describes the transition in organics from movement to mass market. Organic farming organizations are speaking out

²⁸ Manitoba Regional Office of Agriculture and Food Canada "Manitoba Organic Report" online: <<http://www.ats.agr.gc.ca/region/e3327.htm>>. *This citation is not online...however, it is cited elsewhere as* Wuerch, D., H. Urbina and K. Diachun 2002 Manitoba Organic Report: Agriculture and Agri-Food Canada. Winnipeg.

²⁹ Manitoba, Legislative Assembly, Standing and Special Committee on Social and Economic Development, in *Official Reports of Debates (Hansard)*, (17 October 2007) at 15 (Mr. Groening).

³⁰ *Maclean's* magazine reports that in 2005, 25% of small-scale organic farms went out of business due to an inability to compete after market regulations were set. Citing prohibitively expensive fees of \$1,000 just to begin, as well as a quota system, the organic maple syrup sector is shrinking. Pamela Cuthbert, "The Less Sweet Side of Maple Syrup" *Maclean's* (26 March 2007), online: http://www.macleans.ca/article.jsp?content=20070326_103293_103293. Macleans.ca

³¹ See Diane Brady, "The Organic Myth" *Business Week* (16 October 2006), online: http://www.businessweek.com/magazine/content/06_42/b4005001.htm?campaign_id=nws_in_sdr_oct6&link_position=link1.

³² *Supra* note 31.

about this phenomenon, what is termed the ‘corporate capture of organics.’³³ The Organic Food Council of Manitoba notes that companies such as Wal-Mart, Kraft, and Pepsi are buying into organics, and that the industry is suffering, as, “...in order to supply such high output corporations, organic farms are growing, getting bought out, and assimilating some of the large scale industrial practices of today’s conventional food system.”³⁴ Legislation that burdens the small-scale producer will not uniformly help all Manitoba producers, but contribute to the corporate capture of organics.

Perhaps the Legislative Assembly did not come to a similar conclusion because of the focus in their discussions on consumer health. At the second reading of the *OAPA*, Mr. Eichler mentioned that “...the various grocery stores, Wal-Mart and Safeway, Sobeys and many of the others have, in fact, the organic association itself has done a tremendous job in increasing awareness on eating healthy and healthy products.”³⁵ In terms of immediate health benefits, corporate organics may be better than corporate conventional farming. However, the ideals behind the organic movement were not solely based on healthy eating but were part of an active resistance to corporate production:

The organic movement began as a grassroots response to chemical agriculture and the industrialization of the food system. Social justice, the economic viability of the family farm, whole, healthful food, and strong relationships between farmers and consumers were some of the ideals of the organic pioneers.³⁶

Without a fundamental understanding of the organic industry or its ideals, without recognizing the current market shift from small-scale to large corporate producer, and without even mentioning that this legislation is limited to intra-provincial producers, the Legislative Assembly did not fully evaluate whether this bill will help Manitoba organic producers.

As only certain producers will be able to market their products more effectively, the *OAPA* will only help certain consumers of organic produce—those who are unconcerned about the origin of their produce. If this legislation does reduce the number of small organic farms, eliminating falsely labelled organic goods will have come at the cost of reducing the availability of local organic produce. Those who are concerned with lessening their food miles (and thus their impact on the environment) will not have the same consumer choice.

³³ Organic Food Council, Manitoba Chapter “Our Stance on Local vs. “Big Organic” (3 September 2007), online: <<http://organicfoodcouncil.org/localvsbig.php>>.

³⁴ *Ibid.*

³⁵ Manitoba, Legislative Assembly, Debates and Proceedings, in *Official Reports of Debates (Hansard)*, Vol. LIX No. 19 (15 October 2007) at 1331 (Mr. Eichler).

³⁶ *Supra* note 33.

Macey's study of the state of organic farming, suggests that changed certification options and increased fees were a direct cause of a decrease in certified organic producers.³⁷ It is noteworthy that on a national scale, while the number of certified producers has decreased, the actual production of organic goods has increased, as each producer is farming a larger acreage than before.³⁸

To evaluate the protection Manitoba consumers will gain from this legislation, it is helpful to consider the origin of organic food in the grocery store. In 2001, organic producers represented just 2% of the total number of farms in Manitoba and spatially 28 967 acres.³⁹ In 2000, it was estimated that organic retail sales volume in Manitoba lay somewhere between .05%–1% of total retail sales.⁴⁰ The rest of the retail sales were predominately composed of American products as figures cited in the report showed that 85%–90% of organic goods sold in Canada came from the United States.⁴¹ At that time, fewer than 20 local producers were selling Manitoba products to Manitoba organic retailers with 90–95% of eggs, dairy, vegetables, and meat moving directly from producer to consumer.⁴²

While seven years have passed since the above figures were compiled, this report based its conclusions on 200 organic and aspiring-organic producers in Manitoba, the same figure cited by Mr. Eichler and Mr. Maguire in the House on 11 October 2007. These figures suggest that the assistance to the Manitoba consumer will be minimal at best, and potentially non-existent, if direct chains of production between producer and consumer are severed by stressing smaller operations.

Ecologically speaking, as progressive as organic regulation may seem, in truth the members of the Manitoba Legislative Assembly are late to the party. Food activist and PhD candidate at the University of Toronto, Irena Knezevic notes that all organic food is not created equal. Some organic food travels large distances to get to the consumer and the ecological footprint of these food miles is far greater than that of conventional local food.⁴³ The previous focus on the method of production has clearly shifted to the global system of agriculture and

³⁷ Anne Macey, "The State of Organic Farming in Canada in 2002" *EcoFarm and Garden* (Winter 2004) 44 at 44.

³⁸ *Supra* note 37.

³⁹ *Supra* note 28.

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ Michelle Martin, "Corporations Jump on Organic Wagon" *Saskatoon Star Phoenix* (2 June 2001) A14.

trade: “While organic food production has many environmental benefits, the increase in demand for organic versions of all kinds of foods has resulted in added long-distance transportation that emits enormous amounts of carbon dioxide.”⁴⁴ It is becoming increasingly apparent that in choosing between organic and local, the ‘greenest’ choice is local produce.

The Legislative Assembly deserves credit for making organic agriculture a subject for discussion, especially as organics progress into the mainstream of the retail industry. During this transition, Manitoba organic producers could use the support of the Government, but this support would likely be stronger if provided through a different method than regulation of the industry. Briefly, in the committee meeting on Bill 13, one member, Mr. Faurshou demonstrated some awareness that regulation was not the best answer:

We cannot over-regulate an infant industry such as the organic industry is in our province. We have to get more consumers understanding and accepting organic production. That is why we still have to have a producer-to-consumer direct channel that does not bear the heavy burden of the regulation, and, ultimately, the expense of such regulation.⁴⁵

Mr. Faurshou raised an excellent point for debate, one that was pursued by Mr. Struthers. Mr. Struthers disagreed with the idea that this was over-regulation, commenting that organic production methods had been used in Manitoba for generations, even before ‘white folks’ arrived here, essentially arguing that organic production is hardly in its infancy. If this bill was about organic production methods, that would have been an excellent point. However, the *OAPA* is clearly about organic marketing.

The environment, consumers, and local producers would all be better off if, instead of regulating the marketing strategies of Manitoba’s organic producers, producers enjoyed the support of legislation that valued local organic food distribution. In creating and debating legislation on organic marketing, it is crucial to understand the intricacies of marketing organic produce. On a website under the domain of the Manitoba Agriculture and Rural Initiatives a comparison is made between organic and conventional cropping. Listed under differences is the observation that, “organic producers market much of their own

⁴⁴ *Supra* note 33.

⁴⁵ Manitoba, Legislative Assembly, Standing and Special Committee on Social and Economic Development, in *Official Reports of Debates (Hansard)*, (17 October 2007) at 25 (Mr. Faurshou).

produce.”⁴⁶ In regulating the marketing of organic produce, legislators should have carefully considered this crucial difference in marketing schemes.

While somewhat of a simplification, the Manitoba Legislative Assembly could have taken one of two roads. The first would have been to vote down the legislation and let the industry develop unregulated by the government. Currently, with the operation of the *CAPA* and the *Organic Products Regulations*, there is a mandatory system of certification in place for inter-provincial and international trade, and a voluntary system of certification for trade occurring within Manitoba. Without debating the merits, there were clear reasons for implementing a mandatory system at the national level. In a cost-benefit analysis of organic regulation, the Canadian Food Inspection Agency reported that without a national regulatory system acceptable to the European Union (“EU”), the EU would not have accepted Canadian organic produce for its import market.⁴⁷ Voluntary regulation was not enough as, “The variety of certification requirements combined with voluntary standards limit trade growth. National regulations with the federal government as the competent body would improve the ability of Canada to market its organic products in foreign markets.”⁴⁸ Producers concerned with marketing organic products in foreign markets needed certification for their goods to be recognized across borders, a situation where the relationship between the producer and the ultimate consumer have considerable distance between them.

However, similar arguments do not apply to trade of organic products within the borders of Manitoba. It would have been easy for Manitoba to stay with a voluntary system, as one has been in place for nearly 20 years. The Organic Producers Association of Manitoba Co-operative Inc. (“OPAM”) incorporated as a non-profit organization in 1988⁴⁹ and the organization states its primary purpose as the promotion of organic production and consumption, primarily

⁴⁶ Lynda Lowry, “Organic Production vs. Conventional Cropping” (September 2007) online: Manitoba Agriculture, Food and Rural Initiatives <<http://www.gov.mb.ca/agriculture/homeec/cbd03s01.html>>.

⁴⁷ “Cost Benefit Analysis of the Effects of Federal Regulation for Organic Products: Final Report” (31 August 2006), online: Canadian Food Inspection Agency <<http://www.inspection.gc.ca/english/fssa/orgbio/coana/coanae.shtml>>.

⁴⁸ *Supra* note 47.

⁴⁹ “History of the Organic Producers Association of Manitoba Co-operative Inc. (OPAM)” (11 May 2005), online: Organic Producers Association of Manitoba Co-operative Inc. <<http://www.opam.mb.ca/History.htm>>.

through providing a credible certification system.”⁵⁰ The Standards Council of Canada (“SCC”) accredited OPAM in the following subject areas:

- Certification of producers, processors, handlers and traders of organic food, feed and fibre;
- Certification of organic products derived from the above through organic food, feed and fibre processing techniques as defined by the suppliers; and,
- Certification of organic production inputs and organic processing ingredients.⁵¹

A producer can apply to the OPAM certification system to trade in Canada and/or Europe, and to the United States Department of Agriculture accredited certification system. Although just one of the many existing organic certification bodies across Canada, OPAM already has certification criteria, documentation, and third party inspection processes in place.⁵² As an SCC accredited body, the OPAM certification process meets the minimum standards as set by the federal regulations, and complies with the Canadian Standards.⁵³ With OPAM in place and operating in accordance with federal regulations, the province could easily opt to concentrate their legislative efforts elsewhere.

The problem with simply keeping the voluntary system or the status quo was it did not fully address the government’s concern that Manitoba consumers were being duped with false claims of organic produce. However, as stated above, with the small size of the organic sector, fake Manitoba organics probably do not compose a large portion of products. Moreover, if concerned consumers were trusted to learn the difference between a product marketed as organic and one certified as organic by an organization such as OPAM, they could protect themselves from inadvertently consuming conventionally farmed goods.

⁵⁰ “Mission Statement of the Organic Producers Association of Manitoba Co-operative Inc. (OPAM)” (11 May 2005), online: Organic Producers Association of Manitoba Co-operative Inc. <http://www.opam.mb.ca/Mission_Statement.htm>.

⁵¹ “Subject Areas of Accreditation” (24 September 2007), online: Standards Council Canada <http://www.scc.ca/certifiers/cb_opam_e.pdf>.

⁵² “Certification Process” (11 May 2005), online: Organic Producers Association of Manitoba Co-operative Inc. <http://www.opam.mb.ca/Certification_Process.htm>. According to the Canada Organic Growers website there are 23 certification bodies across Canada. See “Organic Certification Bodies” (19 July 2007), online: Canadian Organic Growers <<http://www.cog.ca/cb.htm>>.

⁵³ Hugh Martin, “Organic Food and Farming Certification” (1 May 2002), online: Ministry of Agriculture Food and Rural Affairs <<http://www.omafra.gov.on.ca/english/crops/organic/certification.htm>>.

The second path for the Legislative Assembly to travel, the one ultimate chosen, was to pass the *OAPA* without amendment and force organic farmers to certify or cease production as 'organic' farmers. Embracing a mandatory standard prevents false claims that produce is organic and ensures fair trading practices. The negative aspects of traveling this road have been argued largely above. However, on the coming into force of the *OAPA*, despairing local producers can look to a small legislative loophole. In the *OAPA*, there is a saving provision which allows the Minister to protect the consumer and the certified producers, without punishing the small-scale farmer. Section 10(1)(p) allows the minister making regulations to provide exemptions for people, products, or entire classes of products. This provision has many possibilities. For instance, if within the regulations an exemption is drafted to protect direct producer-to-consumer relationships some of the potential harmful effects of this legislation can be mitigated.⁵⁴

The committee did not recommend any amendments to Bill 13. However, on 5 and 6 November, at the third reading of Bill 13, the tenor of the Assembly was considerably changed. In the second reading of this bill, the only comments made were positive and supportive of this legislation. In the third reading, concerns were expressed with underlying resignation that damage control would depend on the regulations. Len Derkach, conservative member for Roblin-Russell, spoke regarding the potential for strategic exemptions:

I believe that there could be some exception to some, if you like, farm-gate sales. I know that, you know, we have always in this country and in this land lived by farmers being able to sell their product from their farm gate. That's been a good thing... If a farm gate wants to sell organic eggs, for example, I see nothing wrong with a farmer being able to take his product directly to the market, wherever it might be. It might be the farmer's market. It might be a neighbour. It might be somebody in an urban area....I'm hoping that the minister in her regulation, will not impose a penalty if that, in fact, is a desire of a producer.... So, Mr. Speaker, I guess we have to await the regulations.⁵⁵

In addition to the concerns of Mr. Derkach, Mr. Eichler and Mr. Lamoureux both spoke about their concerns regarding this legislation. Mr. Lamoureux stated that he believed that passing the bill would ultimately be a

⁵⁴ It should be noted that not every consumer has the luxury of forming a direct relationship with a producer.

⁵⁵ Manitoba, Legislative Assembly, Debates and Proceedings, in *Official Reports of Debates (Hansard)*, Vol. LIX No. 31 (5 November 2007) at 1941 (Mr. Derkach).

mistake.⁵⁶ Despite these statements, Bill 13 was passed, given Royal Assent on 8 November 2007, and will come into force on a day fixed by proclamation.⁵⁷

At committee, Mr. Groening related a conversation between farmers regarding this bill.

“When a local farmer in our area heard about this bill, he told me, what’s this? You’re farming the way you should be and have an ideal system in place and have to battle for survival against this legislation. I can cover my land with all kinds of toxic stuff and no one bothers me.”⁵⁸

Far from simply filling in where the federal regulations left off, the effects of the *OAPA* are confined to Manitoba producers who wish to market their products within local markets. A very different type of producer than the farmer doing a considerable amount of inter-provincial or international trade, the local producer is likely to be smaller and less able to meet regulatory burdens. By encumbering these producers, the government is assisting in the greater movement from sustainable practices to mass-market organic produce. By delaying debate until the third reading and concurrence, the Legislative Assembly missed their chance. It will be up to the minister in making regulations to mitigate the potential effects of this legislation.

⁵⁶ Manitoba, Legislative Assembly, Debates and Proceedings, in *Official Reports of Debates (Hansard)*, Vol. LIX No. 32B (6 November 2007) at 1984 (Mr. Lamoureux).

⁵⁷ Manitoba, Legislative Assembly, Debates and Proceedings, in *Official Reports of Debates (Hansard)*, Vol. LIX No. 34B (8 November 2007) at 2100.

⁵⁸ Manitoba, Legislative Assembly, Standing and Special Committee on Social and Economic Development, in *Official Reports of Debates (Hansard)*, (17 October 2007) at 13 (Mr. Groening).

