Bill 7, *The Architects and Engineers Scope of Practice Dispute Settlement Act*

ALEXANDRA DUECK

I. INTRODUCTION

In jurisdictions across Canada, architects and engineers have argued over their respective scopes of practice for many years. In various places, this dispute has long been settled. For example, Ontario, Saskatchewan, and British Columbia have enacted legislation to deal with similar arguments.[1] In Manitoba, the time finally came for the Legislative Assembly to attempt to settle this dispute following the 16 September 2005 decision of the Manitoba Court of Queen's Bench. In *Assn. of Architects (Manitoba) v. Winnipeg (City)*, it was decided that the City of Winnipeg could not issue any building or occupancy permits contrary to *The Architects Act*.[2] In response, the government passed Bill 7,[3] following very heated debate. This Bill amended three provincial Acts: *The Architects Act*,[4] *The Buildings and Mobile Homes Act*,[5] and *The Engineering and Geoscientific Professions Act*.[6] The table on the following page summarizes the bill's key components and its effects.

Bill 7 was meant to get projects going again and to prevent further arguments between architects and engineers. This goal was to be accomplished by clarifying when both professions would be needed on specific jobs and how future disputes would be settled. From the author's point of view, the question

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1 In drafting Bill 7, the government studied legislation in Ontario, Saskatchewan, and B.C. In the end, Bill 7 is most similar to that of Saskatchewan. Interview of Chris Jones by Alexandra Dueck (1 November 2006) [Jones].

2 *Assn. of Architects (Manitoba) v. Winnipeg (City)*, [2005] M.J. No. 317, 46 C.L.R. (3d) 223 [McCawley Decision].

3 *The Architects and Engineers Scope of Practice Dispute Settlement Act*, 4th Sess., 38th Leg., Manitoba, 2005 (assented to 30 November 2005), S.M. 2005, c. 48.

4 R.S.M. 1987, c. A130, C.C.S.M., c. A130.

5 R.S.M. 1987, c. B93, C.C.S.M., c. B93.

6 S.M. 1998, c. 55, C.C.S.M., c. E120.

Table 1: Bill 7's Key Features

Government Objective[7]	Related Legislative Measures[8]	Effects
Clarify the scope of practice for both architects and professional engineers	• Amended definition of "architect"—"planning and review" role instead of "planning and supervision" • Grandfathered engineers who did architectural work • Permitted clients to name either professional as prime consultant • Loosened restrictions on work that can be performed by non-architects via amendments to *The Architects Act* • Increased consultation for changes to the *Code* related to involvement of architects and engineers on specific projects • Increased power for Joint Board, settlement decisions now binding on both professions • Amended the acts of both professions to allow development of joint firms	• Reduced the scope of practice for architects • Minimal impact from grandfathering, given the small number of eligible engineers • Gave more decision-making power to clients, which may save costs, but may also raise safety concerns • Increased reliance on the *Code* for specific details • Forced both groups to work together to make changes to the *Code* in the future • Joint board should be able to resolve disputes in a more timely manner and minimize government involvement, saving costs • Potential for more job opportunities for both groups of professionals at different firms
Create more consistency between *The Architects Act* and the *Manitoba Building Code*	• Created ability to amend the *Code* through the *Buildings and Motor Homes Act* • Authorized the *Code* to determine which projects require both architects and engineers	• Both architects and engineers are unhappy with specific divisions in the *Code*'s table • Removes ambiguity for the majority of projects • Unusual for these changes to be written into the *Code* instead of the acts
Deal promptly with permits put on hold by McCawley Decision	• Reinforced validity of permits issued before McCawley Decision	• Government pushed the legislation through, allowing projects to either begin or resume

7 See the government's goals for Bill 7 in the Second Reading section at 258, below.

8 See Analysis of the Bill at 266, below.

is really the following: which jobs require an architect and when can an engineer do the job alone? The architects have fought to be involved in more projects, while the engineers have argued that architects are not always required. To determine the answer to this question, one must consider what is in the public's best interests. The relevant parties seemed to focus on public safety and the cost to the customer.

This paper will begin with a brief review of the main events that led to Bill 7. Next, it will discuss the passage of the bill through the House, and then it will conclude with an analysis of the impact of Bill 7 on those who would be affected by its passage.

II. ORIGINS OF BILL 7

Both architects and engineers are regulated by their own professional associations. The Manitoba Association of Architects ("MAA") governs the practice of architecture in the province in accordance with *The Architects Act*.[9] The Association of Professional Engineers and Geoscientists of the Province of Manitoba ("APEGM") governs professional engineering and professional geoscience in accordance with *The Engineering and Geoscientific Professions Act*.[10]

In Manitoba, the dispute over the respective scopes of practice of architects and engineers has gone on for many years. Both *The Architects Act*[11] and *The Engineering and Geoscientific Professions Act*[12] have provisions enabling the Engineering, Geosciences and Architecture Inter-Association Relations Joint Board ("the Joint Board") to resolve disputes; however, according to Dave Ennis, an engineer, the Joint Board has failed to solve this problem.[13] Thus, in the mid-1990s, APEGM and the MAA brought in a mediator from Rhode Island to assist the groups in coming to a solution; however, this also failed.[14] As such, both groups turned to the courts and the legislature to define their respective positions.

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9 Manitoba Association of Architects, *About the Association*, online: Manitoba Association of Architects <http://www.mbarchitects.org/web/about.shtml>.

10 Association of Professional Engineers and Geoscientists of the Province of Manitoba, *Mission*, online: Association of Professional Engineers and Geoscientists of the Province of Manitoba, <http://www.apegm.mb.ca/askget/whatis/mission.html>.

11 *The Architects Act*, *supra* note 4 at s. 33.

12 *The Engineering and Geoscientific Professions Act*, *supra* note 6 at s. 68.

13 Interview of Dave Ennis by Alexandra Dueck (16 October 2006) [Ennis 16 October 2006].

14 *Ibid.*

A. In the Courts—*Pestrak v. Denoon*

In *Pestrak v. Denoon*, the MAA brought an action against an engineer and a draftsman for doing what the MAA considered to be architectural work.[15] While both were acquitted at trial, the engineer was convicted on appeal to the Court of Queen's Bench in March 2000. It was argued that in the past, engineers had worked as consultants to architects on complex buildings, but over time, the engineers began to work without architects. The engineers claimed that by certifying compliance with the *Manitoba Building Code*[16] ("the Code"), they assumed responsibility for the overall design.[17] However, Monnin J. noted: "The references in the Code cannot form the basis to enlarge the scope of practice of the professional regulatory statutes."[18] Monnin J. concluded that "architects are mandated to provide *planning and supervision* roles" in building projects, while engineers are "mandated to provide services *in conjunction with* the architects under their review".[19]

This interpretation seemed to side with the architects, since they were deemed to have planning and supervision roles. The engineers then turned to the Court of Appeal, emphasizing the amended definition of the "practice of professional engineering"; however, they lost.[20]

B. Amendments to the Professional Acts

Subsequently, changes were made to both professional acts. In 2002, *The Architects Act* was amended to provide for a significant increase in fine levels for contravening *The Architects Act*[21] and a new option for the MAA "to apply to court for an injunction when the Act is contravened."[22]

Next, in 2004, the engineers sought to have their own act amended because APEGM realized *The Engineering and Geoscientific Professions Act* did not give it authorization to make donations, even though it had already been doing so. According to Ron Schuler, the MLA for Springfield and a member of the opposition, this amendment was "very innocuous, but the genesis of the problems" with Bill 7.[23] He explained that key stakeholders were not initially

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15 *Pestrak v. Denoon*, [2000] M.J. No. 112, 6 W.W.R. 178 at para. 1 (Q.B.) [*Pestrak*].

16 Man. Reg. 127/2006, being part of *The Buildings and Mobile Homes Act*, *supra* note 5.

17 *Pestrak*, *supra* note 15 at para. 42.

18 *Ibid.* at para. 70.

19 *Ibid.* at para. 71 [emphasis added].

20 *Pestrak v. Denoon*, [2000] M.J. No. 398, 10 W.W.R. 387 (C.A.) at para. 10.

21 *The Architects Amendment Act*, S.M. 2002, c. 10, s. 9(1), amending C.C.S.M. c. A130, s. 26(1).

22 *Ibid.* at s. 9(3), amending C.C.S.M. c. A130, s. 26.1.

23 Interview of Ron Schuler by Alexandra Dueck (2 November 2006) [Schuler].

contacted in this case, and when the relevant parties were finally informed, the number of letters and petitions that followed was "unbelievable".[24] Mr. Ennis said that architects objected to the 2004 amendment because they interpreted it as being for the purpose of promoting the engineering profession.[25]

As a result of the architects' objections to the amendment, the Honourable Nancy Allan, Minister of Labour and Immigration, ("the Minister") advised the two professions in July 2004 that Dr. David Witty, Dean of Architecture, would become the chair of the Joint Board, which had been dormant since late 2003.[26] Ms. Allen said the Joint Board was to provide a report with recommendations to resolve the conflict by the end of the year, but it failed to provide a solution both groups could agree with.[27]

C. Back in Court—The McCawley Decision

In May 2004, the MAA began an action against the City of Winnipeg[28] ("the McCawley Decision"). The MAA argued that in issuing certain building and occupancy permits, the City was permitting engineers to practice outside their scope, which infringed upon *The Architects Act*.[29] Citing a number of arguments, McCawley J. found that the engineers were practicing outside their scope and she issued an injunction to ensure compliance by the City.[30] At first glance, this result would appear to be very positive for architects; however, this decision took the dispute to a whole new level.

Mr. Ennis said that many projects under construction that did not involve architects were halted as a result of this decision, which had a significant economic effect. Consequently, engineers and the construction industry

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24 *Ibid.*

25 Ennis 16 October 2006, *supra* note 13.

26 *Ibid.*

27 *Ibid.* Mr. Ennis said the subsequent January 2005 Joint Board report was largely the opinion of the Chair, Dr. Witty. Among other things, the report recommended that all building construction projects must have an architect. While the engineers had agreed to Dr. Witty's appointment as chair, they disagreed with his report.

28 McCawley Decision, *supra* note 2.

29 McCawley Decision, *supra* note 2 at para. 1.

30 *Ibid.* at para. 64. McCawley J agreed with Monnin J.'s decision in *Pestrak*—the *Manitoba Building Code* cannot expand the engineers' scope of practice if in doing so it goes against the governing acts (at para. 43). She also stated that the Legislature did not intend "to expand the definition of the practice of professional engineering" in the amendment to *The Engineering and Geoscientific Professions Act* (at para. 53). Finally, McCawley J. said that the "controversial practice" of engineers working without architects could not override the legislation (at para. 59).

petitioned the government, and in particular the Minister, for the "real world status quo."[31]

III. Passage of Bill 7 Through the Assembly

A. First Reading

Bill 7, *The Architects and Engineers Scope of Practice Dispute Settlement Act*, went through its first reading on 7 November 2005. Ms. Allan introduced the bill, stating its purpose as follows:

> This bill clarifies the scope of practice for architects and professional engineers. It facilitates joint practice between the two professions and harmonizes *The Architects Act* with the *Manitoba Building Code* for the purpose of determining when an architect or a professional engineer, or both, are required on building construction projects.[32]

B. Second Reading

Ms. Allan spoke to the bill again when its Second Reading took place on 9 November 2005. She said the legislation must take care of the public's collective interest by ensuring that buildings are "safe, functional and cost-effective," and that they "reflect the vision that we have for our communities today and into the future."[33]

Ms. Allan acknowledged the history of conflict between the two professions and the government's desire to reach a mutually acceptable solution. A solution was necessary, she said, because both architects and engineers are needed for certain projects, such as large complex buildings, buildings where people are cared for or detained, and buildings where the public gathers.[34]

Architects and engineers were not the only stakeholders consulted as part of the creation of the legislative package. Ms. Allan noted that developers, contractors, interior designers, plan reviewers, and building inspectors were also involved in the process.[35]

Ms. Allan listed several goals the government hoped to achieve with Bill 7:

- Prompt action to deal with the building and occupation permits which were put on hold following the McCawley Decision;[36]

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31 Ennis 16 October 2006, *supra* note 13.

32 Manitoba, Legislative Assembly, *Debates and Proceedings*, Vol. LVII No. 8 (7 November 2005) at 223 (Nancy Allan).

33 Manitoba, Legislative Assembly, *Debates and Proceedings*, Vol. LVII No. 10 (9 November 2005) at 308 (Nancy Allan).

34 *Ibid.*

35 *Ibid.*

36 *Ibid.* at 309.

- To provide clarity and certainty in the legislation;
- To create more consistency between *The Architects Act* and the *Manitoba Building Code*;
- To work toward the goal of harmonization with the *National Building Code*;[37] and
- To ensure that architects would still have a "significant role in the planning, design and review of buildings", while allowing engineers to "practice within the bounds of their profession".[38]

Ms. Allan then discussed the key changes that would result from Bill 7. These changes were geared toward resolving the dispute by defining clear roles for each profession.

With regard to *The Manitoba Building Code*, she said *The Buildings and Mobile Homes Act* would be amended to:

- Authorize the Code to determine which buildings require both an architect and an engineer; and
- Require consultation with both professional groups and the Building Standards Board to make changes to the Code related to the involvement of architects and engineers in specific projects.[39]

The proposed changes to *The Architects Act* included:

- An amendment to the definition of "architects", which would state that they "plan and review building construction", instead of "plan and supervise"; and
- Alterations to mirror *The Engineering and Geoscientific Professions Act* to facilitate the development of joint firms.[40]

Changes to both *The Architects Act* and *The Engineering and Geoscientific Professions Act* would permit:

- Engineers who had previously gained knowledge of some aspects of architectural practice to obtain a recognition certificate enabling them to continue their practice until they retired; and

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37 *Ibid.* The *National Building Code of Canada 2005* is a federal code issued by the National Research Council of Canada. It is adopted in s. 1 of the *Manitoba Building Code*, *supra* note 16. See The Canadian Commission on Building and Fire Codes—National Research Council of Canada, *National Building Code of Canada 2005*, 12th ed. (Ottawa: National Research Council of Canada, 2005). The Minister explained that Saskatchewan and Ontario both use their provincial building codes to identify which projects need both an architect and an engineer.

38 *Ibid.*

39 *Ibid.*

40 *Ibid.* at 310.

- Clients to choose to name either an architect or an engineer as the prime consultant in a project.[41]

Additionally, Ms. Allan said the Joint Board's power would be enhanced, making its decisions binding on both associations. However, the Joint Board would be required to make its decisions in a timely manner. Finally, Ms. Allan said that Bill 7 would ensure the validity of the building and occupancy permits issued before the McCawley Decision.[42]

C. Debate at the Second Reading

The Debate on Bill 7 went on for three days, starting on 14 November 2005. Opposition criticized the government for its failure to act sooner to resolve the conflict between the two professional groups and emphasized the need for a rapid solution. However, Mr. Glen Cummings, the MLA for Ste. Rose, was concerned about what he described as insufficient consultation. He asked Ms. Allan to provide details about the scope of the government's consultation with key stakeholders.[43]

Some members also expressed concern about the legislation's effect on Manitoba's economy.[44] Mr. Cummings noted the concern that people would lose money and leave the province as a result of this dispute. He said that projects had been slowed down and project costs might increase due to the weather-sensitive nature of some projects. These increased costs would then be passed on to consumers.[45] Mr. Maguire, the MLA for Arthur-Virden, said that this problem also impacts companies contemplating coming to Manitoba and people trying to build in Manitoba.[46] Mr. Schuler reiterated concerns that had been raised relative to the conflict leading up to Bill 7's introduction. He acknowledged it likely did not please any of the stakeholders and that perhaps the only thing it succeeded at was getting construction back on track.[47]

However, the province's Deputy Fire Commissioner, Chris Jones, said that contrary to the statements of some, the City actually only stopped processing building permits for about a month, and rural Manitoba did not stop processing

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41 *Ibid.*

42 *Ibid.*

43 Manitoba, Legislative Assembly, *Debates and Proceedings*, Vol. LVII No. 11 (14 November 2005) at 341 (Glen Cummings).

44 *Ibid.*

45 *Ibid.*

46 *Ibid.* at 342 (Larry Maguire).

47 Manitoba, Legislative Assembly, *Debates and Proceedings*, Vol. LVII No. 13 (16 November 2005) at 408 (Ron Schuler).

them at all. In fact, he explained that this interruption probably helped accelerate the resolution, since people were upset about the situation.[48]

In the end, Mr. Schuler believed that due diligence was done, as the government had consulted all the relevant parties in the span of a week.[49]

Mr. Bidhu Jha, the MLA for Radisson, responded for the government. He emphasized the need to protect the public interest by preventing construction delays and cost increases resulting from the McCawley Decision.[50] He acknowledged that about 12 engineers were planning buildings at the time and they would be grandfathered under the act so they could continue their practice. Mr. Jha then expressed his confidence that the bill would be very good after hearing all the presenters, and he thanked the Opposition for supporting the bill.[51]

D. Committee Meetings

There were over 200 people signed up to speak to Bill 7,[52] so the bill spent three days at the committee stage, starting on 21 November 2005. There were presentations by many different groups and some were very intense, reflecting the passion that many of the presenters had for their respective professions.

1. General positions

Don Oliver, a past president of the MAA, said the architects took the position that the bill should not be rushed. He said he believed there were good intentions in the legislation, but there were parts that needed to be reworked. He stated that there actually was no crisis resulting from the McCawley Decision, because the City had already been dealing with the backlog for two months.[53] On the other hand, Mr. Ennis, on behalf of the engineers, questioned whether the bill could truly be considered rushed, given the extensive history of the dispute between the architects and engineers.[54] He explained that most engineers supported Bill 7 because they believed it would provide the clarity to allow them to continue work as before. Mr. Ennis noted that both APEGM and the City supported the bill.[55] While he acknowledged that some engineers were

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48 Jones, *supra* note 1.

49 *Supra* note 47 at 409 (Ron Schuler).

50 *Ibid.* (Bidhu Jha).

51 *Ibid.* at 410.

52 Manitoba, Legislative Assembly, *Standing Committee on Social and Economic Development*, Vol. LVII No. 1 (21 November 2005) at 2 (Marilyn Brick).

53 *Ibid.* at 21 (Don Oliver).

54 Manitoba, Legislative Assembly, *Standing Committee on Social and Economic Development*, Vol. LVII No. 5 (23 November 2005) at 232 (Dave Ennis).

55 *Ibid.*

unhappy that a branch of engineering was being called architecture, he said that he agreed with it to ease the passing of the bill.[56]

2. *Outside the Acts*

The architects expressed several key concerns with Bill 7. Robert Eastwood, an architect, said his profession did not like the proposal of governing the scope of work through a public board outside the professional associations and their acts. The architects either wanted the regulation changes to be written into the bill or into the professional acts for continuity and stability.[57] The architects said the bill would undermine the legislative process by putting the Code ahead of *The Architects Act*.[58] Francis Pineda pointed out that "[t]here is no other jurisdiction in Canada [where] the Building Code dictates any professional regulation."[59] However, Mr. Ennis stated for the engineers:

> If the public of Manitoba, operating through the Cabinet, which is the only body with the authority to amend the *Manitoba Building Code*, sees fit to rule on the boundaries, then for me that is okay.[60]

The engineers did raise the concern, however, that the court's broad interpretation of *The Architects Act* would leave engineers from Manitoba Hydro open to litigation, because they were planning supervision for others for Manitoba Hydro buildings.[61]

3. *Professional qualifications*

Next, several architects emphasized their extensive professional training, which they said qualified them to do work that should not be done by others.[62] Although Kevin Sim, an engineer, said: "Who we are and what we are qualified to do should not be based solely on our respective educations but also on our experience and our relative competencies."[63]

Additionally, architect Rudy Friesen worried that public safety would be put at risk because this legislation would weaken the protection offered by *The Architects Act*.[64] Jim Wagner, another architect, spoke to the proposed change in the definition of "architect." He said:

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56 *Ibid.*

57 *Supra* note 52 at 23 (Robert Eastwood).

58 Manitoba, Legislative Assembly, *Standing Committee on Social and Economic Development*, Vol. LVII No. 4 (22 November 2005) at 186 (Rudy Friesen).

59 *Ibid.* at 157 (Francis Pineda).

60 *Supra* note 54 at 232 (Dave Ennis).

61 *Supra* note 58 at 145 (Glenn Penner).

62 *Ibid.* at 157 (Francis Pineda) and at 150 (Philip Reynolds).

63 *Ibid.* at 163 (Kevin Sim).

64 *Ibid.* at 186 (Rudy Friesen).

> The proposed change from "supervision" to "review" implies that supervision is not, in fact, required, that delegation of the restricted scope of practice is indeed authorized and that an architect need merely "review" drawings prepared unsupervised by others in order to apply his or her seal. This is definitely not in the public interest.[65]

He further explained that the current wording provides clarity and that *The Engineering and Geoscientific Professions Act* never uses the term "review".[66] However, the engineers countered that there was no safety concern. Ray Hoemsen, an engineer, explained the engineers' code of ethics states that they must not get involved in a project if they do not feel comfortable working in an area.[67]

Another architect, Mr. Eastwood, was concerned that the decision to include professionals in alterations would depend on who is involved in the projects, without reference to the professional acts.[68] However, Mr. Ennis said that the Joint Board could deal with issues that arise as a result of the Building Standards Board.[69] He also assured the legislature that engineers would not use the 600m^2 restriction in multiples to work on larger buildings without an architect.[70]

4. Grandfathering provisions

Mr. Eastwood expressed some of the architects' additional concerns, including the fact that the grandfathered professionals would be working outside the direct authority of the professional associations who grant the professional licenses.[71] On the other hand, Mr. Ennis said that the engineers' code of ethics, which falls under *The Engineering and Geoscientific Professions Act*, would still govern the engineers covered by the grandparenting clause.[72] In fact, Evan Hancox, an engineer, expressed concern about the grandfathering clause, saying:

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65 *Ibid.* at 147–48 (Jim Wagner).

66 *Ibid.* at 148.

67 *Ibid.* at 149 (Ray Hoemsen).

68 *Supra* note 52 at 24 (Robert Eastwood).

69 *Supra* note 54 at 232 (Dave Ennis).

70 Jones, *supra* note 1. Mr. Jones, Manitoba's Deputy Fire Commissioner, explained that initially, *The Architects Act* required architectural involvement for any building over 400m^2, while the Code required architectural involvement for any building over 600m^2. While the court agreed with the architects, Bill 7 amended the Acts to be consistent with the Code, so that an architect is now required for buildings over 600m^2.

71 *Supra* note 52 at 23 (Robert Eastwood).

72 *Supra* note 54 at 232 (Dave Ennis).

> It is not necessary since the intent deals with the overlap that already lies within the scope of engineering. I also think it sets a dangerous precedent that suggests that engineers require permission from the MAA to practice engineering.[73]

5. *Allegations of bias*

For the architects, Mr. Friesen noted that his profession felt that the board was "heavily biased against architects," given the recent advertising by the engineers, which would lead to the unfair treatment of architects. He also expressed the concern that young architects would not want to stay in Manitoba as a result of this Bill.[74] However, Mr. Ennis said that such moves would be due to higher salaries in Alberta and not the legislation.[75] Richard Marshall, another engineer, emphasized that the profession of architecture would not die if the bill was passed, because engineers would continue to use architectural services for their clients as needed for their specific projects.[76]

6. *Feedback from other stakeholders*

In addition to architects and engineers, some other groups made presentations. A general contractor and a member of a design build construction firm both stated they generally did not need architects in their projects. The general contractor supported the bill because it would not force her to hire an architect, while the design builder said he would hire architects as required by specific projects. As such, he asked the government to come up with legislation that would satisfy the various groups.[77]

Bruce Wardrope, an interior designer, also supported the bill. He said that his clients were never exposed to dangerous situations, but as a result of the McCawley Decision, he would have to involve architects in his projects. Thus, he said that he would not get involved in any projects related to this issue until it was solved.[78]

Thus, during the committee stage, many points of view were presented by people representing a variety of groups. It was then up to the legislature to sort through all of these presentations, with an eye on the different opinions advocated by the architects and engineers.

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73 *Supra* note 58 at 160 (Evan Hancox).

74 *Ibid.* at 186 (Rudy Friesen).

75 *Supra* note 54 at 233 (Dave Ennis).

76 *Supra* note 58 at 158 (Richard Marshall).

77 *Ibid.* at 145 (Ellen Kotula) and at 156 (Norbert Hansch).

78 *Supra* note 58 at 173 (Bruce Wardrope).

E. Report Stage Amendments

On 29 November 2005, Dr. Jon Gerrard, the MLA for River Heights, proposed three amendments, all of which were dismissed.

First, he suggested the removal of wording that may have allowed designs from other jurisdictions to be downloaded from the Internet without approval from a Manitoba architect.[79] Ms. Allan replied that the legislation was clear enough: "The clause says that professional engineers can practice their profession where an architect plans or has planned the building."[80]

Dr. Gerrard then advanced a second amendment with regard to proposed subsection 25(1) of *The Architects Act*.[81] This subsection was meant to put the scope of practice back in *The Architects Act*, but Dr. Gerrard was concerned that it could allow the construction of a huge complex under this legislation without an architect, simply by putting up fire walls or links between smaller buildings. Dr. Gerrard also wanted clarification on the details of altering buildings.[82]

Additionally, he proposed a mechanism for some flexibility: with a unanimous vote, the Joint Board could make regulations for the Code so that the government would not have to get involved. Dr. Gerrard concluded: "The fact is that whether more architects or less are required on projects than prior to September 16, 2005, will depend in part on the interpretation and how this act actually works."[83]

In response, Ms. Allan stated that the government realized the need for flexibility to determine which work could be done by non-architects. But, she said, the *Manitoba Building Code*—a regulation under *The Buildings and Mobile Homes Act*—would provide the needed flexibility.[84]

Dr. Gerrard's proposed third amendment would have made building code regulations subject to subsection 25(1) of *The Architects Act*, but it was no longer necessary, given the rejection of the second amendment.[85]

F. Third Reading and Royal Assent

Bill 7 went to its third reading on the same day as the Report Stage Amendments. Dr. Gerrard asked the Minister to monitor the concerns he had

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79 Manitoba, Legislative Assembly, *Debates and Proceedings*, Vol. LVII No. 21B (29 November 2005) at 776 (Jon Gerrard).

80 *Ibid.* at 777 (Nancy Allan).

81 *Ibid.* at 778 (Jon Gerrard).

82 *Ibid.* at 778–80.

83 *Ibid.* at 780.

84 *Ibid.* at 781 (Nancy Allan).

85 *Ibid.* at 782–83 (Jon Gerrard).

previously raised.[86] On 30 November 2005, Mr. Schuler said that he was impressed by the number of young people that came forward to passionately share their views on the bill. He stated that the opposition did have some concerns about the bill, which he had raised with the Minister. Mr. Schuler said that the opposition felt the bill went too far. He raised one point in particular:

> I would ask the minister if, one more time, she would take the opportunity and maybe flag a caution that an arena of 1 000-seat capacity, though it could have a person capacity much greater than just seats, and that maybe the minister could just put a caution that the intent never was to build a huge building with only 1 000 seats in it.[87]

Mr. Schuler acknowledged that construction must be pushed ahead in rural areas that do not have access to professionals, but he stated that this must be balanced with safety interests.[88]

Despite the concerns raised, Mr. Schuler encouraged the Minister to move the bill on to royal assent and proclamation in the same day.[89] Bill 7 was passed unanimously and it was given royal assent later that day.[90]

IV. Analysis of the Bill

Overall, Bill 7 added some sections and made some changes to all three acts in an attempt to eliminate the discrepancies between them and to resolve the dispute between the two professions. As will be discussed, it appears as though the bill did get projects moving again, but both professional groups have particular concerns about the impact of Bill 7.

A. Amendments to *The Architects Act*

The first part of the bill focuses on amendments to *The Architects Act*, which, according to the Explanatory Note, were intended to clarify when an engineer could do what was considered architectural work. This is an accurate reflection of a few sections in particular. Previously, *The Architects Act* specified who was permitted to use the designation "architect" in s. 15(1). Section 3 of Bill 7 added s. 15(1.1) to *The Architects Act* to ensure that engineers could still legally practice within their profession. As discussed previously, Dr. Gerrard proposed an amendment to this section in the report stage.[91] It appears that Dr. Gerrard raised a valid concern, which was summarily dismissed—what is an acceptable

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86 *Ibid.* at 791.

87 Manitoba, Legislative Assembly, *Debates and Proceedings*, Vol. LVII No. 22 (30 November 2005) at 807 (Ron Schuler).

88 *Ibid.*

89 *Ibid.* at 808.

90 *Ibid.* at 818.

91 See Report Stage Amendments at 265, above.

design in one jurisdiction may not be safe in Manitoba, given geographical differences.[92] Perhaps the phrase could not be struck out; however, it might have been altered to avoid the possibility of downloading designs from the Internet without a Manitoban architect's approval.

In addition, s. 15 of Bill 7 provides for the grandfathering of a specific group of engineers by adding s. 34 to *The Architects Act*. Section 22 of the bill adds identical provisions to *The Engineering and Geoscientific Professions Act* under s. 68.1. As a result, those who were doing "competent architectural work" prior to the McCawley Decision may continue to do this work until they retire. The section also provides operational details for this clause. Section 15(1.2) was added to *The Architects Act* to ensure that the engineers who fell under the grandfathering clause could practice accordingly. The grandfathering clauses seem reasonable, since they only apply to a small number of engineers who have already been doing the relevant work in the past.[93] While there was concern expressed about these grandfathered engineers working outside their professional act,[94] the fact that the engineers would still be covered by their professional code of ethics should provide sufficient public protection, especially since they have already been doing this work.

Additionally, s. 10 of Bill 7 changed the definition "work that may be done by non-members" under ss. 25(1) and (2) of *The Architects Act*. Previously, the section was much more specific about the work that could be done by non-members; however, the amendment removes these specifications, referring the reader to *The Buildings and Mobile Homes Act* and the "applicable building construction code." As discussed previously, the architects were opposed to this amendment.[95] In reality, it should not be a problem to have the details contained in the Code, as long as the Code is clear and changes to it can be made in a way that is fair to both sides.

Section 2 of the bill adds the definition of the "practice of professional engineering," to *The Architects Act*. This section refers the reader to the definition provided in *The Engineering and Geoscientific Professions Act*. More importantly, this section of the bill also provides for an amended definition of the term "architect" in s. 1(1) of *The Architects Act*. While the previous definition stated that architects would plan and "supervise" projects, the Act now states that architects are to plan and "review" projects. This section in particular may reduce the scope of practice of architects, as it seems to suggest that an architect does not necessarily have the final say on the "erection,

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92 See Third Reading and Royal Assent section at 265, above.

93 See Debate at the Second Reading section at 260, above.

94 See Committee Meetings section at 261, above.

95 *Ibid.*

enlargement, or alteration of buildings by persons other than himself." As discussed, the architects were particularly opposed to this change.[96]

While all stakeholders were given the opportunity to speak to the amendments and they were told their input was valued, it does not seem as though their criticism was taken seriously, especially since there were no changes made to the bill following the committee stage. The architects' concerns are understandable, since there appears to be a cost-saving incentive for consumers to take advantage of the situations where architects are no longer required. The long-standing dispute between the two professions suggests that this cost-saving measure may be appropriate at times, since it has been exercised in the past. One would hope that engineers will abide by their code of ethics and hire architects as needed, acknowledging their own strengths and weaknesses. Unfortunately, in reality, occasionally this co-operation may not occur, for whatever reason. As such, it is necessary to be clear when architects must be involved in particular types of projects. In certain circumstances, such as arenas and downloaded designs, the government should have insisted upon architectural involvement for safety concerns.

The Explanatory Note says the amendment was meant to "facilitate the joint practice" of the professions. For example, Bill 7 enables either an architect or an engineer to be the prime consultant on a project.[97] Additionally, s. 3(3) of the bill amended s. 15(2) of *The Architects Act* to enable architects to work for non-architectural firms. These changes do not appear to be controversial, since they affect both professions and hopefully will help them work together. Mr. Ennis said that architects have more employment opportunities as a result of the bill, since engineering firms can now hire architects and provide architectural services. He also noted that engineering firms traditionally pay more than architectural firms.[98] Thus, this can be seen as a positive development for both sides in the dispute.

Finally, with regard to the dispute resolution power of the Joint Board, both of the Acts used to simply indicate that the board was to "consider such dispute or matter and, if possible, make a joint recommendation." Section 14 of Bill 7 altered s. 33(4)(c) of *The Architects Act* to say that the Joint Board must consider any disputes in a "timely manner," and added s. 33(5), which makes the decisions of the Joint Board binding on both associations. Section 21 of the bill made identical changes to s. 68 of *The Engineering and Geoscientific Professions Act*. Some stakeholders seem to be concerned that this level of

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96 *Ibid.*

97 Section 13 of the bill added s. 32.1 to *The Architects Act*, and s. 20 of the bill added s. 66.1 to *The Engineering and Geoscientific Professions Act*. The wording in both Acts is virtually identical.

98 Ennis 16 October 2006, *supra* note 13.

power has been given to the Joint Board. However, it will be beneficial, particularly to consumers, to have a Joint Board that can make quick and binding decisions. The resolution of deadlocks could be a problem if the Board consists of an equal number of architects and engineers, since it will be common to have a tie on such issues. Thus, a person who is independent of both professions should be appointed to settle these issues.

Section 15 of Bill 7 requires the Joint Board to establish criteria to determine whether an engineer can get a recognition certificate for doing architectural work. The board has an equal number of architects and engineers. Unlike the terms of reference agreed to under the 1998 legislation, in a tie vote, the chair decides.[99]

B. Amendments to other Acts and Coming into Force

Part 2 of the bill relates to *The Buildings and Mobile Homes Act.* This part is quite short and it does not seem to raise any controversial points. As described in the Explanatory Note, s. 17 gives the government the ability to amend the *Manitoba Building Code* via *The Buildings and Mobile Homes Act.* It also states that regulations may be retroactive.

Part 3 of the bill discusses amendments to *The Engineering and Geoscientific Professions Act.* As stated in the Explanatory Note, these amendments simply bring *The Engineering and Geoscientific Professions Act* into accordance with the newly amended *Architects Act,* thus the key points have already been discussed.

Part 4 discusses the validation of the bill and the coming into force dates. Section 23 reinforced the fact that regulations made under clause 15(c) of *The Buildings and Mobile Homes Act* would be retroactive. Section 24 stated that the Act came into force on the day it received royal assent, but that ss. 4 to 9 would "come into force on a day to be fixed by proclamation." Section 24(3) stated that ss. 15(1.1) and 25(1) of *The Architects Act* would also be retroactive. As such, engineers who were doing such work previously would be covered by this Act.

Overall, the wording of Bill 7 is fairly straightforward. As a result, the question will be whether putting the law into practice will actually lead to fewer disputes between the two professions. The following sections consider the views of stakeholders following the passage of Bill 7, suggesting that there is still a lack of agreement between Manitoba's architects and engineers.

C. The Opinion of the Architects

Since there were no amendments following the Committee stage, all of the sections that were of concern to the architects remain present in Bill 7.

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[99] *Ibid.* Mr. Ennis believes that the chair, Bill Gardner, a lawyer, sided with the architects.

As discussed, at the Committee stage, the architects made it clear that they did not want to leave it up to the *Manitoba Building Code* to determine who would be required in which projects; however, Table 2.2.2.3 ("the Table") of the Code now sets out the specifics.[100] For example, Group A, Division 3 of the Table seems to be a particular loss for the architects, as it now indicates that an architect "or" an engineer is required for an arena with fixed seating capacity of 1 000 people or less.[101] Thus, an engineer may work alone on such a project. As discussed above, both the architects and the opposition were against this decision due to concerns for public safety. However, Mr. Ennis explained that this was a political decision, because construction would be cheaper for northern communities if they did not need to use architects.[102]

An article in *Canadian Architect* analyzed the overall impact of the bill. The author of the article, Terri Fuglem, stated that Bill 7 would "seriously curtail the role of the architect in the province."[103] She said that the MAA negotiated with APEGM and the government up until the bill was introduced, and it seemed as though the parties were all in agreement. However, when Bill 7 was introduced to the House, major changes had been made unbeknownst to the MAA. She noted that the MAA was very "low key" prior to the legislative process, while APEGM "aggressively lobbied the government, opposition members and building industry groups." She also stated that the MAA did not get students involved until later in the process, when they presented at the Committee. The government did take note of the students' concerns, however, when they were eventually raised. Overall, Ms. Fuglem's view was that "Bill 7 creates dangerous ambiguities, seriously erodes the architect's purview, and allocates no new jurisdictions to architects in return."[104]

D. The Opinion of the Engineers

On the other hand, Mr. Ennis said that the engineers pursued the legislation because of the impact of the McCawley Decision on engineers, designers, and the construction industry.[105]

Mr. Ennis explained that ss. 4 to 9 of the Act did not come into effect immediately because those provisions required the MAA to issue a corporate license to entities not controlled by architects. The government delayed

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100 *Manitoba Building Code*, *supra* note 16 at s. 3(2).

101 *Ibid.*

102 Ennis 16 October 2006, *supra* note 13.

103 Terri Fuglem, "Beware Bill 7" *Canadian Architect* (December 2005), online: Canadian Architect <http://www.canadianarchitect.com/issues/ISarticle.asp?id=170963&story_id=120732101848&issue=12012005&PC=>.

104 *Ibid.*

105 Ennis 16 October 2006, *supra* note 13.

implementation to give the MAA time to change its bylaws and procedures accordingly.[106]

With regard to the specifics of the Table, Mr. Ennis noted that he thought that Group F was supposed to say that an architect "or" an engineer was required. The reasoning, Mr. Ennis explained, is that this group consists of industrial buildings where the owner has very basic expectations for the project. Mr. Ennis said the Table's wording was changed to an architect "and" an engineer because engineers employed by The City of Winnipeg to issue building permits either did not support, or were otherwise instructed not to support the "engineer or" option. Mr. Ennis said that the changes to the table do not return working conditions as close to pre-injunction conditions as the engineers had hoped it would. In the end, Mr. Ennis stated that "the engineers won the battle, but the architects won the war."[107]

V. Conclusion

The Legislature certainly gave everyone a chance to speak to Bill 7. However, it is somewhat surprising that no amendments were made following all of the presentations at committee. It seems that the government wanted to pass this bill after the years of fighting between the associations and the negative publicity about the impact of the McCawley Decision on the construction industry. While the opposition reminded the government not to rush through the bill, it too wanted to resolve the dispute quickly to allow the professionals to go on with their work. As a result, although Bill 7 went through a very inclusive consultation process, it appears as though insufficient weight was given to submissions from the architects and engineers at the Committee stage, given the government's refusal to amend the bill.

The controversy over the involvement of architects in small arena projects was a clear situation where the government had to try to strike the right balance between costs and public safety. It is unclear whether the safety concern should have outweighed the consideration of cost savings. Perhaps engineers are fully capable of undertaking such jobs without architects. Additionally, one would assume that engineers would obtain assistance from architects if they were unfamiliar with the project's specifics, particularly since the engineers' code of ethics would call for such action. However, if in reality engineers usually do need architects for such projects, this legislation should read "architects *and* engineers." Surely a client would rather wait to raise the funds to build a more expensive but safe arena than to construct something that could cost even more

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106 *Ibid.*

107 *Ibid.*

money for repairs in the future, or worse yet, cause injuries to innocent victims. However, the law has been written and time will tell whether it was well done.

For now, Bill 7 seems to have enabled both professions to get on with their work following the McCawley Decision. Unfortunately, both sides seem unhappy with the legislation, so it is questionable whether the "tactics" of one group were superior to those of the other. The architects seem rather dissatisfied that their scope of practice is not defined in *The Architects Act*, while the engineers disapprove of some of the details of the legislation, such as the requirement for an architect's involvement in an industrial building project. One would suspect that the MAA will be closely monitoring the situation for young architects in Manitoba, as well as the size of projects that engineers undertake without consulting architects. Whether the associations will try to change the legislation again in the future will most likely depend on the actual effect of this bill over time.