

THIRD SESSION - TWENTY-SEVENTH LEGISLATURE

of the

Legislative Assembly of Saskatchewan

DEBATES and PROCEEDINGS

(HANSARD) Published under the authority of The Honourable Dan D'Autremont Speaker

N.S. VOL. 56 NO. 28A WEDNESDAY, MARCH 5, 2014, 13:30

Bill No. 120 – *The Lobbyists Act*

Mr. Forbes: Thank you very much, Mr. Deputy Speaker. It is a pleasure to rise this afternoon to enter into the debate on Bill No. 120, *An Act respecting Lobbying*. And of course this is a bill that's long overdue and one that we were anxiously all waiting for. And in fact I know when we came back from the election in the fall of 2011, it was one that I know the government was most interested on getting right to work. And of course we appreciate that attitude from any government when they want to get right to work and get down to brass tacks. And this was one that they seemed pretty anxious to get moving on right, right away. And here we are in third session now debating this.

And of course we don't know whether it'll actually be enforced even before the next election, ironically. Will the regulations be in place? Will the registrar be in place? All the pieces that need to make it happen, who knows? It could be the thing that they want to get right to work. Maybe, even hopefully, it'll be us who will be getting right to work on putting this into force after the next election. So, Mr. Deputy Speaker, you heard it first here. This is the thing that we'll be looking forward to putting into action. So put that . . . Write that down. Write that down.

But seriously, it is an important piece. But it is amazing how when things are so critical and they seem to start off out of the gate so quickly, that something happens with the gas. I don't know whether somebody put water in the gas or sugar in the gas or what happened, but something happened that caused the fizzle between the report . . . And I'll get into the specifics, but I understand that the people did their work and we had a minority report. It was finished May 12th but we didn't actually see it. It sat on the shelf for a year, a year, which was quite amazing.

So with that, what we have . . . The debate is before us about this bill and what the content is and whether it's effective, whether it will be a good start or a poor start, or whether it's something that should go back to the drawing boards. You know, the big question is, what are the unintended consequences? And so with that, we need to make

sure we examine this thoroughly. And when we're in committee, we'll have another go through it because I think the people of the province expect a high standard when we talk about transparency and accountability. This government, this party has come to power under that banner of transparency and accountability.

And we think that's an important piece, that's an important piece of any government to make sure they're transparent and accountable. And that means everybody, everybody, not just a select few. And this is one of the problems that we'll talk a bit about in terms of those who were included, those who were excluded, and why would they be included and why would another group be excluded? It doesn't seem to make a lot of sense. Because no matter what business you do with the Government of Saskatchewan, it's all important and it all should be accountable and it all should be transparent.

There's nobody who gets a special key to the back door. That doesn't happen. That's not on, and we should not allow that to happen. And so everybody's work — and I always start with the assumption that whoever comes to meet with the government or the opposition is doing their best for the province and the people of Saskatchewan — they may have a different perspective. We may not agree with them, but they think it's in the best interests of whatever the cause that they are trying to promote.

And with that I can't see why anybody would want to be excluded from the registry. In fact I think it would be something they would feel would be an honourable thing to be part of. And so why would anybody want to be excluded? The only reason I could actually think that might make some sense is if it's an overbearing amount of work to undertake. You know, I mean, is it writing a simple letter? Now in a sense that is lobbying, isn't it? But should they then register within this process? That makes it a little absurd, doesn't it? So there is some reasonable levels that we have to take into account. But with that, I think that this is one that we are glad to have before us for this discussion because I think that we need to have something in place regarding lobbying.

And so with that I want to take a minute and review the minister's comments because I think it's always interesting that we can take a look at what they've done. And so he talks about how, and the reasons that are driving, the reasons behind the legislation before us. And I know as my colleague just remarked earlier, there's a good reason to have a minister's comments because we can look back and talk about the reasons why. And in fact it might actually serve as part . . . it is part of the public record, but a significant part of the public record in future years.

And so he talks about how on December 7th, 2011, shortly thereafter — I think that's almost a month after the election, the election being I think in November 7th, 2011 — one month later the Legislative Assembly passed a motion to refer the issue of lobbyist legislation to the Standing Committee on Intergovernmental Affairs and Justice for review and to report back. And what they wanted to do was make recommendations on a legislative model for this new legislation, for new legislation in Saskatchewan that will ensure that the public is informed and aware of who's lobbying the public office-holders in Saskatchewan while ensuring that free and open access to government decision makers is not unduly impeded. And I think that's important.

That's what we were talking about before because we do want to engage the public. We do want to listen to the public. And in fact, that is one of the major concerns that we hear from organizations and the public, that we don't seem to listen to them. We work really hard on this side to listen to them. I know that on that side the record is rather spotty in terms of how they engage the public and how they listen to them and how they hold public meetings and that type of thing. And I could go on at length about the changes in labour legislation, about whether or not they actually engage the public and how the people can have free and open access to government decision makers. We want to make sure that's not duly impeded.

And we have seen for example the refusal to hold public meetings, to meet with the public. But they've been told instead, please write a letter. That's the only way that we'll hear from you is via the Internet or via Canada Post. And that's a problem because I think that people want to say, we want to have access to government decision makers that's open and free. And I think this is an interesting comment from the minister to say that that's our goal when often we see that not being the actual case when the rubber hits the road, that they are actually not open and it's not a free access to government decision makers. But I digress, Mr. Deputy Speaker, about that. That's just part of this whole thing.

But just a short few months later, five or six months later, the standing committee tabled the majority report. We had a minority objection, and I will refer to that in a minute because I think it's a pretty key piece of the discussion today about this bill.

So they talked about how there was considerable consensus around preparing an Act based largely on the Alberta and British Columbia legislation and further consultation with stakeholders was considered desirable before introducing a government bill. And so while it's based on the recommendations, they went back to have more consultation with the stakeholders. And that showed up perhaps in this; we don't know.

And that's the question we'll have: who did they consult with? Did they listen to the recommendations? Did they not? If not, why not? And we will have questions about that because it just seemed rather odd that you would send out a committee, a standing committee of the legislature to do this work and then say, but we want to refine it further. So that is what happened though; that's the case before us.

And they talked about how the bill will do a number of things and establish types of lobbyists, and that makes sense. A registration requirement, a process, and that makes sense. We have to keep track of who the lobbyists are, what that will mean. It will be an interesting process to see how that plays out.

And you know, we'll have those kind of questions in committee. How are the registration processes? How is that done in Alberta, Ontario, the federal government? How effective is that? And how effective is it vis-à-vis this kind of legislation, particularly when we have some of the concerns about essentially how effective it will be and how many registrants, how many lobbyists will actually be on the registrar. You know, the concern is because some of the benchmarks are so high, that in fact there won't be that many that

will actually qualify for it. So this will be interesting.

This will be an interesting process to see, appointing a registrar as an independent officer of the Assembly to oversee the Act, investigate the complaints and offences. So we have another officer of the Assembly, and how that will play out. And restricting lobbying by former public office holders, the MLAs here, that will be here, and some of the people who have worked for government, that will be interesting.

It does talk a little bit about the exemption for local authorities, including universities, SARM [Saskatchewan Association of Rural Municipalities], SUMA [Saskatchewan Urban Municipalities Association], and the School Boards Association. And I have some concerns about that. And I know particularly those people do really good work, and I think it's really important that we keep in touch with them.

And this is in no way . . . I don't think, the Act respecting lobbying is meant to curtail lobbying. It's just made to keep track of it. And in fact, that's a good way of seeing so how does, who is the government talking to? Who are they listening to? And I think it's important that they listen to all sorts of people and that's registered. I don't see a problem with that.

And I think that that in fact, as I said, all of these organizations, part of their job is to inform and to talk to both the government and the opposition side so we can support their work and support the changes that they need to have done. If we don't do that, then we're not doing our job. And if they don't do it, they're not doing their job. And so it's really critical that actually that be seen to be part of their role. They all work for the public, and the goal of this piece of legislation is something to help the public understand, so what's happening?

And I find it interesting in fact how we've done . . . worked really hard to make this legislature an efficient place. And it's much more efficient than when I was first elected. And I think, Mr. Deputy Speaker, you would remember those long days and long nights when we would all sit in here in Committee of the Whole, and we couldn't do two committees at the same time. We had no idea of what the calendar was. We didn't have the processes we have now, which are largely really effective getting the job done in a certain amount of time and making sure that we can be back in our constituencies, just a simple thing like having our Fridays as our day in our constituency office. And it's really important to remember that's not a day off. That's a day back at our constituency office to meet with people.

So now we have this situation. People want to know, so what are you really doing? Who's really talking to you, and what are they talking about? I think they'd be very happy to know that SUMA and SARM and the school boards and universities are talking to us. But now they won't know, and they won't know how much they're talking to . . . They're also being paid by the public. All of those groups of people are paid through tax dollars, and the taxpayers want to see an efficient and effective use of their money. And if they want to see these two levels or three levels getting together to talk about the issues of the day, they would like to see some evidence of that. And I don't think that's a bad

thing. I think that's a good thing and a thing that they can be proud of.

But it's sort of this exemption that I think has some concerns, concerns also about charities. And of course I need to take a look closely, and we'll have this discussion in committee because there seems to be so many different levels of the term charities, whether you have NGOs [non-governmental organization] or CBOs [community-based organization] or you know, who's funded by provincial dollars? Who's funded by donations? Who are able to be run by foundations and therefore are exempt by the advocacy rules of the Canadian Revenue Agency?

Those are all big differences, so I think that we kind of get into this trouble of when you exempt groups and not have a really good reason. There are some good reasons, and particularly when it comes to the size or the time of lobbying. Clearly, as I stated earlier, the idea of simply writing a letter or a letter-writing campaign, I think that's fair enough that they're not really in the ballpark of having what we call in-house consultants or lobbyists. Yes, in-house lobbyists, people who make it their business to make sure government and opposition are informed about the issues of the day because we are all busy people and we need to make sure we have that. So I will come back to this again because I think it's very, very important.

And talking about recommendations, the minister goes on and talks about recommendations on post-employment restrictions for cabinet members and to continue what's already in place in the members' conflict of interest, which only makes sense.

So this reflects a focus on private sector and paid lobbyists' activities. It's where the risk of influence is most acute and there is limited public disclosure. And that may be all true and I understand that, and definitely . . . And we've seen this from the American experience. But clearly we are in a North American area and it's important that we take a look at lessons from America in this.

Where the risk of influence is most acute, and that's fair enough, and you know, you have to talk about the issues around risk. And I would assume that we really do talk a lot about this and conflict of interest. And the unfortunate thing, and I think this is in some of the things some of the experts in this area have pointed out, that really there's no lack of code of ethics related to this.

There was some discussion around that. Why is there not something in place around code of ethics for lobbyists? And I think that's an important area. But I don't think that this really needed just to focus on private sector. I think there should not have been a distinction between private and public, that in fact it's all about who we're talking to, about who we're listening to. And I think that's important. I think that's an important aspect.

So, Mr. Deputy Speaker, as the minister talks about when he's first referenced, talked about free and open access to government decision makers, that's an important matter of public interest and as I would say, that's all sectors, not just one sector. And it's a legitimate activity. And I couldn't agree more, and it is one that has to be conducted

appropriately.

He goes on and talks about thanking the committee for their excellent work. And I sure would agree with that. And I would want to, at the same time, thank our member from Nutana for representing our points of view on that well. So thank you. My thanks to her for making sure that we were brought up to date and our points of view as the NDP opposition caucus were fairly reflected in that.

But I do want to reflect on hers if I could now, on her minority objection. And I think that's important to do because we don't often do this. But we have done, and we have done that. In fact, Mr. Deputy Speaker, you may remember that when I was first elected we had a chance to talk about farm land security. And I was a member of that committee and we actually, even within the government we had a minority report even though it was our side, which was a very unusual situation. We should have been all agreeing on this, but we didn't.

And I think it's only fair in democracy that we have that freedom to say we have concerns about things going forward. And I think there's absolutely nothing wrong with that. I think it's important that committees . . . And this is something we're striving for, I think, and it's something that's been a difficult challenge for us as a legislature to have our committees work more freely as a committee. And again reflecting that maybe that that sphere of influence from America where we could learn a bit from them, where their committees are much more . . . when they have standing committees they truly do stand with a lot of independence.

And I think that's something that our committee structure right now could learn a little bit about, where we could have a little bit more independence. You know, I mean I know the Canadian system really talks about party discipline and that type of thing. But I think that we could do with a little bit more rigour and a little bit more independence.

But I do want to talk about the minority opinion that was registered by my colleague from Saskatoon Nutana. And she talks about, she wants her opinions to address concerns regarding the scope of the proposed legislation, and the Intergovernmental Affairs and Justice Committee's recommendations on the report. The committee's . . . And I quote. I'm quoting:

The committee's discussions have centered around the stated goal of the Assembly's motion: "to ensure that the public is informed and aware of who is lobbying public office holders in Saskatchewan." We recommend that the requirements for registration and reporting be as simple and easy as possible so that lobbyists who are included in the definition of "lobbyist", [are] those who are not exempted for specific reasons, and the threshold of time are not onerous, and people who are encouraged to err on the side of registration and reporting when in doubt.

So we're actually being more cautious, and I think that's a good principle to be on as opposed to being dismissing someone who probably should be included but there may be

some doubt. She goes on to write, and I quote:

On that basis, the committee looked at whether or not charities should be exempted and it was originally discussed that they should not, as the registration and reporting requirements would be minimal, and the stated goal of ensuring the public knows who is lobbying would be impacted if they were excluded. It is for that reason that I continue to recommend that charities NOT be exempted from the definition of lobbyist. Further to that, the threshold which is originally discussed to be 100 hours, including preparation and travel time, is now being reduced to 100 hours including travel time. It is my view that this watering down of the 100 hour content will effectively eliminate most lobbyists from the requirement to register and will emasculate the legislation, particularly in the light of exempting charities from the definition. It is my opinion that the legislation will be ineffective if the committee recommends to exempt charities and water down the 100 hour benchmark by excluding preparation time.

So I think her points are very clear, and I really do want to say and be on the record of supporting the minority opinion. I think it is important, and it is not a problem if, and again and maybe this is a big if, but the question is we do not want to make the registration onerous, an undue hardship so that people are avoiding it just because it's a red tape. We know this government, and it's gone on a real offensive, and we enjoined that too. Reducing red tape is important if it's just about making sure unnecessary steps can be eliminated.

Sometimes you have to have some strong regulations, and I don't call that red tape. I don't call that red tape, but by, you know, the informal definition of red tape, we can always do with getting away with less of that. But I do feel that. And when she talks about "... the registration and reporting requirements would be minimal, and the stated goal of ensuring the public knows who is lobbying would be impacted if they were excluded." And I think that's a problem.

I totally agree with her in terms of we want to make sure people know who's been talking to the government, and that's only fair and reasonable. That's not an unreasonable request. And I would think that it's in everyone's best interests to show that they're doing their work — particularly the voluntary sector, the charitable sector, the administrative government-public sector of SARM, SUMA, universities, the School Boards Association — that they all want to be.

It should be relatively straightforward. You register and then you're keeping track of those hours. I'm sure they're keeping track of those hours anyways for their own efficiency. Now they may have their own sort of lean type of work models that they have to be, but somebody's got to know when they come to Regina for the day and what did they do. And essentially, as many of these organizations know, I mean they have people who are working those jobs to make sure we're up to date in terms of their own goals, their own initiatives, that type of thing, and their problems.

So I think it's a harmful omission and it's one that will be interesting to see if we're back.

Now it will be interesting to see — and I don't know the answer to this question; maybe this will come up in committee — what is it like across the country in terms of this omission? I know there's different reasons for different provinces to have different standards, but I think this is one that we need to really consider.

And we'll probably be back, if this bill passes as it is now, talking about this later. Because I think the public expects it and the public will demand it and will ask why; why are we omitted? Why is there an omission like this? Because really I mean I can't . . . Other than the undue hardship, which is a fair enough reason, if we're making it so onerous that the school boards association says we cannot, we cannot provide that kind of information, you know, SARM and SUMA saying that we just don't have the resources to do the red tape that this government would set up for lobbyists. But I have a funny feeling it's not going to be that hard to do. And so I think that's an important thing.

I want to take a minute if I can. We all read with interest some of the commentary about this. And I think that it was insightful because, you know, when you have a piece of legislation come forward, it's interesting to see what people across Canada think. And we were interested. So what do you think? You know, it's our Saskatchewan, made-in-Saskatchewan model, and so how does it stand out against others?

So there was a blog last year on November 22nd by Guy Giorno, if I'm saying that right — Giorno — talking about the bill. And in many ways he said that there were positive parts to it but there were some really questionable parts to it too. And I think it's important that we take a minute to . . . And I know the people at home would be very interested in that. And of course he was talking about, and he quotes, he says:

. . . if passed, would give the Province one of the most strongly enforced lobbying laws in the country, and lobbying conflict-of-interest rules among the toughest in Canada. [But, and I quote] The law would not, however, affect interest groups, many non-profit organizations and some businesses.

So clearly he sees that there is gaps in this legislation. And this is the problem when you're trying to set something up. And it will be very interesting to see how those gaps will play out because in fact, you know, Saskatchewan is a unique province in the fact that we have so much of our work is done by public groups, different levels of government and CBOs and NGOs and that type of thing.

But he was talking about that, you know, until now — and this is a good reason for us to be moving on this — “. . . the largest Canadian province that lacks a lobbying transparency law . . .” And that was often the subject of criticism. And I think that's what drove the speed at which we got to work on this one month after the election, and now here we are like 30 months later, and we're still counting. And so I think we need to get to work on it.

He talks about “Despite warnings . . .” And I quote, and here are the gaps:

Despite warnings that these provisions would probably exclude most lobbying in Saskatchewan, Bill 120 would exclude lobbying by employees, officers and

directors of:

Interest groups, lobby organizations and other non-profit entities, except those that represent businesses or management, union or professional interests.

Businesses whose employees, officers and directors collectively lobby Saskatchewan public office holders less than 100 hours in a year.

And so some of those might be, I mean we don't know what the Canadian Taxpayers Federation, how much time . . . I mean, would you know because we're excluding preparation. So is a letter . . . And especially a lot of the work that we go into, and we can see the Canadian Taxpayers Federation, some of those that do some, it appears, a lot of preparation on their work that they give us. They don't just drop by over a cup of coffee. And they don't have any . . . They do have paper. They have charts and graphs. They have a lot of arguments. They spend a lot of time on this.

And so if we're not counting the preparation, I think this will be interesting to see who does register. And so it's a bit of a, it'll be an interesting thing when this actually gets going and we see who actually registers. You know, this is a really, really important thing.

So we have a whole roll of different things here it talks about:

Consistent with the approach of most Canadian jurisdictions, the Saskatchewan law would impose the registration filing requirements on:

Each individual consultant lobbyist, in the case of consultant lobbying.

The CEO (senior officer) of . . . [that group] . . .

He goes on, that it does contain two strong conflict of interest provisions:

Former Ministers would be banned for all lobbying for one year.

Former MLAs and former Premier's Office employees, and former deputy ministers, former associate deputy ministers and former assistant deputy ministers in the Office of the Executive Council would be banned from all lobbying for six months.

And I want to talk a bit about that. Because you know, the fact is six months is not a long time in our cycle here. It may mean actually that they only sit out the spring session, or the last month of the spring session, or maybe the fall session. So I actually, you know when I first saw that, I thought well that seems like a reasonable length of time. Then I'm thinking about the time that we're actually here because we're here for 10 weeks in the spring and I think it's six or eight weeks in the fall. Actually when you take in the six-month window, it's not hardly any time at all.

And probably it should have been because the way our schedule is now set, we have our Throne Speech in October and then the rest of the year is supposed to play out from that Throne Speech. The budget follows the Throne Speech; it would have been logical to have that reflect that time period. So you set out one session and not one six-month period because you could actually be lobbying something that came up in the Throne Speech because it wasn't six months later. So this is an important thing.

But he does talk about one really important, significant omission. And this I'll quote here:

One significant omission from Bill 120 is a code of conduct for lobbyists. The federal, Quebec and Newfoundland and Labrador laws itemize specific ethical rules that lobbyists must follow. The Saskatchewan Government has declined to do likewise at this time, but will continue to review the possibility.

And I think that's really important, that we talk about that because we all work from a code of ethics. And people do have an expectation that there will be some sort of code of ethics, and I think this is really, really critical. So I think that you see that it's a start, and the debate will be whether it's a good start or a poor start. I think that it's a start, but the question really becomes will we be back here and what will be the unintended consequences?

And I know that we've seen the media respond to this, and I refer to a column that came out on November 23rd, 2013 by Murray Mandryk. And it's "Sask's lobby law needs to be improved." So he asks, and the quote is, his opening line is:

So the burning question in the wake of the Saskatchewan Party government's new lobbyist registry law is this: Is it better to have a weak, potentially ineffectual law or no law at all?

And so that's sort of how he presents it, that this is potentially ineffective. But the other option is no law at all. And I think that's where we have the question of the day. And I think that's a critical question here.

And so we need to talk about the quote, the blog that I was referring to, and you know, the fact that, and he refers to the fact that there will be large gaps in the legislation, and it would not affect the interest groups and many non-profit organizations and some businesses, particularly those organizations because of the exclusion of the preparation element. Because we know — and as I've said before and, Mr. Speaker, not that I want to repeat myself for you — but I think it's critical that I think they be included. And this is what he says. And I quote that editorial, the column by Mr. Mandryk, and I quote:

This seems a particularly bad oversight in a small province where everyone seems to know everyone else and where municipal lobbying interests like the Saskatchewan Urban Municipalities Association (SUMA) and the Saskatchewan Association of Rural Municipalities (SARM) carry a lot of weight.

While some high-profile lobbyists like the Saskatchewan Federation of Labour (SFL), chambers of commerce and the Canadian Federation of Independent

Business (CFIB) should be captured by the bill's broad definition of a "profit-seeking enterprise", others with "individual" memberships, like the Canadian Taxpayers Federation, might argue the law does not apply to them. That this thinly veiled "non-profit" right-wing organization — one that doesn't disclose its own membership — might be viewed differently under this law is troubling.

So the key ... And he goes on, and I think this is a very important quote. He says, "The key is for the public to be able to see what government is doing, said Giorno, likening the lobbyist Act to a flashlight rather than a hammer." And I quote, "Right now, you (in Saskatchewan) don't even have a two-watt flashlight," he said."

So maybe this goes further, and it can always be fixed in second reading with amendments. Laws too can always be later amended. But he says it's a start. So the debate, is it a great start or can it be amended? I think that unfortunately it will be one of those things.

And I think that, you know, once we see this, and it's a big, big concern is when you have legislation, the cost of the legislation and how effective, and it's particularly when we're looking at, you know, creating a new officer of the legislature, what that cost will be and how effective will that be. How effective will that office be? Will it be more of an ornament to say that we have something up on the wall? Or will it be something that the public of Saskatchewan will say, you know what, we really can go to that office, like the Ombudsman or the Children's Advocate, and they will engage with the public. And they will be straight shooters, and they will say this is what the reality of the lay of the land is. Or will that officer be saying . . .

You know what, already we see big gaps. Already we see the kind of problems that we knew, that we knew, and nobody can say we didn't see this coming. And so this government can't say that they weren't warned about this. We warned about it. We had a minority opinion about this, so clearly the writing was on the wall. Our speeches will reflect this, and I think they have to date. And we will speak at length about this and we will ask questions at length about this. So it's pretty critical. Columnists have written about it. People across Canada have written about it. They have reflected on the good parts of it. There are good parts to it, but there are gaps. There are gaps and there is no reason for those gaps at all.

I think, as I said, I think that public organizations should feel proud to be part of the registry. And the non-profits, as long as it's not undue hardship to register — and that should not be an issue for a government that prides itself on cutting red tape — there should be a minimal amount of work just to make sure that it's accurate, that we should be able to have this done. So it should be a piece that we're all proud of. I can't say that we're all proud of it. We can all say it's a start and whether it's a good start or not is the question of the day.

So with that, Mr. Speaker, I know that there's a lot of work that we want to get to today and a lot of speeches we want to hear. And so with that, I think this Bill No. 120, *An Act respecting Lobbying* I would adjourn. Thank you, Mr. Speaker.

