David M. Sanders, M.A., LL.B.
907-885 Wilkes Avenue
Winnipeg MB R3P 1J3

May 7, 2014

Chair and Members
Executive Policy Committee
The City of Winnipeg
510 Main Street
Winnipeg MB

Re: Executive Policy Committee – 10:30 a.m. Wednesday, May 7, 2014

Report #4 Bill C-23 Fair Elections Act – Public Consultation

Report #5 Costs and Benefits of Railroad Rationalization

I am appearing this morning as a private citizen, to speak in support of the two proposed resolutions dealing with Bill C-23 and Railroad Rationalization.

Report #4 Bill C-23 Fair Elections Act – Public Consultation

I wish to register my strong support for the Council resolution proposed by Councillors Smith and Eadie:

> "That the City of Winnipeg write a letter to local MP's, the Minister of Democratic Reform and the Prime Minister stating opposition to Bill C-23, the so-called Fair Elections Act, based on the provisions which are likely to reduce voter turnout and confidence in the integrity of the democratic process; and
>
> That the City of Winnipeg call upon the federal government to conduct country-wide public hearings to allow Canadians and experts to make submissions on measures to improve electoral accountability and transparency, and increase voter turnout."

I support that resolution, notwithstanding the recent amendments proposed by the Minister at Committee and presented to the House of Commons on Monday of this week.

Just in case some Councillors think this kind of resolution may be out of order at City Council, I submit that it is well within the jurisdiction of Council to make representations to the Canadian Government, as it has recently done with respect to:

a) Federal policy regarding the recent events in Ukraine;
b) Federal regulation of rail safety and the transport of dangerous goods; and
c) Federal suspension of the proposed changes in Canada Post delivery services, pending the results of the requested sustained and substantive public consultation process.

I agree with the Editorial Board of The Winnipeg Free Press, which said:

> "The government needs to do what it should have done at the beginning of the process, namely consult with Canadians about how elections will be managed." (Winnipeg Free Press Editorial, April 29, 2014)

As Bill C-23 now stands, with this week's government amendments, here are my continuing problems with it.

1. Complexity and Sheer Size of the Legislation

   Bill C-23 is a huge piece of legislation, making significant amendments to The Canada Elections Act, the Electoral Boundaries Readjustment Act, the Telecommunications Act, the Conflict of Interest Act, the Director of Public Prosecutions Act, the Access to Information Act, the Financial Administration Act, the Income Tax Act, and the Procedure for Recounts. I rather doubt many people have read the whole bill yet, or the 14 pages of amendments to the amendments published this week. The Library of Parliament Legislative Summary of the original Bill C-23, just the Summary, is 67 pages long. But it is by far the best reference work on this "omnibus" bill which I have seen so far.

   After the Canadian Constitution, I don't think there is any more important law than the Canada Elections Act, whereby we Canadians agree to choose who will exercise the enormous powers of the Government of Canada.

   Before the Parliament of Canada makes substantive changes in the democratic electoral process, there must be far greater consultation of the Canadian public, and a genuine effort to seek out a national consensus of opinion supporting the changes to be made.

   Debate on such a bill should never be limited by the use of closure in the House of Commons.

2. Voter Identification

This whole issue is based on the presumption that there has been widespread voter fraud, when the evidence is that there has been little or no such fraudulent voting in Canada. There are reports of many irregularities in the proper documentation of voter vouching, which suggests that the Chief Electoral Officer needs a budget for more and better training of poll clerks and officials. But I understand there have been no convictions or even charges of voter fraud.

The original bill would have done away with the ability of qualified voters to vouch for the identity of voters who came to vote without documents proving their names and addresses. The bill has now been amended to allow a voter with printed name identification to prove his or her residence by taking an oath in writing, attested to on oath by another qualified voter.

This purports to answer the problem of seniors, students, the homeless, First Nations citizens on reserve, and others who may not have documents with up-to-date individual addresses. Or don't have addresses at all.

As reproduced by the CBC, here is the Government's list of 39 forms of identification, many of which do not contain addresses, and all of which may be stolen, forged, or obtained fraudulently.

Approved ID for federal votes

- Driver's licence
- Ontario health card
- Provincial/territorial ID card in some provinces/territories
- Canadian passport
- Certificate of Canadian citizenship (citizenship card)
- Birth certificate
- Certificate of Indian status (status card)
- Social insurance number card
- Old age security card
- Student ID card
- Liquor ID card
- Hospital/medical clinic card
- Credit/debit card
- Employee card
- Public transportation card
- Library card
- Canadian Forces ID card
- Veterans Affairs Canada health card
- Canadian Blood Services/Héma-Québec card
- CNIB ID card
- Firearm possession and acquisition licence or possession only licence
- Fishing, trapping or hunting licence

- Outdoors or wildlife card/licence
- Hospital bracelet worn by residents of long-term care facilities
- Parolee ID card
- Utility bill (telephone, TV, PUC, hydro, gas or water)
- Bank/credit card statement
- Vehicle ownership/insurance
- Correspondence issued by a school, college or university
- Statement of government benefits (employment insurance, old age security, social assistance, disability support or child tax benefit)
- Attestation of residence issued by the responsible authority of a First Nations band or reserve
- Government cheque or cheque stub
- Pension plan statement of benefits, contributions or participation
- Residential lease/mortgage statement
- Income/property tax assessment notice
- Insurance policy
- Letter from a public curator, public guardian or public trustee
- One of the following, issued by the responsible authority of a shelter, soup kitchen, student/senior residence, or long-term care facility: attestation of residence, letter of stay, admission form or statement of benefits

All that is well and good, and if you ignore the many ways that such identification may be produced fraudulently, then it sounds eminently reasonable to require voters to be able to produce some documentary evidence of their existence.

However, it seems to me that the absolute best form of voter identification is the sworn testimony of a person who knows the voter. In Canadian courts, that is how we prove identity, not by proffering computer-generated utility bills.

In my opinion, insisting that voters go back home and find whatever identification they may have is just one more way of discouraging voters who are already disinclined to make the trip to the poll in the first place.

I also think that the refusal to accept the Voter Identification Card/Notice of Confirmation of Registration, will lead to even more discouraged voters. Canadians will go to the trouble of authorizing the Canada Revenue Agency to give their names, addresses and nationality to Elections Canada for listing on the National Register of Electors, or they will apply to the Returning Officer to be placed on the Voters List before election day, only to find that they still have to prove themselves once again at the poll anyway.

Frankly, I think a Canadian voter should be able to vouch for himself or herself, with a written oath administered by a nonpartisan election official at the poll, and in full view of the scrutineers appointed by candidates to observe the procedures.

3. Powers of the Chief Electoral Officer and the Commissioner of Elections

In a weak moment, my old friend Geoff Norquay admitted on national television that the reason for the Conservative Government's unprecedented attack on the independent Chief Electoral Officer is to seek revenge for the "in-and-out" election-financing court case.

The amended bill still restricts the ability of the Chief Electoral Officer to promote voting by all Canadians, to hire staff and expert advisors independently, to obtain any documentary evidence of election expenses, and to investigate election law violations effectively.

Future investigations by the Commissioner of Elections are to be placed under the supervision of the Director of Public Prosecutions, raising questions of inappropriate influence and control, and the Commissioner will still be hobbled by his lack of power to compel testimony and the production of documents. It was a travesty of justice for the Commissioner to have to report to Canadians recently, that he cannot find evidence of voter suppression in the last election because he has only very limited powers of investigation.

The continued refusal to give the Commissioner the power to conduct serious and timely investigations of alleged electoral violations is indefensible. Other federal agencies have and use such powers, including even the Canadian Radio-television and Telecommunications Commission (CRTC), which is to enforce the new rules regarding voter contact calling services (robocalls) in the Canada Elections Act.

The Winnipeg City Auditor has such powers to obtain evidence. So do other elections officers.

4. Advance rulings and interpretation bulletins

Bill C-23 introduces procedures for the Chief Electoral Officer to issue guidelines, interpretation notes, and opinions on matters related to the Act. This week's amendments reduce the timelines somewhat from the original. However, while the procedures requiring consultation and responses from political parties and candidates seem very reasonable, I am afraid that a consequence (hopefully unintended) will be the inability of the Chief Electoral Officer to issue such guidance quickly in the midst of an election campaign, when it may be needed the most.

5. Judicial Recounts

Bill C-23 establishes a new set of rules for judicial recounts of ballots.

During the last election, I served as a candidate's voluntary legal counsel during a two-day judicial recount.

There were lots of legal advisors present, a total of three in the case of the candidate I represented, and we were all very busy assisting the recount teams recounting thousands of ballots simultaneously, and we then advised the judge with regard to his examination of the many disputed ballots.

I must say that the whole process was extremely fair, transparent, and respectful of the rights and responsibilities of all the parties involved, and though my candidate did not win, I was proud to be a Canadian that day, knowing that we authorize the power of the state by ballots, not bullets.

However, for some unknown reason, the new procedure in Bill C-23 allows for participation by only one legal counsel for each candidate. This restriction is unnecessary, and may well detract from our ability to conduct recounts which are beyond reproach.

So I respectfully ask that Executive Policy Committee recommend that Council approve this resolution at its next meeting on Tuesday, May 27. At the very least, I ask that EPC refer the resolution to Council for debate and a vote on May 27.

Report #5 Costs and Benefits of Railroad Rationalization

There are all sorts of good reasons for taking a fresh hard look at the present costs and future benefits of rationalizing or relocating the railroads passing through the City of Winnipeg:

- Avoiding the huge costs of continuing to build, repair and replace more grade separations (underpasses and overpasses, both vehicular and pedestrian) for more and more major traffic routes.
- Improving traffic safety by reducing the number of at-grade crossings and minimizing opportunities for collisions with vehicles, bicycles and pedestrians.
- Improving community safety by diverting hazardous goods trains away from populated areas of the City.
- Acquiring rail rights-of-way for use as rapid transit ways, whether bus (BRT) or Light Rail (LRT), and/or active transportation routes.

- Increasing the efficiency of the urban rail services through shared use of rights-of-way, and easy access to intermodal transfer points such as CentrePort.
- Removal of obsolete spur lines and the assembly of underutilized industrial lands for redevelopment within existing employment areas of the City.

The Canadian Transportation Agency oversees the federal government's role in facilitating railroad rationalization:

"The *Railway Relocation and Crossing Act* (RRCA) is designed to facilitate the relocation of railway lines or the rerouting of railway traffic in urban areas in situations where a railway company and the relevant government body cannot agree. The RRCA empowers the Canadian Transportation Agency to order a railway company to do such things as remove railway structures, build new facilities, stop operating on certain lines or allow other railway companies onto their trackage in urban areas. However, these powers may only be used when certain criteria are met, including a determination by the Agency that any such relocation or rerouting would occur at no net cost to the railway company.

The Agency may also recommend a grant to help offset the costs of relocation or rerouting but only when Parliament has previously set aside money for that purpose. Financial assistance to help prepare a transportation plan for any such relocation or rerouting may also be available from the Minister of Transport, Infrastructure and Communities, again provided Parliament has previously set aside money for that purpose."

With federal and provincial assistance, and the cooperation of the railways, Winnipeg took a serious look at the issues forty years ago, when the Winnipeg Railway Relocation Study was commissioned following the publication of Metro's Winnipeg Area Transportation Study in 1966-68.

Since then, the CN East Yard has been removed to make way for the redevelopment of The Forks site, but the CPR Marshalling Yards still remain in North Winnipeg. Some trackage has been taken up on certain lines through the City, but by and large the many railways passing through Winnipeg remain in place.

So I do believe it is time to commission a new Winnipeg Rail Relocation Study, engaging all concerned, with a view to securing the funding necessary to relocate, realign, and redevelop urban railway lands, if warranted now.

Thank you.

David M. Sanders MA LLB

River Heights-Fort Garry

DMS/bm