

Sausage Making in British Columbia's NDP Government: The Creation of the Land Commission Act, August 1972-April 1973*

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"The less people know about how sausages and laws are made, the better they'll sleep at night." — OTTO FUERST VON BISMARCK

Probably the most sustained and damning academic criticism of British Columbia's short-lived New Democratic Party government has come from those who have catalogued the failure of that government to establish from the start an institutional mechanism to co-ordinate policy and control expenditures.¹ One consequence of this failure, according to political scientist Paul Tennant, was that power to initiate policy devolved upon a few dominant cabinet members. This, in turn, hindered inter-departmental policy development and resulted in legislation being proposed without adequate consultation or deliberation.²

Still, the fact that the NDP did not establish an institutional policy structure does not imply that the government regarded policy development as unimportant. As Tennant himself acknowledges, "the number and scope of innovations made under the NDP was undoubtedly greater than in any other forty-month period in British Columbia history."³ Nor can it be said that the policy initiatives of the NDP government, for all of the chaos that may have surrounded their introduction, were inadequate

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¹ See, for example: Paul Tennant, "The NDP Government of British Columbia: Unaided Politicians in an Unaided Cabinet," *Canadian Public Policy*, Autumn 1977; Walter D. Young and J. Terrence Morley, "The Premier and the Cabinet," *The Reins of Power: Governing British Columbia* (Vancouver: Douglas & McIntyre, 1983).

² Tennant, *ibid.*

³ Tennant, *ibid.*, p. 497.

or short-sighted. Indeed, the extent to which many of those initiatives endured under Social Credit suggests the opposite.⁴

The ability of the NDP government to implement significant and enduring policies in the absence of a formalized policy mechanism illustrates an important point: the process of initiating ideas and transforming them into action, no matter how systematic it becomes, is ultimately a human endeavour which can only be fully understood in human terms. Examining institutional variables is important to an understanding of limitations on policy development, but it cannot disclose how policies were developed within those limitations.

The purpose of this paper is to look beyond institutional limitations to examine more fully the nature of policy development under the NDP. The focus is the Land Commission Act, one of the first and most significant legislative initiatives undertaken by the NDP government. Although the Act, which brought to a halt the subdivision of agricultural land in the province, engendered a storm of criticism when it was put before the legislature in February of 1973, it has since become so revered within the province's political culture that, in recent years, no major party leader has dared to suggest that the legislation should be repealed or that the Commission should be abolished.

How was it possible for a government that lacked a planning structure to put forward so quickly legislation as far-reaching and enduring as the Land Commission Act? To what extent did the absence of such a structure hinder, or to what extent did it promote, the development of the Act? It is to these questions that this paper is addressed. By examining the interplay of ideas, personalities and institutional forces which gave rise to the Act, it is hoped to throw some light on how policy development within the NDP government *did* take place, as well as on the costs and benefits of that process.

The Origins

Throughout the 1960s, a concern emerged among politicians, planners and citizens' groups in British Columbia regarding the effects of urban sprawl and the attendant depletion of prime agricultural land in the

⁴ As Tennant observes, the Social Credit government in its first term following the defeat of the NDP "accepted the policy outcomes of the NDP" and continued "every one of the policy-making and regulatory agencies established by the NDP": *ibid.*, p. 501. It is, of course, true that a number of NDP policies and agencies have since been altered or abandoned, particularly in past two years, although it is also true that a number, such as the Land Commission and the Insurance Corporation of British Columbia, have remained largely untouched since 1975.

province. This concern was undoubtedly justified. While losses of agricultural land during the twenty years preceding 1971 were offset by gains achieved through new clearing,⁵ a geographic breakdown shows that the gains were achieved in low-yield grazing areas in the north and the interior, whereas the losses occurred in the fertile valley bottoms, the coastal plains and the river basins adjacent to the province's urban centres — areas whose soil and climate made them “best suited to intensive cultivation.”⁶ By 1973 an estimated 20 percent of all arable land in the Lower Fraser Valley — the most productive land in the province — had been lost to residential and urban development, and a further 3,000 acres were being eaten away each year.⁷ In addition, thousands of acres were being taken from agricultural production as farmlands were subdivided and converted into hobby farms or country estates, or held for speculative purposes.⁸ The extent of this depletion, combined with forecasts of massive population growth in the Lower Mainland,⁹ fuelled concern that, unless something were done, urban growth would “inundate the remaining farmlands with suburbia and its attending development.”¹⁰

Still, the demands for farmland preservation might not have come so quickly were it not for the fact that British Columbia's agricultural capabilities were so meagre from the start. Only 5 percent of the province's total land mass is arable, and less than 1 percent possesses a productivity rating of Class One.¹¹ Thus, as the population grew and as prime agricultural land was lost or taken out of production, the province imported ever increasing quantities of food from other jurisdictions.¹² So long as imported food remained plentiful and inexpensive this posed no problem, but as reports from California and elsewhere made it clear that continued supplies of cheap, foreign food were not assured, many became alarmed

⁵ David Baxter, *The British Columbia Land Commission Act — A Review* (Vancouver, Faculty of Commerce and Business Administration, UBC, Report No. 8, 1974), p. 2.

⁶ *Ibid.*

⁷ Department of Agriculture, “Bill 42: Land Commission Act” (Victoria, Department of Agriculture, unpublished report), pp. 1-2.

⁸ Baxter, *loc. cit.*

⁹ Sigurd Peterson, “Preservation of Prime Farm Lands in the Fraser Valley” (Victoria, Department of Agriculture, unpublished report, 13 December 1971), p. 1.

¹⁰ *Ibid.*

¹¹ British Columbia Land Commission, *Keeping the Options Open* (Vancouver, British Columbia Land Commission, 1975), p. 5. Class One land is land “capable of producing the very widest range of vegetables, cereal grains, forages, berry fruits and numerous specialty crops.”

¹² Baxter, *op. cit.*, p. 1.

by the potential consequences of British Columbia having insufficient agricultural land to meet its own food requirements.¹³

The first major attempt to address these concerns came from the Lower Mainland Regional Planning Board.¹⁴ In 1962 the Board published *Land for Farming*, a detailed analysis of the agricultural land loss problem,¹⁵ and a year later followed this up with a comprehensive regional plan designating over 50 percent of the usable land in the Lower Fraser Valley for long-term agricultural use. Under the plan, a municipality was prevented from rezoning land to a use not compatible with its designation, and minimum lot sizes for agriculturally zoned land were set at between five and twenty acres.¹⁶ The plan was approved by the provincial cabinet and by every municipality but one in the region;¹⁷ it lost credibility, however, when the province expropriated over 4,000 acres of prime land in Delta for the development of the Roberts Bank Superport in 1967, and it became increasingly subject to amendment following the breakup of the Lower Mainland Regional Planning Board into four smaller districts by 1968.¹⁸

With the apparent failure of the regional plan to halt losses of agricultural land, new proposals came forward. Mayor Douglas Taylor of Matsqui recommended that government purchase the "development rights" to prime farmland and that the funds for such a scheme be raised through the levy of a new tax on all lands approved for development.¹⁹ Surrey municipal council endorsed, in principle, a report of its planning department calling for

the establishment of a public commission at the provincial level to place restrictive development covenants on agricultural lands in exchange for monetary considerations and preferential tax treatment to the farmers.²⁰

Delta Social Credit MLA Bob Wenman asked that the provincial govern-

¹³ For a discussion of some of these consequences, see Department of Agriculture, *op. cit.*, p. 2.

¹⁴ The board, which was established in 1949 by the coalition government, acted as a co-ordinative, planning agency for the entire lower Fraser Valley.

¹⁵ See Baxter, *op. cit.*, p. 5.

¹⁶ *Ibid.*, p. 6.

¹⁷ W. E. Cochrane, "Land in British Columbia: Some Recent Policy Developments, Part II, Bill 42 — The Land Commission Act" (Victoria, B.C. Project, University of Victoria, unpublished paper), p. 2. The one municipality that withheld its approval was the District of Langley.

¹⁸ *Ibid.*, pp. 2-3.

¹⁹ *Vancouver Sun*, 1 December 1972, p. 6.

²⁰ *Vancouver Sun*, 22 June 1971, p. 27.

ment purchase agricultural land as it became available, zone it for agricultural use in perpetuity, and then resell it at agricultural values to farmers,²¹ and the British Columbia Federation of Agriculture (BCFA) called for a plan involving voluntary dedication of farmland to permanent agricultural use in exchange for the removal of taxes from such land.²²

Meanwhile, civil servants in the British Columbia Department of Agriculture also were becoming alarmed by the disappearance of farmland in the Fraser Valley. In December 1971 Production Services Director Sigurd Peterson prepared an extensive report for Agriculture Minister Cyril Shelford recommending that the provincial government undertake a farmland preservation program in the region.²³ The report suggested that Canada Land Inventory (CLI) data be used to identify prime farmlands in the area and that a “transaction freeze” be placed on such lands. Once this freeze was imposed, an assessment of the affected lands would be conducted to determine both their “farm use value” and their “non-farm use value.” The government would then purchase all parcels which had a “development value” (being the difference between their non-farm use value and their farm use value), excepting those whose development values were “beyond the practical objectives of this program” — these would be removed from the preservation area. The report suggested that the government might consider acquiring just the development rights to certain parcels as an alternative to outright purchase. Once the purchase phase was completed, the transaction freeze would be lifted with the condition that all land within the preservation area could be bought and sold “for farm use only.” Subdivision would be prohibited, “excepting when a sale would result in consolidation of two parcels into one.” Land purchased outright by the government would be sold or leased on a long-term basis for agricultural purposes. The big question the report failed to answer was: how much would it cost? In its own words: “[t]he total amount of capital required to carry out a preservation scheme is presently unknown.” Shelford, nevertheless, took the report to cabinet, where Premier W. A. C. Bennett pronounced it too politically hot²⁴ and moved, instead, to establish a \$25 million greenbelt fund.²⁵

²¹ *Vancouver Sun*, 27 January 1971, p. 20.

²² Peterson, *op. cit.*, p. 9.

²³ Sigurd Peterson, “A Program for the Preservation of Farm Lands in the Fraser Valley based on Soil Capability Classification” (Victoria, Department of Agriculture, unpublished report, 13 December 1971).

²⁴ Sigurd Peterson, Interview, 16 April 1980.

²⁵ David Stupich, Letter to Premier Dave Barrett, 31 October 1972.

During the 1972 provincial election campaign all three opposition parties pledged themselves to policies to stop the depletion of agricultural land. The Conservatives promised "long range and systematic planning . . . so that the best agricultural land is in fact used for agriculture."²⁶ The Liberals advocated the establishment of an "Agricultural Lands Trust" to acquire development rights to farmlands.²⁷ The New Democratic Party proposed "a land zoning program to set aside areas for agricultural production" as well as "a land bank to purchase existing and rezoned agricultural land for lease to farmers on a long term basis."²⁸ Indeed, the NDP and its forerunner, the Co-operative Commonwealth Federation, had adopted farmland protection policies as early as 1950, and the need for legislation to preserve such land had been reaffirmed at CCF and NDP conventions and council meetings throughout the 1950s and the 1960s. Following the NDP's victory on 30 August 1972, therefore, the key question for those concerned about farmland preservation was: how would the new government translate its commitment into action?

Locking in the Cabinet

The major impetus for the Land Commission Act can be traced to the meeting and joining of two forces in September 1972. The first force — the NDP force — was represented by newly appointed Agriculture Minister David Stupich, a long-time supporter of farmland preservation policies. The second force — the Department of Agriculture force — was represented by Sigurd Peterson, whom Stupich confirmed as his deputy minister in mid September.²⁹

The Stupich-Peterson relationship was a natural one: Stupich had enthusiasm and influence while Peterson had experience and a plan — a plan which Stupich was quick to seize upon and adopt.³⁰ Everything was ready to roll into action; at least, that is how Stupich must have perceived it on October 3, less than three weeks after his appointment as minister, when he told a press conference in Kelowna that farmland protection was his number one priority and that his department was preparing legis-

²⁶ Baxter, *op. cit.*, p. 8.

²⁷ *Ibid.*

²⁸ British Columbia New Democratic Party, *Policies For People* (Vancouver, British Columbia, NDP, 1976), p. 6.

²⁹ Peterson had been appointed deputy on 22 August 1972, eight days prior to the provincial election. This appointment was rescinded, however, after the NDP victory, leaving Peterson in a state of limbo until his reappointment on September 22.

³⁰ Peterson, Interview, *loc. cit.*

lation for the fall session of the legislature. "This is the most important of several items which will need attention as soon as possible," he told reporters.³¹

It is easy to understand Stupich's enthusiasm and desire to get on with the job. What is more difficult to understand are the actions taken, and those not taken, by the minister at this time, especially when it is recognized that Stupich had had considerable political and legislative experience³² and that he was a chartered accountant by profession. Although he knew that the program would require cabinet and Treasury Board approval, Stupich did not take it to cabinet or to Premier Dave Barrett before announcing it in the press.³³ Although the expense of the program was unknown, he made no attempt to have a cost analysis of it done,³⁴ and his statement that legislation was being prepared for the fall session of the legislature clearly set an unrealistic goal for such a major new initiative.

What explanation is there for this conduct? When asked directly in 1978, Stupich argued that, like his colleagues, he was simply "doing his own thing . . . we did a lot that way."³⁵ Certainly, as Paul Tennant has observed, there is evidence to suggest that Barrett's control over his cabinet was fairly lax. But even Tennant does not go so far as to suggest that it was normal for a cabinet minister to initiate a program in total isolation from the Premier and his colleagues; rather Tennant describes Barrett's cabinet as a "bargaining centre."³⁶ In any event, Stupich's statement may explain why he did not consult the Premier and the cabinet, but it offers no insight into why he did not request a cost analysis of the project and why he announced that he would have legislation ready for the fall session. Indeed, there appears to be only one explanation which can account for all of Stupich's actions — an explanation to which Stupich himself has alluded. It is that he was so bent on implementing his (i.e., Peterson's) program with or without approval, regardless of the cost, that he decided to lock the cabinet into a public commitment without first consulting it. When asked whether it was true that he had unilaterally made farmland preservation a government priority through his actions, Stupich replied that he had done so "consciously," and when

³¹ *Vancouver Sun*, 5 October 1972, p. 78.

³² Stupich had been an MLA from 1963 to 1969.

³³ David Stupich, Interview, 10 February 1978.

³⁴ *Ibid.*

³⁵ *Ibid.*

³⁶ Tennant, *op. cit.*, p. 492.

asked if he regretted that the introduction of the Land Commission Act had not been better planned, Stupich said that he was "glad that it wasn't because the odds are that we wouldn't have done it otherwise."³⁷

This explanation begs another question: why did the Premier and the rest of the cabinet permit Stupich to proceed as he did? The most plausible answer is the one suggested by Paul Tennant's analysis. Without a co-ordinated planning capability, and with Barrett declining to act as an authoritarian leader, the NDP government, particularly in its first few months, operated in a frenzied state of disarray.³⁸ Cabinet meetings were conducted without agendas,³⁹ they were not always well attended,⁴⁰ and there was virtually no functioning committee structure.⁴¹ Furthermore, in the absence of a co-ordinating mechanism, it is entirely possible that Barrett and his cabinet colleagues, unless they paid particularly close attention to the newspapers, were not aware of what Stupich was doing.

What Stupich *was* doing was more of the same. In an interview which appeared in the October 8 edition of the *Victoria Colonist*, he reiterated that the preservation of agricultural land was his prime concern,⁴² and throughout October he gave the same message to constituency associations and other groups whenever he spoke.⁴³ Back in Kelowna on October 30, following the brief fall session,⁴⁴ Stupich kept the issue alive, this time promising that legislation would be presented in the spring legislative sitting.⁴⁵

Finally, on October 31, almost one month after his first public announcement, Stupich sent a copy of Peterson's 1971 report to Barrett "for your consideration." His covering letter recommended a program virtually identical to Peterson's in every respect but one: it was to apply to all farmland in the province rather than just to that in the Fraser Valley. Perhaps as significant, in light of his confident statement of the day before, is the fact that the letter contained no reference to when he wished the legislation to be introduced.⁴⁶ The following day Stupich sent

³⁷ Stupich, Interview, *loc. cit.*

³⁸ Tennant, *op. cit.*, pp. 492-93 (and Norman Pearson, Interview, 1 March 1978).

³⁹ Sharon Yandle, "Defeat by Attitude?" *Priorities, IV*, January 1976.

⁴⁰ Tennant, *op. cit.*, p. 493.

⁴¹ *Ibid.* (and Stupich).

⁴² *Victoria Colonist*, 8 October 1972, p. 7.

⁴³ Stupich, Interview, *loc. cit.*

⁴⁴ Apparently the legislature was one of the few places at which Stupich did not raise the issue.

⁴⁵ *Victoria Times*, 30 October 1972, p. 23.

⁴⁶ Stupich, Letter to Premier Dave Barrett, *loc. cit.*

a copy of the proposal to NDP Resources minister Robert Williams and to Municipal Affairs minister James Lorimer. Once again his covering letter did not betray the assured tone of his public announcements. Rather, he modestly suggested:

I think there is a good case to be made for this as the means of preserving farm land and would like you to have this material prior to a Cabinet committee discussion.⁴⁷

It is not clear whether Barrett replied to Stupich's submission, but he did not consider it pressing enough to raise in cabinet.⁴⁸ As for the proposed cabinet committee discussion, according to Williams it never took place.⁴⁹

Up until this time Stupich's announcements had attracted modest press coverage, but in late November a meeting was scheduled which Stupich must have known would be extensively covered by all major newspapers and the media: the BCFA convention in New Westminster. Speaking to the delegates on November 29, Stupich repeated his earlier promise that the government would soon pass legislation preventing agricultural land from being rezoned to residential or industrial use. "The situation has deteriorated to the point where action by the government is the only way to stop it," he declared. "This government will respond and will respond soon." He then startled observers by stating that the provincial government had not permitted any rezoning of farmland within its jurisdiction since the NDP had taken office in September.⁵⁰ It was a statement which also startled Lorimer, whose department was responsible for screening zoning applications. Asked in 1978 whether a ban on rezoning had, in fact, been instituted by the government or by himself, Lorimer replied: "Of course not . . . it was never brought up in cabinet or anywhere else."⁵¹ But, accurate or not, the statement gave added credibility to Stupich's announcement, and it and his other comments were given front-page coverage in the *Vancouver Sun* and other newspapers.

The next day, on his way to a cabinet meeting, Stupich elaborated on his remarks to the convention, telling reporters that the government was planning to purchase farmland and the development rights to such land. He then promised that the cost of protecting farmland would not be borne solely by the farmers; and, in his most extraordinary comment of

⁴⁷ David Stupich, Letter to Robert Williams and James Lorimer, 31 October 1972.

⁴⁸ Robert Williams, Interview, 13 February 1978 (and Stupich).

⁴⁹ *Ibid.*

⁵⁰ *Vancouver Sun*, 30 November 1972, p. 1.

⁵¹ James Lorimer, Interview (telephone), 4 March 1978.

all, said that the government was firmly committed to introducing legislation after Christmas. Finally, he warned speculators that the government would take action, if necessary, to prevent people from buying land before the legislation was approved and then holding out for a higher price later on.⁵²

If Stupich had been seeking official reaction to his proposal, this time he got it. According to Lorimer, he was chastised in cabinet for his statements,⁵³ and presumably Barrett told him he had better get some draft legislation together quickly.⁵⁴ By this point, of course, Barrett had only two alternatives: he could either repudiate Stupich's statements, which likely would have meant dismissing Stupich from the cabinet, or he could follow through on them. As history has shown, Barrett chose the latter course.

In fact, there really was no choice. Stupich's speech created such alarm in the real estate and agricultural communities that municipalities, regional districts and the provincial government were soon being deluged with rezoning and subdivision applications.⁵⁵ To have backed off and allowed these applications to be approved might have ended forever the hope of rationally preserving the province's remaining agricultural land. The pressure to rezone became so great by the middle of December that Lorimer was forced to send a letter to municipalities and regional districts saying that his department would be "scrutinizing" all applications concerning rural land. In retrospect, it is possible to detect a real irony in Lorimer's statement to these local governments, for he justified the province's scrutiny by saying that it

was in keeping with the *announced policy* of the government on the preservation of farm land and other rural lands from urban land use and further subdivision of land. (emphasis added)⁵⁶

Furthermore, even if Barrett had entertained second thoughts about introducing legislation in the spring, Stupich effectively scotched them with another amazing manoeuvre. At a cabinet meeting on December 21, with Barrett away from Victoria, Stupich obtained cabinet approval for an order-in-council which,

⁵² *Victoria Times*, 30 November 1972.

⁵³ Lorimer, *loc. cit.*

⁵⁴ According to Stupich, he first prepared material for cabinet after the BCFA convention: Stupich, Interview, *loc. cit.*

⁵⁵ Cochrane, *op. cit.*, p. 5.

⁵⁶ *Victoria Colonist*, 22 December 1972, p. 29.

pursuant to section 6 of the *Environment and Land Use Act*, [prohibited] all subdivisions of farm land, including all lands deemed by the Committee to be suitable for cultivation of agricultural crops, until further order or provision by statute to the contrary. . . .⁵⁷

It was a sweeping measure, and, according to Williams, cabinet only went along with it because Stupich "left the impression that Barrett had endorsed it."⁵⁸ What is clear is that Barrett had not endorsed it.⁵⁹ Even Stupich does not deny this, but says that cabinet ministers often took major initiatives to cabinet when Barrett was not present and that the Premier was always "joking about what went on while he was away."⁶⁰ But a former Barrett assistant and Williams disagree; they say that Barrett was very surprised and upset when he learned about the order-in-council.⁶¹

The political reality, however, was that no matter how upset he may have been, there was little Barrett could then do to extricate the government from the position in which Stupich had placed it. Stupich had succeeded in ensuring that his proposal, or some version of it, would be introduced in the spring session and the only issue left to fight over was what form the legislation should take.

Drafting the Legislation

Given the political sensitivity of the farmland preservation issue and the time constraints involved, the question regarding what form the legislation should take was not one to be answered easily; and the task was made even more difficult by a serious split that developed within cabinet in late December and early January over the subject of compensation.⁶² What the issue came down to was whether so-called "development rights" were vested with the property owner or with the Crown. If they were vested with the property owner, as Stupich maintained, then the government would have to compensate farmers for freezing development on their land. But if they were vested with the Crown, as Williams contended, what the Crown gave the Crown could take away, and compensation was not necessary.

⁵⁷ B.C. Reg. 4/73.

⁵⁸ Williams, *loc. cit.*

⁵⁹ Peter McNelly (former Barrett assistant), Interview, 2 March 1978 (and Williams).

⁶⁰ Stupich, Interview, *loc. cit.*

⁶¹ McNelly, *loc. cit.* (and Williams).

⁶² Williams, Interview, 20 February 1980.

The opposing views of Stupich and Williams on the question of compensation reflected a deeper, ideological rift between the two men. Stupich, for his part, was more the traditional socialist, believing that government has a right to control the means of production and should play a strong central role in directing the economy. At the same time, Stupich was reconciled to the view of most western socialists that government acquisition requires government compensation, whether the acquisition involves capital, land or the development value of land. Williams, on the other hand, had been strongly influenced by the political philosophy of nineteenth-century American economist Henry George. Like George, he placed a great deal of faith in the value of a free, competitive market; however, as did George, he also believed that land (i.e., including resources) was a public resource which did not form a part of that market. Indeed, the basis of George's philosophy was that monopolization of land by private interests is the thing that undermines the effectiveness of the market to fairly allocate labour and capital. Rather than proposing wholesale nationalization of land, which he viewed as a cumbersome means of achieving his end, George proposed that a "land-value" tax be levied to recoup from property owners the full value of their land in the undeveloped state.⁶³ For Williams, then, unlike Stupich, the distinction between land and capital was a crucial one — one which led him to believe that the development value of raw land, like its other values, is a public asset not requiring compensation. This view was reinforced by Williams' experience as a municipal planner where he had come to accept zoning as a right of government. If a municipal government had the right to zone land for agricultural use without providing compensation, he thought, why should its mother provincial government not have the same right?⁶⁴

The dispute was based on practical as well as ideological concerns. Stupich, for example, undoubtedly wanted to foster good political relations with the farming community, and that meant fulfilling his pledge that farmers alone would not have to bear the cost of preserving their land. Williams, on the other hand, was extremely worried about the financial burden compensation would place on the government. While

⁶³ See Henry George, *Progress and Poverty* (London: The Henry George Foundation of Great Britain, 1932).

⁶⁴ The observations regarding the political philosophies of Stupich and Williams are based on the author's observations of and discussions with the two men over a ten-year period.

no cost analysis had been conducted on Stupich's proposal, Williams suspected that the price tag was far too high.⁶⁵

Other members of the cabinet also were split on the issue, some siding with Williams, some with Stupich, and some unsure what to believe. Barrett's solution was a simple one: he placed Williams, Stupich, Provincial Secretary Ernie Hall and Highways and Transportation Minister Robert Strachan on a special committee and told them to resolve the dispute among themselves.⁶⁶ It was a tactic borrowed from the repertoire of Franklin Delano Roosevelt, one of Barrett's political heroes, and one which Barrett used throughout his term as Premier to resolve policy differences within his cabinet.⁶⁷

Williams describes the conflict over the compensation issue as a "tough, bitter battle,"⁶⁸ and it appears to have been just that. Stupich, for his part, continued to make pronouncements that he hoped would embarrass the cabinet into adopting his position. On December 27 he publicly repeated his pledge that farmers would not be expected to carry the full cost of preserving their land and promised that the financial burden for the farmland preservation program would fall on all the people of the province.⁶⁹ Even more extraordinary is the fact that Stupich, at a meeting with representatives of the BCFA in his office on January 10, actually went so far as to encourage farmers to dissent, in the belief that it could serve to strengthen his bargaining position in cabinet. Here is an excerpt from the notes which Williams' assistant, Norman Pearson, recorded at that meeting:

Stupich: [The] order-in-council will stand until [the] opening of the house.⁷⁰
I want to work with you.

[BCFA]: We might demonstrate on the steps.

⁶⁵ Williams, *loc. cit.*

⁶⁶ Williams, Interview, 13 February 1978.

⁶⁷ *Ibid.* (and Stupich). And the costs for FDR were much the same as they were for Barrett: administrative disorder and animosities among his key advisers.

⁶⁸ Williams, *loc. cit.*

⁶⁹ *Vancouver Sun*, 27 December 1972, p. 2.

⁷⁰ It is ironic to note that, contrary to Stupich's statement, the order-in-council did not stand. Due to public pressure against its sweeping provisions and legal concerns that it was not sufficiently clear to be enforceable, a second order was passed on 18 January 1973 (B.C. Reg. 19/73). This order was far more precise than the first and exempted from the freeze parcels which were less than two acres in size as well as parcels on which "development had substantially commenced before the 21st day of December 1972." It also provided those aggrieved by the order with an opportunity to appeal to the Environment and Land Use Committee of cabinet. See Cochrane, *op. cit.*, pp. 5-6.

Stupich: I might welcome a demonstration — it might strengthen my hand. Didn't I say the farmers shouldn't bear the cost? Have I ever said otherwise?⁷¹

Meanwhile, Williams had set Pearson to work analyzing the options under consideration. Pearson, who was a planner by profession and had served as assistant director of the Lower Mainland Regional Planning Board before its demise in 1968, was already familiar with the farmland situation in the province, particularly in the Fraser Valley. Using Peterson's proposal as a basis, he calculated the cost of purchasing the required agricultural land in the Lower Mainland at three-quarters of a billion dollars over thirty years, with the figure for the entire province running well over a billion dollars. Furthermore, he estimated that the alternative of compensating owners just for their loss of development value would be only slightly less expensive — "in fact the price would be so high it could prove more expedient to purchase the land outright."⁷²

On January 10, prior to Stupich's meeting with the BCFA, Pearson contacted Peterson in an effort to get him and Stupich to "cool it" on the compensation issue. According to Pearson, Peterson was "very defensive about the compensation thing" and, despite Pearson's cost projections, was not persuaded to reconsider his position.⁷³

Further evidence that Peterson was unwilling to reconsider is to be found in the first major draft of the bill⁷⁴ that the legislative counsel's office, in consultation with Peterson and his staff,⁷⁵ was preparing for Stupich at the time. This draft, which was completed on January 16, was modelled on Peterson's 1971 proposal. It established a farmland reserve consisting of land designated as Class 1, 2, 3, or 4 under the Canada Land Inventory and included "any other land designated by order of the Lieutenant Governor in Council."⁷⁶ Land within this reserve could not be

⁷¹ Norman Pearson, Memorandum to Robert Williams, 17 January 1973.

⁷² Norman Pearson, Memorandum to Robert Williams, 18 January 1973 (and Pearson).

⁷³ Pearson, Interview, *loc. cit.*

⁷⁴ There had been earlier attempts at drafts, but these had been written in note form and are better described as preliminary drafts. The draft produced on January 16 was characterized as the "first draft" by the office of the Legislative Counsel.

⁷⁵ Particularly Roy Wilkinson, the director of the Department's Development and Extension Branch.

⁷⁶ British Columbia, "Farm Land Preservation Act" (Draft, 16 January 1973), s. 1. Exempted from the application of the bill were parcels of less than two acres and those which were being used for a non-farm purpose on the effective date of the relevant section, so long as that same purpose continued (s. 8).

subdivided⁷⁷ and could not be used for “any purpose other than farm use.”⁷⁸

The draft also created a Farm Land Preservation Commission made up of not less than five members, including a chairman and vice-chairman, all of whom would be appointed by cabinet to hold office “during pleasure.”⁷⁹ The duty of the Commission was to “preserve farm land for farm use” and, accordingly, it was empowered to acquire farmland, with cabinet approval, “by any means, including expropriation,” to dispose of farmland “by sale, lease or otherwise . . . subject to continuous farm use,” and to compensate farmland owners for their losses of development value due to the imposition of the reserve.⁸⁰ The apparent intention of the bill was, as Peterson had recommended in his 1971 report, to have the Commission purchase all reserve land with a development value and then to lease or resell this land for farm use.

In order to finance the cost of this land acquisition program, the draft established a Farm Land Preservation Fund — an umbrella fund for all money received and paid out by the Commission.⁸¹ Capital for the fund would come initially: (1) by obtaining loans and advances of up to \$25 million from the government’s Consolidated Revenue Fund;⁸² (2) by borrowing up to \$100 million⁸³ through the issue of commission bonds, debentures or securities⁸⁴ and through short-term loans from banks and other credit sources;⁸⁵ and (3) by receiving moneys directly appropriated by the legislature.⁸⁶ Furthermore, the bill followed through on Peterson’s 1971 suggestion that “not all transactions need be made on a full cash basis”⁸⁷ by allowing the Commission, as an alternative to making lump sum payments for land, to purchase land by means of assigning Commission bonds or securities to the vendor, purchasing an annuity in the name

⁷⁷ *Ibid.*, s. 7. “Except as provided in this Act or the regulations or as authorized by order of the Commission . . .”

⁷⁸ *Ibid.*, s. 2. “. . . except as permitted by this Act or the regulations or by order of the Commission.” The draft also restricted to farm use (“or such other use as may be authorized by the Commission”) all land within 500 feet of reserve land, a zone referred to as the “additional zone” (s. 6).

⁷⁹ *Ibid.*, ss. 13 and 14.

⁸⁰ *Ibid.*, s. 11.

⁸¹ *Ibid.*, s. 19.

⁸² *Ibid.*, s. 21.

⁸³ *Ibid.*, s. 26.

⁸⁴ *Ibid.*, s. 22.

⁸⁵ *Ibid.*, s. 23.

⁸⁶ *Ibid.*, s. 64(2).

⁸⁷ Peterson, “A Program . . .,” *op. cit.*, p. 10.

of the vendor or his nominee, or making periodic cash payments to the vendor.⁸⁸ The presumption underlying all of these provisions seems to have been that the acquisition program could be funded principally through income derived from leasing and reselling land, especially if the initial costs of purchasing land and development rights were spread, through borrowings and innovative purchase agreements, over a number of years. It was a presumption which was unsubstantiated by any financial analysis and one whose credibility was seriously called into question by the magnitude of Pearson's cost estimates.

Another apparent presumption of the bill's drafters was that they would be able to stagger the cost of acquiring development rights by tying development rights compensation to the purchase of the land, so that there would be no separate development rights acquisition program; rather, a property owner would be reimbursed for his loss in development value at the time he chose to sell his land to, or at the time it was expropriated by, the Commission.⁸⁹ The problem with this approach, as Pearson noted in a memorandum to Williams, was that, because it was tied to a provision setting 1 January 1972 as the date for determining market values of land,⁹⁰ the bill "would presumably result in everyone wanting to be bought out right away, or they will be losing money in the interim."⁹¹

The expropriation provisions of the bill enabled the Commission, with the approval of cabinet, to "expropriate and take possession of any farm land that it considers necessary to carry out the purposes of this Act." Upon expropriation, the Commission was to compensate the former landowner for the fair market value of his property as farmland as well as for the development value of the land.⁹² A person dissatisfied with the amount of compensation could take the matter to final and binding arbitration under the Department of Highways Act.⁹³

The reasons for such sweeping expropriation powers are not entirely clear. It was not the intention of the drafters that they be employed to

⁸⁸ "Farm Land Preservation Act," *op. cit.*, s. 30.

⁸⁹ This intention is evident from the fact that the bill contained no provision empowering the Commission to compensate a landowner for his loss in development value, except at the time of sale of his land to, or its expropriation by, the Commission. *See* ss. 29 and 31.

⁹⁰ "Farm Land Preservation Act," *op. cit.*, s. 29. In the case of expropriation, however, the valuation date was "the date of expropriation" (s. 31).

⁹¹ Norman Pearson, Memorandum to Robert Williams, 30 January 1973.

⁹² As ascertained at the date of expropriation.

⁹³ "Farm Land Preservation Act," *op. cit.*, s. 31.

seize land used in contravention of the legislation, since the bill provided the Commission with explicit confiscation powers for that purpose and also prescribed fines and prison terms for violators of the Act.⁹⁴ One can surmise, therefore, that the purpose of the expropriation provisions was to allow the Commission to take control of land whose use, while conforming to the letter of the Act, was deemed not to be optimum. Another possible application of the power would have been to allow the Commission to acquire a number of small contiguous parcels of land in order to consolidate them into larger parcels which would be more economically viable for agricultural production — in effect, repatriating to agricultural use hobby farms and country estates.

In addition to the power to take land, the Commission was also granted the power to grant loans “for the development and maintenance of farm land for farm use”⁹⁵ as well as to loan money

to a lessee of Commission land for the purpose of assisting the lessee with respect to the acquisition of capital improvements for the land or for any other land owned or leased by the lessee and farmed in connection with the Commission land.⁹⁶

Both the power to expropriate and the power to make loans reflect the strong managerial function which Stupich foresaw for the Commission. Stupich’s commission was to be an active instrument of government policy — one which would be able to take control over agricultural land in order to maximize and rationalize its use, and one which also would have the power to provide farmers with financial assistance to carry out operations that were consistent with the objectives of the legislation. The bill did not purport to establish a politically independent, adjudicative commission and, for this reason, independent arbitration was provided for in the case of expropriation or confiscation. Moreover, the final determination of whether land fell within the statutory definition of “farm land” was left, through a formal provision for appeal, to the courts.⁹⁷

A revised draft of the bill was circulated one week after the first and, although it was substantially the same as its predecessor, the changes which had been made show that Stupich and Peterson, faced with Pearson’s cost estimates and under pressure from Williams, were already rethinking the financial implications of their proposal. For example, while

⁹⁴ *Ibid.*, s. 2.

⁹⁵ *Ibid.*, s. 11.

⁹⁶ *Ibid.*, s. 43.

⁹⁷ *Ibid.*, ss. 3 and 31 (arbitration), s. 59 (appeal by originating notice of motion to County Court).

the Commission still was granted powers to purchase, confiscate, expropriate, sell and lease land, and to compensate owners for losses in development value, it no longer was allowed to make loans.⁹⁸ Furthermore, the provisions establishing the Farm Land Preservation Fund and those enabling the Commission to raise its own money through the issuing of bonds, debentures, securities and through borrowings from banks, the government and other sources were all eliminated in favour of a single section calling on the legislature "to vote such funds as it deems advisable."⁹⁹ Perhaps even more revealing was the addition of two new clauses: one permitting the Commission to "establish priorities for acceptance of land offers or payment of compensation for reduction, if any, of development value"¹⁰⁰ and a second allowing the Commission to pay development value compensation "at a time and in a manner prescribed by the Commission."¹⁰¹ Clearly, the purpose of these clauses was to enable the Commission to set its own timetable for the purchase of land and development rights in the event that there was a run on the sale of agricultural land, as well as to give the agency the flexibility to purchase only development rights where the cost of purchasing a parcel of land was beyond its means. Also, in apparent recognition that even the development rights to some parcels would be beyond the means of the Commission, the revised draft allowed the cabinet to remove farmland from the reserve.¹⁰²

While Stupich and Peterson were reconsidering some of the economic implications of their proposal, Williams, now armed with Pearson's cost projections, was more convinced than ever that any attempt at development value compensation would cripple the government financially. He asked Pearson to prepare a memorandum, based on their discussions, outlining the case for and against each of the alternatives. Not surprisingly, the memorandum, which was dated January 18, rejected both outright purchase of farmland and the purchase of just development rights as options which were too costly and which violated "the funda-

⁹⁸ British Columbia, "Agricultural Land Preservation Act" (Draft, 22 January 1973 with revisions). As evidenced by the omission of any loan-making powers in s. 15.

⁹⁹ *Ibid.*, s. 19.

¹⁰⁰ *Ibid.*, s. 28(4).

¹⁰¹ *Ibid.*, s. 28(5).

¹⁰² *Ibid.*, s. 6. This was consistent with Peterson's 1971 proposal which stated: "It is also believed that some of these lands will have development values beyond the practical objectives of the program and in that event, the preservation boundary should be amended to exclude these lands." See Peterson, "A Program . . .," *op. cit.*, p. 5.

mental notion that development rights are vested in the Queen.” At the same time, the memorandum indicated that Williams was prepared to offer Stupich a compromise on the compensation issue. While voicing Williams’ unequivocal support for “reinforced zoning” without compensation as “the most principled avenue for preserving agricultural land,” it also suggested

several avenues for overcoming the changed value situation [which] might be considered:

- guarantees of a protected market, price or production, price support, etc.,
- social program, such as a special farmer pension,
- rebate of taxes on unearned increment phased over several years.¹⁰³

In other words, Williams and Pearson were raising the possibility of a less costly alternative which would compensate working farmers for holding onto their land and for their agricultural activity rather than their loss of real estate value.

By late January the legislation had undergone numerous revisions under the auspices of Stupich and Peterson, and a consensus had yet to be reached among the members of the special cabinet committee. However, Pearson’s cost projections had obviously influenced the attitudes of Hall and Strachan, and, with time running out, the pressure was now on Stupich to change his stance. It is difficult to establish the precise sequence of events at this time. At some point, according to Williams, an agreement was reached among Barrett, Stupich and himself to ensure that funds would later be made available for a farm subsidy program.¹⁰⁴ In addition, Stupich secured a promise that the Commission would be given sufficient money to allow it to purchase farmland from owners who would suffer unusual hardships due to the imposition of the reserve.¹⁰⁵ With these assurances, Stupich apparently relented and agreed to accept provincial zoning without compensation as the principal method of farmland preservation.

¹⁰³ Pearson, Memorandum to Robert Williams, 18 January 1973.

¹⁰⁴ Williams, Interview, 20 February 1980. The result was the Farm Income Assurance Program.

¹⁰⁵ Stupich, Interview, *loc. cit.* As well as to build a modest landbank of key sites where finances allowed. An example of the kinds of hardships envisioned by Stupich is given in an Agriculture department report: “consider . . . where a family recently purchased a farm at market price and on the strength that they too would in the future be able to sell the farm to another family. However, due to death or other misfortune they are now owners of a property that has only a farm value. Clearly this would be harsh and impose financial ruination on innocent people.” See Department of Agriculture, *op. cit.*, appendix.

A draft of Williams' version of the bill was hurriedly drawn up by the legislative counsel's office. This draft, which was completed on February 1, permitted the Commission¹⁰⁶ to acquire farmland and endowed it with a \$15 million fund to do so,¹⁰⁷ but, unlike earlier versions, it did not provide for any compensation for the loss of development rights; nor did it empower the Commission to grant loans, to confiscate or to expropriate property. The draft expanded the definition of agricultural land to include land classified as agricultural for taxation purposes under the Municipal Act and the Taxation Act,¹⁰⁸ and it continued to provide an appeal to the courts on the question of whether land fell within this definition.¹⁰⁹ It eliminated cabinet's power to exclude land from the reserve but gave the Commission the discretion to adjudicate applications from landowners who wished to have their property excluded from the provisions of the Act, provided such applications had received prior approval from the local zoning authority.¹¹⁰

The draft also contained two major new provisions which had been urged by Williams in the cabinet committee.¹¹¹ First, in addition to establishing an agricultural land reserve (ALR), it empowered the Commission to designate and acquire land for greenbelt, landbank and parkland reserves.¹¹² Second, it included a section permitting the Commission to acquire reserve land by substituting itself for a private purchaser of such land within fifteen days of the purchase date.¹¹³ By expanding the Commission's mandate to include the designation of three new reserves

¹⁰⁶ Now named the Provincial Land Commission.

¹⁰⁷ British Columbia, "An Act to Establish a Provincial Land Commission" (Draft, 1 February 1973), ss. 11 and 13. In a further concession to Stupich, this amount was increased to \$25 million in later drafts.

¹⁰⁸ *Ibid.*, s. 1. Williams believed that people who had had their land classified as farmland for taxation purposes should be made to live with that classification for the purposes of this Act.

¹⁰⁹ *Ibid.*, s. 22(a).

¹¹⁰ *Ibid.*, s. 22(b).

¹¹¹ Williams, *loc. cit.*

¹¹² "An Act to Establish a Provincial Land Commission," *op. cit.*, s. 1: "'Greenbelt Land' means any land which is deemed by the Commission to possess unique values for aesthetic, recreation or economic purposes and deserving of preservation for public benefit"; "'Land Bank Land' means any land that is deemed by the Commission to possess desirable capabilities for urban and industrial development purposes." ("Park Land" was not defined in this draft, but it was later defined in the Act as land "having desirable qualities for, or future potential for, recreational use, as park land.")

¹¹³ *Ibid.*, s. 18. The section reads: "In the event of any sale within the area designated for any of the purposes of this Act the Commission shall have fifteen days, during which time it may elect to replace the purchaser."

— which carried no restrictions but were merely intended to draw these lands to public and government attention¹¹⁴ — Williams sought to enable the agency to rationalize the use of agricultural and non-agricultural land and to develop in the government an integrated land use planning capability.¹¹⁵ By permitting the Commission to substitute itself as purchaser, Williams hoped to provide a method less coercive than expropriation of allowing the Commission to acquire key agricultural sites and, even more importantly, key greenbelt, landbank and parkland sites (which, in the absence of any restrictions on their subdivision and use, could not be protected from inappropriate utilization in any other way).

With the drafting process now under his aegis, Williams convinced cabinet to allow him to retain Richmond lawyer William Lane, one of British Columbia's leading authorities on land use legislation and later appointed Chairman of the Land Commission, to look over the new version of the bill.¹¹⁶ Lane, who was preparing to leave on a journey to South America, was contacted by Attorney General Alex Macdonald on February 3 and came to Victoria on February 6, three days prior to his departure.¹¹⁷ After consulting with a number of cabinet ministers, including Williams and Stupich, and with Allan Higenbottam, the legislative counsel,¹¹⁸ Lane spent two gruelling days in Williams' office rewriting the February 1 draft.¹¹⁹

Lane's revision, which was completed on February 7, was basically a restructuring of the February 1 version of the bill, although it did contain two significant alterations. First, it omitted the section permitting the Commission to substitute itself for a purchaser of reserve land — a section which Lane deemed unworkable in its present form "because of the complexity of the Land Registry administration involved."¹²⁰ Secondly, it granted the Commission authority to recommend to the cabinet that it designate as ALR any parcels of land which, although they did not fall

¹¹⁴ *Ibid.* There is no reference in the draft to any restrictions regarding the three non-agricultural reserves. See William Lane, Memorandum to Allan Higenbottam, 7 February 1973, in which Lane explains the effect of the designation of these three reserves.

¹¹⁵ Williams, *loc. cit.*

¹¹⁶ Williams, Interview, 13 February 1978.

¹¹⁷ William Lane, Interview, 20 February 1980.

¹¹⁸ Lane says he sensed some frustration on the part of Higenbottam "in that it wasn't clear to him what the government wanted." In light of the political machinations at the time it is not at all surprising that Higenbottam, at this stage, would have been confused regarding the government's intentions.

¹¹⁹ Williams, *loc. cit.* (and Lane).

¹²⁰ Lane, Memorandum to Allan Higenbottam, *op. cit.*

within the statutory definition of "agricultural land," the Commission considered "necessary for the purposes of this Act."¹²¹ This alteration was significant because it marked the first time a draft had involved the Commission in the process of designating agricultural land. In addition to these two changes, Lane, in his notes to Higenbottam, recommended the inclusion of a clause — "like s. 706(1) of the Municipal Act"¹²² — explicitly providing that the designation of land as part of a reserve would not give rise to compensation.¹²³ To Lane, who like Pearson and Williams had experience as a municipal planner, the concept of a province-wide zoning scheme did not seem at all unorthodox;¹²⁴ and the notion that such a scheme should require compensation did not even enter his mind.¹²⁵

Lane's revision and notes, as well as the February 1 draft they were based upon, had been prepared in great haste, and it was now necessary for the bill to be sent back to the legislative counsel's office in order to have it fleshed out and organized into standard legislative form. The result was the February 13 draft, which varied in only a few respects from the bill introduced in the legislature nine days later. Most of the fleshing out done by the legislative counsel consisted of expanding the procedural provisions of the bill, often by importing sections from earlier drafts. For example, both the February 1 and Lane's drafts of the bill prohibited only the subdivision of agricultural land and contained no restrictions on its use. Clearly, however, Williams' and Lane's intention, like Stupich's, was to prevent the non-farm use of agricultural land.¹²⁶ To fulfil this objective, restrictions against non-farm use which had been developed in earlier drafts now were incorporated in the February 13 draft.¹²⁷ Similarly, the sections establishing the Commission had been reduced to skeletal form in the February 1 and 7 drafts; therefore these sections also were expanded in the February 13 draft by reintroducing

¹²¹ British Columbia, "An Act to Establish a Provincial Land Commission" (Draft, 7 February 1973), s. 3(6).

¹²² R.S.B.C. 1960, s. 706, as am. by Stats. B.C. 1962, c. 41; 1965 c. 28. The section reads: "Property shall be deemed not to be taken or injuriously affected by reason of the adoption of a zoning by-law under this Division or by reason of the amendment or repeal of a zoning by-law."

¹²³ Lane, Memorandum to Allan Higenbottam, *op. cit.*

¹²⁴ *Ibid.*

¹²⁵ Lane, Interview, *loc. cit.*

¹²⁶ Williams, Interview, 20 February 1980; see also Lane, Memorandum to Allan Higenbottam, *op. cit.*, in which Lane specifically recommends the inclusion of land use restrictions for the ALR.

¹²⁷ British Columbia, "Land Commission Act" (Draft, 13 February 1973), s. 10.

clauses employed in earlier drafts.¹²⁸ A few of the provisions imported into the February 13 draft from earlier versions of the bill were subsequently struck prior to the introduction of the legislation in the House. Included among these were sections specifying fines and prison terms for violators of the Act¹²⁹ and allowing the Commission to confiscate land used in contravention of the legislation.¹³⁰

One major new aspect of the February 13 draft seems to have resulted from a sudden realization on the part of Pearson and Williams that a statutory definition of what constituted agricultural land would be unworkable and unjust. This realization was based on a number of factors. First, the Canada Land Inventory, which had been the key to statutory designation in earlier drafts, was incomplete at the time.¹³¹ Secondly, CLI designations were fairly broad and did not lend themselves to the precise pinpointing of parcels required by the legislation. Thirdly, the CLI classification system related principally to soil capabilities, whereas the viability of much agricultural land, especially in the north, was determined more by climatic conditions, accessibility and other variables.¹³² In light of these problems, a decision was made to drop the statutory definition of "agricultural land" and to replace it with a provision granting the Commission the discretion, with prior cabinet approval, to designate as ALR land "that is suitable for farm use as agricultural land."¹³³ This change not only altered the function of the Commission but also meant that the sections allowing landowners to appeal to the courts on the question of whether their land fell within the statutory definition of "agricultural land" had to be dropped.¹³⁴ To compensate for this deficiency, a section enabling the cabinet to exclude land from the reserves was reintroduced into the bill,¹³⁵ but, because both cabinet and the Commission

¹²⁸ *Ibid.*, ss. 2-6.

¹²⁹ *Ibid.*, s. 10(4).

¹³⁰ *Ibid.*, s. 10(2), (3) and (7).

¹³¹ Norman Pearson, Memorandum to Robert Williams, 8 February 1973.

¹³² Pearson, Memorandum to Robert Williams, 30 January 1973. Although CLI soil capability ratings did take into account climatic conditions (see B.C. Land Commission, *loc. cit.*), Pearson's comments indicate that he did not consider the manner in which the CLI accounted for climate to be adequate.

¹³³ "Land Commission Act," *op. cit.*, s. 8.

¹³⁴ The reason for this was twofold: (1) the courts did not possess the expertise to determine what land was "suitable for farm use" and (2) to have allowed an appeal on a question such as this would have resulted in the courts being inundated with more cases than they could possibly handle.

¹³⁵ "Land Commission Act," *op. cit.*, s. 9.

were involved in the original designation process, this scarcely qualified as an appeal, especially since there was no guarantee in the bill that the cabinet would use this power to entertain applications from individual landowners to have their land removed from the reserve.

As significant as these changes in the functions of the Commission was the fact that there were no commensurate changes to the provisions creating the Commission. In Stupich's version of the bill, the Commission had operated as an active instrument of government policy, playing a strongly interventionist role as land purchaser, land manager and watchdog. By the time Williams' version of the bill reached the Legislature, the Commission had been stripped of many of these functions. Gone were its powers to loan money and to confiscate and expropriate land; and, while the Commission retained its authority to acquire agricultural property, no longer was this power tied to a universal compensation scheme which would have had the Commission negotiate the purchase and preside over the lease or resale of all agricultural land having a development value. Instead, the Commission was now invested with major adjudicative responsibilities involving the designation of agricultural land. Yet, while the Commission had undergone this transformation from an active instrument of public policy to an adjudicator of which private interests would be affected by that policy, the structure of the Commission and its relationship to the government remained unaltered. Its members were still appointed by the cabinet to hold office "during pleasure."¹³⁶ Their remuneration was still set by the cabinet.¹³⁷ The cabinet still retained its power to designate a chairman and vice-chairman¹³⁸ and to appoint a general manager.¹³⁹ Even the appointment of consultants continued to require ministerial approval.¹⁴⁰ Indeed, the only concession made to the Commission's adjudicative responsibilities was the last-minute deletion of a provision allowing MLAs to sit on the Commission and receive remuneration "notwithstanding the Constitution Act."¹⁴¹ The impression created by the bill, therefore, was that of a government-controlled political body performing adjudicative functions — functions which would have significant impacts on the livelihoods of individuals and on the value

¹³⁶ *Ibid.*, s. 2(1).

¹³⁷ *Ibid.*, s. 2(2).

¹³⁸ *Ibid.*, s. 3.

¹³⁹ *Ibid.*, s. 5(2).

¹⁴⁰ *Ibid.*, s. 5(4).

¹⁴¹ *Ibid.*, s. 5(3). Although nothing was added prohibiting MLAs from sitting on the Commission; the Constitution Act merely prevented them from receiving remuneration.

and use of their land. This impression, combined with the lack of an independent appeal mechanism, helps to explain the cause of much of the fear and opposition engendered by the bill, particularly among those who were not ideologically opposed to the notion of a provincial farmland preservation program.

Yet, of all of the changes the legislation had undergone in the five-week period between the completion of the first draft on January 16 and its introduction in the House on February 22,¹⁴² none was more significant than the inclusion in the February 13 draft and the final version of the bill of one 38-word section which read:

16. Land shall be deemed not to be taken or injuriously affected by reason of the designation by the Commission of that land as agricultural land reserve, green belt land reserve, land bank land reserve or park land reserve.¹⁴³

The inclusion of this section marked the culmination of a hard-fought battle — a battle over ideology and over money. Moreover, if Pearson's estimates were correct, it was a battle whose outcome may have saved the government as much as a billion dollars, a figure which at the time represented more than one-half of the annual provincial budget.

Amending the Bill

The amendments introduced by the government during the legislature's consideration of the Land Commission Act¹⁴⁴ were drafted in an attempt to quell the political furor the bill had evoked from the opposition, the media and local governments as well as from members of the real estate and agricultural communities.¹⁴⁵ In order to understand the significance of these amendments, therefore, one must first understand the criticism they were intended to blunt. Much of the criticism of the bill, of course, took the form of demands for compensation and general outcries against the tyranny of the government, and did not lend itself to a legislative

¹⁴² Prior to its introduction, the bill received cabinet approval and then went to the NDP caucus where only two MLAs — Don Lewis of Shuswap and Roy Cummings of Vancouver-Little Mountain — expressed dissatisfaction with it (according to Stupich). Lewis, himself a farmer, was concerned about the economic impact of the bill on the agricultural community while Cummings was worried that it would drive up land prices in the Lower Mainland.

¹⁴³ British Columbia, "Land Commission Act" (Bill 42, introduced in the legislature on 22 February 1973), s. 16.

¹⁴⁴ The amendments were introduced on 19 March 1973 prior to third reading of the bill.

¹⁴⁵ Cochrane, *op. cit.*

response. Some, however, was more focused and less extreme in nature, and it was this form of criticism which prompted the government to make amendments.

Two of the objections voiced against the legislation seem to have been founded on misconceptions regarding the bill and, from the government's point of view, merely required a clarification of its intentions. The first of these misconceptions was the belief by some that, in granting the Commission power to "purchase or otherwise acquire land,"¹⁴⁶ the government had endowed the agency with the right to expropriate.¹⁴⁷ An examination of the evolution of the legislation shows that this clearly was not what was intended by its drafters. Indeed, the fact that explicit expropriation provisions had been deleted from earlier drafts of the bill indicates that powers of expropriation had specifically been ruled out.¹⁴⁸ Yet a number of groups contended that, intended or not, the right to expropriate had been conferred. It is virtually impossible to believe that the courts, with their presumptions in favour of upholding private property rights, would have shared this view; still, in order to lay the concern to rest, the wording was amended to allow the Commission to "purchase or acquire land *except by appropriation*" (emphasis added).¹⁴⁹

The second misconception related to the Commission's power to designate greenbelt, landbank and parkland reserves. As Lane had noted in his memorandum to Higenbottam, the designation of these reserves, unlike the designation of the ALR, carried with it no restrictions on the subdivision or the use of the affected land, but was intended "merely [to] direct . . . public and government attention to these lands."¹⁵⁰ The problem arose from the fact that section 8 of the bill, which provided for the designation of the four reserves, made no attempt to differentiate between the ALR and the other three reserves. Indeed, nowhere in the legislation was there a statement concerning the government's purpose in establishing the three types of non-agricultural reserves, and the only legal distinction between them and the ALR was to be found in the absence of any provisions equivalent to section 10 — the section which restricted the subdivision and use of agricultural reserve land. Furthermore, the fact

¹⁴⁶ "Land Commission Act" (Bill 42), *op. cit.*, s. 7(i).

¹⁴⁷ Cochrane, *op. cit.*

¹⁴⁸ Indeed, the wording had been tightened up even from the February 13 draft which had given the Commission power to "acquire land by any means whatsoever. . . ." See "Land Commission Act" (Draft, 13 February 1973), s. 7(i).

¹⁴⁹ Land Commission Act, Stats. B.C. 1973, c. 42, s. 7(1)(i).

¹⁵⁰ Lane, Memorandum to Allen Higenbottam, *op. cit.*

that section 16 specified that the designation of any of the reserves would not give rise to compensation served to reinforce the impression that all four of the reserves were restrictive. One commentator has attributed the confusion regarding the non-agricultural reserves to "the careless and, generally, amateurish draftsmanship that characterized the preparation of the bill."¹⁵¹ A kinder interpretation would be that it was simply a case of too many cooks and not enough time to simmer the broth. In either case, the problem was cured by amendments allowing the Commission to designate as greenbelt, landbank and parkland reserves only land acquired by it,¹⁵² and deleting from section 16 all references to the three types of non-agricultural reserves.

Aside from the controversy regarding compensation, probably the strongest criticism of the bill arose from its failure to provide for an appeal from the designation of agricultural land by the Commission.¹⁵³ The government tried to answer this criticism by arguing, on the one hand, that a simple zoning power did not require a mechanism for appeal¹⁵⁴ and, on the other, that the Commission itself would act as an appellate body from the decisions of its staff;¹⁵⁵ but neither of these arguments carried much sway, probably because of the highly politicized structure of the Commission. Looking again to the evolution of the bill, it is apparent that the problem resulted more from last-minute procedural changes in the designation process than it did from any ideological indisposition of the government toward the concept of appeals. Indeed, as already noted, all drafts of the bill but the last one provided for court appeals on the question of whether agricultural land fell within the statutory definition of "agricultural land," but such appeal provisions had been dropped when it became necessary to make the designation process a discretionary one. Therefore, in an effort to assuage those who felt that some avenue of appeal was necessary, provisions allowing limited appeals to the Environment and Land Use Committee of cabinet were included within the amendments. These provisions permitted such appeals only after a person had presented his case to and received a decision from the Commission and only

¹⁵¹ Cochrane, *op. cit.*, p. 11.

¹⁵² Land Commission Act, Stats. B.C. 1973, c. 42, s. 7(2).

¹⁵³ Cochrane, *op. cit.*, pp. 12-13.

¹⁵⁴ Other than the opportunity for judicial review which, due to the absence of any privative clauses, was still allowed.

¹⁵⁵ See Department of Agriculture, *op. cit.*, appendix.

- (a) upon being authorized to appeal by a resolution of the municipality or regional district, as the case may be; and
- (b) upon being granted leave to appeal by any two members of the Commission. . . .¹⁵⁶

The other major criticism of the bill which prompted the government to introduce amendments also resulted from the “eleventh hour” shift away from a statutory definition of “agricultural land.” With a statutory definition there had been no need to consider whether there should be input from local governments and the public to the designation process. The shift to a discretionary procedure for determining what constituted ALR land, however, left the government open to the criticism that it should have provided a means for such input. This became a particularly sore point with a number of municipalities and regional districts that were already upset at the province for usurping their traditional authority over zoning.¹⁵⁷ In response to this criticism, the amendments to the bill provided for local government participation and public hearings as part of the designation process,¹⁵⁸ and also extended to municipalities and regional districts the right to apply directly to the cabinet to have land excluded from the ALR.¹⁵⁹

While these amendments fell short of answering all of the objections and did not quiet opposition to the bill, they at least had the effect of showing the press and the legislation’s less vociferous detractors that the government was acting in good faith and was willing to respond positively to criticism. On 16 April 1973 — three months to the day after the first draft had been completed — the Land Commission Act was passed in the legislature by a vote of 34 to 17, with all members of the opposition voting against it.

Conclusion

This paper has shown how one cabinet minister was able to capitalize on the absence of a formalized planning apparatus during the early days of British Columbia’s NDP government to lock the cabinet into endorsing a program which had not been adequately researched or planned. At the same time it has demonstrated how quickly creative policy proposals can be translated into action when individual political will is permitted to

¹⁵⁶ Land Commission Act, Stats. B.C. 1973, c. 42, s. 9(7).

¹⁵⁷ Cochrane, *op. cit.*

¹⁵⁸ Land Commission Act, Stats. B.C. 1973, c. 42, s. 8.

¹⁵⁹ Land Commission Act, Stats. B.C. 1973, c. 42, s. 9(1).

dominate over institutional structures. The paper has also demonstrated how surprisingly effective ad hoc responses to policy formulation can be even under difficult circumstances: shaping a proposal as undeveloped and fiscally dangerous as that originally put forward by David Stupich into legislation which, despite some serious flaws, proved to be as effective and enduring as the Land Commission Act was no small feat.

It would, of course, be wrong to suggest that abandoning formalized planning structures in favour of individual political initiative and ad hoc responses is without its costs. In the case of the Land Commission Act the costs were obvious. By permitting ministers to promote policies publicly which had not been fully developed and had not received cabinet approval, the government appeared indecisive and lacking in cohesion and control. Furthermore, the public reaction to such promotion precipitated a crisis which forced the government to act more quickly and crudely than would otherwise have been necessary. This, in turn, put pressure on the policymakers and led to a drafting process which was continuously disrupted by shifts in political direction. The result was the creation of a Commission whose composition did not appear to suit its mandate and of a bill which did not clearly enough address potential public concerns. Had there been more time to consider the legislation and to consult with those affected by it, no doubt the government could have avoided much of the criticism which the bill engendered and could have spared itself the embarrassment of having to introduce major amendments. Finally, and most importantly, the haste with which the government was forced to act prevented it from implementing a strategy to educate the public as to the need for and the aims of the legislation, and thus served to lend substance to criticism that the NDP was acting in an extreme and heavy-handed manner.

Yet these, for the most part, are political costs, and some may view sympathetically Stupich's point that, had individual ministers not been free to initiate policies as they did, the Land Commission Act and many other NDP programs would not have gone ahead. Certainly the argument in favour of rationalizing policy development by means of a strong central planning apparatus is not as self-evident as Tennant and others seem to assume; and the argument against such an apparatus may be well founded where political priorities are clearly defined, public demand for new policies is great and time is of the essence. It is not only in British Columbia that creative policy proposals have been quickly translated into significant and enduring programs by means of individual initiatives and

ad hoc planning, as evidenced most graphically by Franklin Roosevelt's first "one hundred days."

On the other hand the costs, while largely political, were nevertheless great.¹⁶⁰ In the case of the Land Commission Act some of these costs can be attributed to Stupich's idiosyncratic behaviour. The inability of the government to control this behaviour and foresee its consequences, however, together with its inability to promote and present the legislation competently, must be attributed to the absence of an ongoing planning mechanism.

A fundamental problem with Stupich's analysis is that it fails to appreciate that impulsive political action, or action which appears to be impulsive, will only be acceptable to the public in extraordinary political times. When the NDP came to power in 1972, agricultural land protection had not been clearly identified as its major political priority. Furthermore, while public sentiment favoured change, there was no overwhelming public perception of a crisis, akin to the Great Depression, calling for an immediate and drastic response. Thus the manner in which the Land Commission Act was planned, prepared and introduced was inappropriate and unnecessary; it fuelled fears and suspicions at a time when the political need was to reassure and to display competence.

Besides, Stupich's suggestion that, had things been done differently, the bill might never have been introduced is without foundation. It is, of course, true that institutional structures which promote research, planning and co-ordination impede the development of legislation; that, in part, is their purpose. With the government firmly committed to the principle of protecting agricultural land from development, however, there is no reason to suppose that the cabinet would not have been prepared to sponsor the legislation in the fall of 1973 or even in 1974.

It might be argued that it was necessary for the government to act quickly in order to accomplish this and all of its other goals during its first term in office, but this position only makes sense if one assumes that the defeat of the NDP government after one term was inevitable. The continued strength of NDP support in the 1975 election,¹⁶¹ notwithstanding the government's reputation for chaotic administration, disputes this

¹⁶⁰ As Paul Tennant has correctly noted, the "cabinet's reputation for back-tracking, vacillating and simple bungling caused dismay among party supporters . . . and gave much ammunition to the Social Credit opposition": *op. cit.*, p. 492.

¹⁶¹ The percentage of the vote received by the NDP in 1975 was 39.15 compared to 39.59 in 1972.

assumption. What this strength suggests is that, had the NDP government avoided the political costs of operating without an effective planning apparatus, it would have been in an excellent position to have broadened its base of support, to have renewed its mandate and to have continued its program into the future.