Legislative Assembly of Alberta

Title: **Tuesday, June 16, 1992 8:00 p.m.**
Date: 92/06/16

head: **Private Bills**
head: **Committee of the Whole**

[Mr. Schumacher in the Chair]

MR. CHAIRMAN: Order in the committee, please. The Committee of the Whole is meeting this evening for study of the private Bills that have progressed to this stage.

Bill Pr. 1
Cynthia Lynne Rankin Adoption Act

MR. CHAIRMAN: I know the hon. Member for Wainwright wishes to see this Bill progress. Are there any amendments or comments to be proposed with respect to this Bill?

[Title and preamble agreed to]

[The sections of Bill Pr. 1 agreed to]

MR. FISCHER: I'd like to move that the Bill be reported.

[Motion carried]

Bill Pr. 2
First Canadian Casualty Insurance Corporation Act

MR. CHAIRMAN: Any questions, comments, or amendments?

[Title and preamble agreed to]

[The sections of Bill Pr. 2 agreed to]

MRS. BLACK: Mr. Chairman, on behalf of the Member for Calgary-Bow I move that Bill Pr. 2 be reported.

[Motion carried]

Bill Pr. 3
Carmelite Nuns of Western Canada Act

MR. CHAIRMAN: Are there any questions, comments, or amendments to be offered in respect to this Bill?

[Title and preamble agreed to]

[The sections of Bill Pr. 3 agreed to]

DR. ELLIOTT: Mr. Chairman, I move that Bill Pr. 3 be reported.

[Motion carried]

Bill Pr. 4
Caritas Health Group Act

MR. CHAIRMAN: The hon. Member for Clover Bar.

MR. GESELL: Thank you, Mr. Chairman. Perhaps it's appropriate to make some opening remarks. I expect there may be an amendment, and we will deal with that in due course when it comes. First of all let me say that the private Bill that is before us mostly contains clauses that have been in place in the private Acts which originally established the Misericordia and the Grey Nuns hospitals.

I'd like to just briefly outline and summarize the clauses, Mr. Chairman, that are included in this particular Bill, and they are really

> (a) to undertake and carry on charitable institutions, works and activities consisting of the operations of hospitals, missions, health care facilities of any kind or nature, schools, dispensaries, homes for the aged, homes for the handicapped and the like; to impart education and medical and other training; and generally to care for the aged, sick, handicapped and unfortunate.

The general principles running throughout all of these clauses are

> (b) to provide and offer health care activities, facilities and programs of all kinds, including without limitation the general acute care hospitals, auxiliary hospitals, nursing homes, geriatric rehabilitation facilities, hostels, family care programs, educational programs, and schools of nursing;
>
> (c) to carry on any other business, development or activity for the purpose of generating revenue for the corporation or which, in the opinion of the directors is otherwise incidental, beneficial or conducive to

the operations of the corporation.

It also is there

> (d) to incorporate, support and monitor other entities engaged in activities incidental or conducive to [these] objects;
>
> (e) to incorporate and support other entities for the purpose of generating revenue for the corporation or for any other purpose, beneficial to the corporation, [and]
>
> (f) generally, to engage in charitable and benevolent activities.

Mr. Chairman, I should stress to you and the members here that this consolidation of these two corporations, these two entities that have been created under the private Acts, has the total support of staff in all three facilities that we're talking about and the doctors practising in those facilities as well. So there's total co-operation with respect to what is being proposed here. I should also mention that the proposed Caritas health group has the blessing and the approval of the Minister of Health.

Finally, Mr. Chairman, I'd like to state that I will endeavour to answer any questions that may be arising during the committee discussions, and in the event that I may not be able to answer, I would provide the undertaking that I will obtain answers and provide them during the third reading of this particular Bill.

MR. CHAIRMAN: Are there any amendments or other comments to be offered?

The hon. Member for Edmonton-Strathcona.

MR. CHIVERS: Thank you, Mr. Chairman. I'd like to begin by commending the hon. member who's sponsoring the Bill for bringing it forward. I also want to recognize at the outset the excellent and long-standing service that these institutions have provided to Edmonton and Edmontonians in respect of hospital services. I think that goes without saying, but I'd like to mention it before I begin with some concerns that I have concerning the Bill as it is proposed. They're not numerous, but I will be introducing a single amendment.

I think in order to understand the concerns I have, it's necessary to examine what the Bill does. As the sponsoring member has indicated, the Bill essentially amalgamates two corporate entities, three hospitals, under a single administration under the corporation named by this Bill. This corporation is then empowered to conduct its activities not only in Alberta but outside Alberta and outside Canada. I think that is a point that is worth noting. Under 2(3) this corporation is required to conduct its activities in accordance with the medical moral code approved by the Canadian

Conference of Catholic Bishops or any successor organization. Now, that is no longer a matter of hospital policy, that is a matter of statutory law; the corporation is legally bound to conduct its activities in accordance with this code as it now exists or – this is also noteworthy – as it may be amended in the future either by the Canadian Conference of Catholic Bishops or by some successor organization. Therefore, the code and any changes to it are given the force of law.

If it should develop that the code should be amended in a way which is perceived not to serve the public interest, there would be no remedy available to deal with that sort of situation other than to bring the legislation back before this Assembly and amend it or deal with it in terms of the process of this Assembly. Therefore, if at some time in the future it is perceived that the code that is approved is contrary or perceived to be contrary to the public interest, there is no way to deal with it except by bringing the matter back before the Assembly.

8:10

I think it worth noting, Mr. Chairman, that the primary source of revenue for hospitals in Alberta, including these institutions, is of course through public funding provided by the taxpayer. That being the case, it seems logical that if circumstances were such that a hospital board was perceived to be conducting its activities in a manner which was not serving the perceived public interest, there should be a mechanism available to ensure that the government can force compliance with the public's interest. For other hospitals that mechanism is provided by section 25 of the Hospitals Act, which provides as follows, and I'm going to paraphrase section 25. It provides that

> the Minister by order may for cause dismiss the members of a district or board of management and appoint an official administrator in their place.

Now, there are, of course, limitations on the ability of the minister to exercise that discretion, but basically the limitation is that he can do so for cause. Clearly, if an institution, a hospital is perceived to be acting or conducting its activities contrary to the public interest, then that would be one situation in which the minister could exercise his discretion and ensure that the hospital act in accordance with the perceived public interest. However, that mechanism would not be available in these circumstances because we have included in the Bill a provision which gives the code of conduct by which the hospital is statutorily bound to conduct its activities the force of law. It seems to me that is not a wise position to place oneself in as a Legislative Assembly; in other words, we have no meaningful mechanism in order to deal with that potentiality should it occur.

Now, I'm not suggesting that the institutions here have or would fail to act in the public interest, but it is conceivable that those sorts of circumstances could arise, and it is my submission that a mechanism should exist to ensure on an ongoing basis and not through a review by bringing the legislation back before the Assembly that the corporation will continue to act in accordance with the public interest. I submit that giving statutory authority to the corporation to establish its own medical code and amend it as it sees fit from time to time in the future and to give that power to the corporation is, in effect, to give it a statutory carte blanche. I submit that that is not a wise use of the legislative power.

I think that is particularly important here in view of the fact . . . I want to draw your attention to the provisions of section 1. The member sponsoring the Bill has indicated that essentially this is an amalgamation of three existing institutions, and of course it is that. However, section 1 contains a provision which does not appear in any – at least I do not believe appears in any of the other instruments, and if it did, it would not be necessary to have this Bill. Section 1 contains the provision,

> Present members of The General Hospital (Grey Nuns) of Edmonton and the present members of the Misericordia Hospital and such others as shall hereafter from time to time become members of the Caritas Health Group in the manner prescribed in the by-laws of the Caritas Health Group are hereby declared to be . . .

et cetera, et cetera, a corporation.

Now, the significance of that is we are not, by this legislation, simply dealing with the status quo and granting to the three existing institutions the amalgamation and the ability to carry on conducting their affairs as they have in the past. This corporation will have the ability in law, the statutory ability, to add members to its group and, therefore, bring other hospitals under the force of this statute by virtue of provisions that they prescribe in their bylaws. Consequently, it is not simply a matter of recognizing the status quo and carrying that situation forward into the future. This is again a clause which permits the corporation to add new hospitals who would then be bound by the same rules, the rules that I summarized for you previously, the rules that by force of statute require any hospitals that belong to this corporation to conduct their activities in accordance with the medical code which is established by the conference of bishops or a successor organization.

I think that is particularly an important point, because we're not, and I repeat we are not, dealing simply with the three institutions. This is a provision which, in effect, expands the requirements of the statute conceivably in the future to encompass other institutions. I think it's in that context that we need to examine this legislation and to be careful as to what it is that we're doing here. I accept that what was intended was to amalgamate these hospitals under the existing status quo, but that is not the effect of the Bill. There is no mechanism in the legislation, as I have pointed out, to compel in future if it was seen or perceived to be the case that the institutions were not or the corporation was not conducting its activities in accordance with the public interest. It would not be possible to compel it to do so because of the existence of the provisions that I've identified. So the ability to add additional institutions under the umbrella of this corporation is indeed a significant feature.

No doubt this feature is not a problem with respect to the three existing hospitals because at the present time, notwithstanding that these hospitals presently conduct their activities in accordance with the code of the Catholic bishops conference, of course, in Edmonton a full range of medical services is indeed available in the city as a result of the fact that there are numerous other institutions and facilities that provide the services that are not available at these three institutions. Therefore, it is not a problem.

The difficulty could arise and is likely to arise in a situation where you're dealing with a smaller community and a hospital in a smaller community should choose to join this group and thereby come under the medical code that is countenanced by this statute. There is then no way to ensure the public interest in reasonable access to the full range of medical services is available in that community because the discretion would have been removed by the statute. I think that is a serious deficiency of the Act.

I would ask hon. members to consider the comments on that basis. I think perhaps if the legislation did no more than preserve the status quo, the difficulties perhaps would not be as noticeable or as important, but in these circumstances there can indeed be a situation where communities who previously had a full range of medical services by virtue of the operation of this statute would be deprived of the full range of medical services. Of course, I think

that is a matter of concern because, as I've said previously, the principle source of funding is the Treasury, the taxpayers' dollars.

It seems to me, Mr. Chairman, that we must have the ability to ensure that a full range of medical services is available across the province, not only in Edmonton. We must have the ability as legislators to ensure regional access to a full range of medical services. I'm concerned that in future this legislation could operate so as to prevent us from the ability to do so.

In some circumstances, I submit, it should not necessarily rest in the final analysis at the corporation level or at the board level as to what services need to be provided by an institution because, of course, if the principle of accessibility and universality is to be preserved, we have to have facilities located in the community that are able to deliver the full range of medical services.

Of course, I would hate to see us get into the situation that arose in British Columbia, where quite unfortunately the government found it was necessary, because of that deficiency in their legislation, to enact regulations under the Hospital Insurance Act to ensure that named hospitals had the facilities necessary to allow qualified persons to receive abortions at the named hospitals. The reason for that was because it was not possible in all parts of the province to have that necessary balance in terms of regional access, accessibility on a regional basis. It seems to me that we would be well advised not to put ourselves in that kind of a situation in Alberta.

8:20

I suppose there are a number of ways in which the legislation could be amended to deal with that. One has been proposed previously by my colleague Ms Laing, and since it was prepared in advance of this night, this is the amendment that I propose to move this evening. Perhaps I should do so at this time. I provided the amendment to the Chair. The amendment that I move is that the Bill hereby be amended as follows: delete section 2(3). Now, I move that amendment and I support it.

As I had said previously, there perhaps is another way of dealing with some of the concerns that are raised, and that would be an amendment to section 1, which would delete the ability to add members to the corporation in the future. That, of course, would deal with the immediate concerns I have. However, as I say, this amendment is prepared, it has been presented to the Chair, and I move it and ask that it be circulated to the members.

If I might just have a moment to review my notes, Mr. Chairman. I think I've covered all the points I wanted to cover. I want to make one final point, and that is that the amendment that I propose will not compel the delivery by these institutions, by these hospitals, by this corporation, of the full range of medical services that I've spoken of. Deleting 2(3) would not compel the institutions to provide the full range of medical services. It would not compel them, for example, to provide the services that they do not provide at the present time: the tubal ligations, the vasectomies, and the abortions. What it would do is still leave the choice to them as to what services they wished to provide, subject of course to the ability of the government, if it found that for one reason or another the public interest in accessibility to the full range of medical services was not being met, to exert the necessary influence to see that that full range of medical services is supplied in the future.

Now, that's a highly unlikely scenario in a large city such as Edmonton, but it is not, as I pointed out, an unlikely scenario in the smaller communities where there is a single facility, a single institution, a single hospital. Consequently, I'd ask that members support this amendment.

Thank you, Mr. Chairman.

MR. CHAIRMAN: Are there any further comments on it? The hon. Member for Clover Bar.

MR. GESELL: Thank you, Mr. Chairman. I assume we're talking about the amendment that the hon. member has moved.

MR. CHAIRMAN: The Member for Edmonton-Avonmore?

MR. GESELL: Not the amendment in section 1 that the member has referenced. We're talking about section 2(3)?

MR. CHAIRMAN: That's correct.

MR. GESELL: Thank you, Mr. Chairman. I'd like to respond to that particular amendment. Now, the member has raised a number of questions in his discussion. I'll have to concentrate because of the amendment on section 2, which deals with the moral code, and I would, after the amendment is disposed of, go back to the other questions that have been raised by the member, if that's agreeable.

Now with respect to 2(3), Mr. Chairman. I'm really concerned with this particular amendment because what we have here, and let me just refer to the specific Bill, under 2(3):

> The corporation shall at all times conduct its activities in a manner which is consistent with the principles outlined in the medical moral code approved from time to time by the Canadian Conference of Catholic Bishops or any successor organization.

Well, Mr. Chairman, I'm a little bit concerned about that because what we have here is a new corporation that's going to be established by consolidation of two existing corporations, and that corporation is guided by some moral and ethical principles that are referenced in this particular private Bill. I should stress for the member that those moral and ethical principles are included in the present private Acts that exist. So these carry forward. It's not something new that is being introduced in the Caritas Health Group Act.

Really what those principles deal with – and the information has been distributed to the members of the NDP – is the health care ethics guide. These ethics and moral codes that we are talking about here, Mr. Chairman, are predominantly, if I might summarize, to protect human life, and basically what it says in this code is that "Human life [should] be respected and protected from conception." I perhaps feel that the Member for Edmonton-Avonmore and perhaps other members of the NDP may have some difficulty with the latter because their frame of mind might be somewhat different.

Mr. Chairman, let me be a little bit more specific. Perhaps the concern is not so much related to the overall moral code that we've got in front of us here. That moral code is there to assist in decision-making with respect to some very critical issues in health care. Let me outline in general what that decision-making involves and the principle that guides that moral code as it is included in this particular Bill. Decision-making involves both technical judgments and judgments of ethical value, rights, duties, and responsibilities. These judgments of what is right or wrong are ethical and moral decisions. When rights, duties, or values appear to conflict – and they do – ethical reflection based on established principles and on an appropriate decision-making process can assist patients, residents, and care givers to arrive at sound decisions. That is really what this moral code is all about: to assist in making those critical decisions that we have to make when we're dealing in health care.

AN HON. MEMBER: Question.

MR. GESELL: I'm not finished. I'm sorry, hon. member.

This is a very serious matter, Mr. Chairman. I need to stress here also that these corporations have operated for some considerable period of time under this particular moral code, and I think they have done an excellent job. The member even recognized them in his initial preamble of his discussion as being dedicated and providing excellent health services. They have done just that; they have provided that excellent service under this particular moral code that the member now would just throw out of this particular Bill and leave them floundering in limbo, so to speak, without having some guidance of how to reach some of these critical decisions that they need to reach in the health care field.

8:30

Mr. Chairman, there are fundamental moral principles involved here, and I'd just briefly like to touch on the general ones that we are concerned with here and then zero in on the specific concerns perhaps. Although the member hasn't referred to it – well, he did actually refer to sterilization and tubal ligation, if I heard him correctly – I think the main concern here may be really with abortion and sterilization. I must stress that under this moral code that we are discussing here, those procedures are not encouraged. As a matter of fact, they're restricted. They are undertaken on certain occasions, but they are undertaken in line with the principles and the decision-making process that is included in this moral code.

The fundamental moral principles that we're referring to are: the dignity of a person; the social nature of a person; the right to life; a well-informed conscience; the principle of double effect; the principle of legitimate co-operation; the principle of totality and integrity of a human person; the principle of the common good, subsidiary, and functionalism; the principle of growth through suffering; and the principle of stewardship and creativity.

Mr. Chairman, human life in accordance with these principles is highly respected by these organizations, and for the member to suggest that they will deviate from that respect for human life, the caring for those that are unfortunate or ill . . . [interjection] I'm sorry; if I'm interpreting those comments incorrectly, I apologize. Surely the guiding principles that have been established for some considerable period of time should prevail because they have worked effectively for these two corporations that have provided excellent service to Edmonton residents and the surrounding area. To now all of a sudden delete those principles I don't believe is in the best interests of the residents of Edmonton or the residents in the district, the metropolitan area of Edmonton, that avail themselves of these necessary and essential services.

There are certain considerations that need to be looked at. I mentioned abortion, and I mentioned sterilization. Those are the contentious issues that may have prompted perhaps this particular amendment. Without giving my personal opinion, I feel that many oppose abortion today because they believe it violates a moral law. That's their belief. They feel that moral law should be enforced by civil law, but it is not. There are also many who want to legalize abortion. Even if you were to take a vote of the members here in this particular Assembly, I think you'd get a diversity of opinion about that particular issue. We certainly are not going to be unanimous on that. The point I'm making, Mr. Chairman, is that even though we may engage in considerable debate on those issues, I think we have an obligation in this House to respect the opinions, those moral beliefs that people hold.

The members of the ND Party, particularly the Member for Edmonton-Avonmore, remind us on every possible occasion, I should say, that we should exercise understanding and awareness of others and respect that. Well, Mr. Chairman, that also applied to this particular issue. You may not necessarily hold the same point of view as I might, but I will respect your point of view, hon. member, and I would ask you to respect mine. They may differ considerably. Surely the member would not strive to impose their own agenda, your mores, your norms on other people, on other Albertans, other Canadians. I think there needs to be a certain respect, particularly when the issue is so divided as this particular issue is. You cannot make them all come over to your point of view. I think you have to respect that there are people that will have a different point of view, particularly when it is based on religious belief.

SOME HON. MEMBERS: Question.

MR. GESELL: I'm hearing the question, Mr. Chairman.

Let me just conclude, then, on this particular Bill, just a final concluding remark. Surely the members in the New Democratic Party will exhibit the understanding and the awareness that they expound in this Legislature from time to time and hopefully display consideration and those attributes to those people who may differ, and respect them. Because what we are talking about here are moral and ethical issues that are important to those who believe in them, you cannot go and say, "Well, because I do not agree with those particular beliefs, we should throw all of those codes out and get rid of them and delete them." Hon. member, these moral and ethical codes have served us extremely well, and I think it would be beneficial for us to retain them.

Thank you very much, Mr. Chairman.

MR. CHAIRMAN: The hon. Member for Edmonton-Strathcona.

MR. CHIVERS: I'll be brief, Mr. Speaker – or Mr. Chairman. I'm sorry. I've promoted you again.

The member has spoken of a willingness to accept other points of view. I share that concern with him, and I assure him that I do accept his point of view, but I hope that by the same token he will accept the point of view that I've urged upon him and look frankly at the statute. It is not correct to state that this statute is simply a continuation of the existing status quo, because as I have indicated, this statute has a provision that these institutions did not have under the previous Acts, and that is the ability to add other hospitals to their group to come under the force of the corporation. That is not simply a continuation of the status quo. That is a new departure and one which I think is highly dangerous.

The second point I wanted to make is that I want to make it perfectly clear to the member – and I believe he does understand this, although I wasn't clear from his comments that that is the case – this is not a statutory repealing of the medical moral code approved by the Canadian Conference of Catholic Bishops. What I'm suggesting is simply the deletion from the statute of the provision that makes that part of statutory law. There is no way in which the deletion of that subsection is going to repeal the moral medical code of the Canadian Conference of Catholic Bishops. They will be able to continue to run their hospitals in exactly the same fashion that they have in the past, subject to the single exception that if the occasion arose where they were for one reason or another not perceived by the government to be conducting their activities in accordance with the public interest, then the minister would have the ability to do something about it without the necessity of bringing the matter back to the Legislature to have an amendment.

Mr. Chairman, I wanted one final comment. The member has attributed to me comments that I did not make. I won't go into that issue, but I did not make the comments that he attributed to

me, and I do not appreciate having words attributed to me that are not my own.

Thank you.

8:40

MR. GESELL: I need some clarification here on this particular issue because of some of the points that have been raised by the Member for Edmonton-Strathcona. This particular section that we're dealing with, the amendment – and he has strayed a little bit broader than the amendment, I would suggest – this particular section 2(3) is carried forward. It's not changed in the present legislation. He's referring to other entities that might be rolled into this one, and I will deal with that separately as an outside question apart from this amendment because it is outside of that particular amendment.

Now, the member has also indicated that I've made some remarks with respect to what he said. I believe I withdrew those when he objected as soon as I had spoken them, and I indicated that it was my interpretation. If that interpretation is incorrect, I certainly do take it back, and I apologise if my interpretation was incorrect.

With that, Mr. Chairman, I would urge members to defeat the particular amendment. Thank you.

HON. MEMBERS: Question.

[Motion on amendment lost]

MR. CHAIRMAN: Any further questions?

MR. GESELL: Mr. Chairman, there are some questions left that have been raised by the hon. member in his preamble prior to making the amendment. He raised questions with respect to the entity operating outside of province. I think that was his first question. I need to mention here that that concern must be tempered with the realization that extraneous objects of this new corporation are not really relevant here given that that entity will be funded only to operate and manage these three health care facilities. That takes care of your concern to some degree as well with respect to adding additional entities. So the funding, the revenue that the member has referred to limits further consolidation, as do sections 2 and 27 of the Hospitals Act.

The member should be aware that the Minister of Health has issued an approval for this particular entity under that Hospitals Act under section 2 to designate those entities as hospitals and also the governing boards under section 27 of the Hospitals Act. So I would draw those matters to the attention of the member.

You should also know with respect to operating outside the province that this hospital, as in the past, has operated missions, which necessarily include working outside the province, and they have provided health services outside the province. I must stress here that those services when they are provided outside of this province are not paid for by this province; they are covered by their fund-raising campaigns in other areas. So there's no impact on the revenue that they receive from this particular province to operate those facilities.

Mr. Chairman, there were some other questions with respect to public interest. I think the member mentioned section 25 of the Hospitals Act and indicated that the minister may abrogate some responsibility to this particular entity. I don't believe that is actually correct, but I will undertake to check with the minister on that particular aspect and provide an answer in due course.

The question of additional entities being rolled together with this organization I've already addressed, because it does require the approval of the Minister of Health.

I believe I've covered most of the questions that have been raised by the member. If I have missed one, I will review *Hansard* to look at the detailed questions that the member has asked and will provide a response at third reading.

With that, Mr. Chairman, I would ask members to support this particular Bill in committee.

HON. MEMBERS: Question.

MR. CHAIRMAN: Are there any further questions or comments?

[Title and preamble agreed to]

[The sections of Bill Pr. 4 agreed to]

MR. GESELL: Mr. Chairman, I move that Bill Pr. 4 be reported.

[Motion carried]

Bill Pr. 5
Lee Justin Littlechild Adoption Act

MR. CHAIRMAN: Are there any questions or comments?

[Title and preamble agreed to]

[The sections of Bill Pr. 5 agreed to]

MR. ADY: Mr. Chairman, I move that Bill Pr. 5 be reported.

[Motion carried]

Bill Pr. 6
Rocky Mountain College Act

MR. CHAIRMAN: The hon. member for Canmore – or Banff-Cochrane.

MR. EVANS: That will do too, Mr. Chairman. On behalf of my colleague the hon. Member for Calgary-Bow I'd like to move a number of minor amendments to Bill Pr. 6. These amendments have been circulated. They were reviewed by Private Bills Committee, and I believe that they were approved and accepted by all members of Private Bills. As the Chair will be aware, that's an all-party committee.

[Motion on amendments carried]

MR. CHAIRMAN: Are there any further questions or comments?

[Title and preamble agreed to]

[The sections of Bill Pr. 6 as amended agreed to]

MR. CHAIRMAN: The hon. Member for Banff-Cochrane.

MR. EVANS: Thank you, Mr. Chairman. I move that Bill Pr. 6 as amended be reported.

[Motion carried]

Bill Pr. 7
Medicine Hat Community Foundation Act

[Title and preamble agreed to]

[The sections of Bill Pr. 7 agreed to]

MR. MUSGROVE: Mr. Chairman, I move that Bill Pr. 7 be reported.

[Motion carried]

Bill Pr. 8
Calgary Municipal Heritage Properties Authority Amendment Act, 1992

MR. CHAIRMAN: The hon. Member for Calgary-Foothills. [interjection] Okay; no questions or comments. Call for the question.

[Title and preamble agreed to]

[The sections of Bill Pr. 8 agreed to]

MRS. BLACK: Mr. Chairman, on behalf of the Member for Calgary-Glenmore I move that Bill Pr. 8, the Calgary Municipal Heritage Properties Authority Amendment Act, 1992, be reported.

[Motion carried]

Bill Pr. 10
St. Mary's Hospital, Trochu Amendment Act, 1992

MR. CHAIRMAN: Are there any questions, comments, amendments? Okay; I'll call for the question.

[Title and preamble agreed to]

[The sections of Bill Pr. 10 agreed to]

MRS. BLACK: Mr. Chairman, I move that Bill Pr. 10, the St. Mary's Hospital, Trochu Amendment Act, 1992, be reported.

[Motion carried]

Bill Pr. 12
Calgary Foundation Amendment Act, 1992

MR. CHAIRMAN: Are there any questions, comments, or amendments?

[Title and preamble agreed to]

[The sections of Bill Pr. 12 agreed to]

MRS. BLACK: Mr. Chairman, I'd like to move that Bill Pr. 12, the Calgary Foundation Amendment Act, 1992, be reported.

[Motion carried]

8:50

Bill Pr. 14
Carolyn Debra Peacock Adoption Act

MR. CHAIRMAN: Are there any questions or comments?

[Title and preamble agreed to]

[The sections of Bill Pr. 14 agreed to]

MR. CHIVERS: Mr. Chairman, on behalf of my colleague the Member for Stony Plain I move that Bill Pr. 14 be reported.

[Motion carried]

Bill Pr. 15
Victory Bible College Act

MR. CHAIRMAN: Are there any questions, comments, or amendments to be offered?

[Title and preamble agreed to]

[The sections of Bill Pr. 15 agreed to]

MR. McINNIS: Mr. Chairman, I move that Bill Pr. 15, the Victory Bible College Act, be reported.

[Motion carried]

head: Government Bills and Orders
head: Committee of the Whole

Bill 23
Environmental Protection and Enhancement Act

MR. CHAIRMAN: The hon. Minister of the Environment has some amendments he wishes to make.

MR. KLEIN: Thank you, Mr. Chairman. At the outset I would like to thank the hon. Member for Edmonton-Jasper Place for sharing well in advance his amendments with the Assembly.

What I would propose to do this evening is to start things off by proposing a number of House amendments to Bill 23 in six main areas. Those main areas include: offensive odours related to farm operations, agriculture; economic instruments regarding taxes; the delegation of various authority to local governments; contaminated sites regarding the allocating of costs; recycling funds related to industry-operated funds; and some drafting improvements in two sections to clarify the intent of this Bill.

The amendments listed before you appear in the order that they occur in the actual legislation. I propose that we discuss them grouped within the six areas that I just mentioned.

Mr. Chairman, I also seek the concurrence of the Legislative Assembly to deal with all the amendments at once. Now, I know that requires unanimous consent. If not, then I would propose to deal with them in the six groups rather than each individual amendment, and there are numerous amendments within each group.

I would like to now take you through the principles of the amendments if I can.

MR. CHAIRMAN: I have to get the consent of the committee to proceed in the manner suggested by the minister.

MR. KLEIN: Right. Thank you, Mr. Chairman.

MR. CHAIRMAN: Is there any concern about that? If we do it with this, can it apply to all amendments? Can we have a general agreement for all amendments to be proposed?

MR. McINNIS: I'm not sure what's being asked. That each amendment be dealt with as one? I'm not sure that's going to work. I have a subamendment.

MR. CHAIRMAN: The minister in fact has proposed that they be dealt with as a package.

MR. McINNIS: The government amendments?

MR. KLEIN: The government amendments, yes.

MR. CHAIRMAN: Yes. The Chair is wondering whether the same rule could apply to all amendments, if they're done by packages. The hon. Member for Edmonton-Jasper Place has some packages too, and I was just wondering whether this committee wants to treat all of these packages the same way.

So the committee agrees?

HON. MEMBERS: Agreed.

MR. KLEIN: Thank you very much, Mr. Chairman, and thank you, colleagues in the Assembly. Dealing with the first group, amendment 1, with respect to offensive odours, this involves amendments to three sections, items A, F, and I. They are proposed to address concerns from the agricultural community.

Section 105 provides a power to "issue an environmental protection order" for offensive odours. It was not the intent to issue orders to agricultural operations which are following generally accepted farm practices. In item F, section (1.1) is added to 105 to make that clear.

In item A, section 1(b.1) is added to provide a definition of "agricultural operation" which would be consistent with the Agricultural Operation Practices Act. In item I, the former definition in section 118(a) is struck out. We are currently working co-operatively with other departments and the agricultural industry to develop an effective dispute resolution mechanism.

With respect to amendment 2 involving economic instruments, this proposed amendment is related to economic instruments in section 13. This section allows economic instruments to be developed to encourage environmental protection programs. A list of the types of measures which could be considered are included in the Bill. This amendment simply serves to delete a reference to taxes because the imposition of taxes is beyond the scope of this legislation. So it deletes all reference to taxes.

Amendment 3 involves local governments and the delegation of authority to local governments. Changes to three sections are proposed to address concerns of local governments.

Items C and D. The references in section 17(3) and section 18(1) currently require the Minister of the Environment to consult with a government agency or local authority before he or she delegates any responsibility for administering the Act. The amendment to sections 17(3) and 18(1) will require consent prior to a delegation. This reinforces our commitment to partnerships.

Item P. The change in the wording of section 206, which provides protection from civil liability for employees administering the Act in good faith, recognizes that this protection should extend to situations where the municipality has the authority to act but does not do so.

Amendment 4 relates to contaminated sites. Three changes are proposed to ensure that Bill 23 clearly responds to the recommendations of the Contaminated Sites Liability Issues Task Force. One change, item G, will add a section 108.1, which will recognize this government's commitment to establishing programs and other measures necessary to restore contaminated sites. In fact, the government has already entered into a co-operative agreement with the federal government to clean up orphan sites.

The second change, item H, will amend section 113. First, the criteria that the director must consider in determining persons responsible for a contaminated site will be expanded to include recognition if all the legal requirements of the day have been met by a person responsible. Also, the legislation will be amended to be clear that if the government has accepted responsibility for some of the cleanup of a contaminated site, the portion to be covered under a government program will not be charged to the persons responsible for the site.

The third change, item Q, will amend section 224, which currently limits liability of trustees and receivers to the value of the assets that are being administered. The wording is being clarified so that it is clear that protection is being given to the trustee or receiver for the assets that he is administering on behalf of others but not to any of the assets that are being administered on behalf of a person responsible for the contaminated site. Also, the protection of trustees and receivers will not apply where they have contributed to further contamination of the site. In other words, when they take over the site, Mr. Chairman, they are not responsible for those who have actually polluted the site, but if they themselves pollute the site, they of course will be responsible.

9:00

With respect to amendment 5, there are a number of amendments proposed to the provisions establishing recycling funds, and the intent here is to allow for both a government recycling fund and for industry-operated and -administered recycling funds. The principle of encouraging industry to administer recycling funds is a key element in the legislation and totally consistent with the concept of polluter pays. The amendments to section 160, item J; 162, item K; 163, item L; 165, item N; and 166, item O, and the addition of section 163.1, item M will ensure that industry can operate these funds in compliance with the financial requirements of the province; in other words, in compliance with the Financial Administration Act. A reference to the new section is also required in section 246, item S. Section 246 deals with the coming into force of the legislation.

The final grouping of amendments really are drafting items, and two drafting amendments are proposed to clarify the intent of two sections. One, a drafting improvement, item E, is proposed to section 81(1)(a) to clarify the designation of activities that require an approval from Alberta Environment. The designation may specify "the circumstances under which an approval is required and the person or classes of persons" who require an approval. The second drafting amendment, item R, involves some improvement in the wording for the transitional provisions of the legislation in 241.

Basically, Mr. Chairman, this legislation involves rolling nine separate Acts into one Act, and we need the legislative authority to make sure that there is a smooth transition as these Acts are brought into the new Environmental Protection and Enhancement Act, Bill 23. Basically, clear provisions are required to support the orderly transition when the proposed legislation is implemented.

Mr. Chairman, basically, those are the six groupings and . . .

AN HON. MEMBER: Agreed.

MR. KLEIN: Thank you.

I'd be glad to receive any comments or questions relative to these amendments.

MR. McINNIS: There are a number of amendments put forward by the government, and we have no objection to dealing with them en masse, although there are a couple that I think deserve special attention and one that I think should further be amended.

I think, though, that every member of the committee should reflect for just a second on the fact that even though it has gone through a very lengthy process of consultation and review within government and this is the second time it's been tabled in the House and the third public draft of it, this Bill is still being amended up to this very hour, which indicates, not surprisingly, that it's not a perfect piece of legislation. It didn't come from God. You know; it wasn't dropped from the heavens. In fact, I wouldn't even say with a straight face that it came from the people because there are some significant variations between what the public told the government, as witnessed by the Evans report, and what's in the Bill itself. It is, in the end, the kind of compromise that comes out of government, and of course it's not perfect and of course it can be improved. Generally speaking, these amendments are aimed at improving the Bill, so I would ask the members of the committee to open their hearts to other suggestions to improve and change the Bill, given that in fact it's not a perfect Bill. If it was a perfect Bill, there wouldn't be government amendments before the committee today.

I think my colleague the Member for Vegreville is going to speak to the agricultural provisions, which seem to my limited understanding to be an improvement on what's there. I want to focus on two in particular which I think are of some substance. One is the amendment to section 206, which is amendment P within the provision. This is the amendment that deals with the liability or escape from liability of various officials in the course of their public duty. Now, I understand that some of the local municipalities have a concern that the members of local councils might be liable for civil action in respect of some of their responsibilities, so the amendment that's put forward – well, essentially it's a meaningless amendment.

It doesn't change a thing, but what it does is add more words to the effect that it covers failing to do something when there's discretionary authority but not doing it. Well, what, pray tell, does "act or omission" mean? To me an act is doing something and an omission is failing to do something. The section as originally drafted suggests that

> where the action arises out of any act or omission of that person that occurs during the course of that person's carrying out [their] duties or exercising powers . . . in good faith,

there is no action for damages. Well, that's not even a sausage different from saying that doing something or failing to do something where there's discretionary authority. That is an omission by any other phrase. So I don't think that this amendment makes any difference to the text whatsoever. I mean, if there is a real problem here, it hasn't been gotten to by this amendment. I'm not sure that there is a real problem. I think that section is quite the same as what was in the original draft.

I'd like to turn also to the next amendment, Q, which deals with section 224. This is a very difficult area in law at the present time for receivers and administrators of estates; they may find themselves responsible for problems that they didn't create. Well, I think we should understand that this whole section deals with sites which are under the control of an environmental protection order. In particular, subsections (2) and (3) refer specifically to an order under section 113. Well, if you go back to 113, the reference is to contaminated sites. So what we're talking about here are sites that have already been certified as contaminated before they even get into the hands of the receiver. I think that's significant, because a receiver under those circumstances has got to be aware that there is contamination. When subsection (4) is added to try to clarify that the responsibility of the receiver relates to after the role of the receiver takes effect, I think putting in the words "on becoming aware of the presence of the substance" is a little bit strange, because these are lands which are already under an order declaring them to be a contaminated site. I suppose if the amendment were to pass in its present form, it might conceivably invite the receiver to be wilfully ignorant of what orders already exist from Environment under section 113.

Now, I've hurriedly drafted a subamendment, but I see that I did it too quickly and it's not quite complete. So I wonder if I could get those members of the committee who are paying attention to find a pen and go through the subamendment. It suggests that item Q of the government amendment is further amended as to the proposed subsection (4) of section 224 by striking the words "on becoming aware of." I want you to add in the words "the presence of."

MR. MAIN: "On becoming aware of the presence of."

MR. McINNIS: Right.

AN HON. MEMBER: Can we put it in between "aware" and "of"?

MR. McINNIS: No, it has to go after "of".

MR. MAIN: Can we put "aware of the presence"? The "of" is already written there.

MR. McINNIS: No, I think both "of"s need to be there. So you add the words "the presence of," and then we substitute "on taking possession of."

Mr. Chairman, I so move the subamendment as corrected. We're certainly not going to amend a subamendment, not around here.

What that will do is clarify that the receiver is responsible from the time that he or she takes possession of the property because it's already subject to an order declaring it to be a contaminated site. Therefore, the presence of contaminants is an issue that the receiver has to deal with. Now, it's one thing to say you're not responsible for what took place before, but it's quite another to say that you can avoid any responsibility by failing to become aware of certain things, and I think that the existence of an order under section 113 should be sufficient to give the receiver that information.

With that, I think that would make that amendment worthy of support.

9:10

MR. CHAIRMAN: Are there any comments on the subamendment? Is the committee ready for the question on the subamendment?

HON. MEMBERS: Question.

[Motion on subamendment lost]

MR. CHAIRMAN: Any further comments on the amendment?

The hon. Member for Edmonton-Meadowlark.

MR. MITCHELL: Mr. Chairman, I'm concerned with the amendment that would have the effect of deleting section 13(d). It's not that I'm a taxmonger or that we are advocating increases or other taxes, but I would just like an explanation as to why the minister would say that this is beyond the purview of this particular Bill and then comment on whether there is a problem or a contradiction, therefore, between what would now be devoid

of 13(d) and section 163, which establishes that environmental fund, and section 163(3), whether this becomes too limiting. If he is to exclude taxes, then it seems to me that he may be limiting the kind of funding that could go into the recycling fund and therefore limit its flexibility and its ultimate effect.

The other concern I have is this. The irony of our tax system is that we end up consistently taxing things that we do not want to discourage, such as small business, but we do not tax things that we might well want to discourage, such as certain kinds of pollutants and certain kinds of effluents. We don't tax them or we don't tax them adequately. One could envision a tax regime within which we begin to use taxes as incentives and disincentives, as we always have, but in a much more rational way or in a way that is at least differently rational than the way in which we do it now. Why, for example, would we rather tax small business in this province than tax auto emissions? It seems to me that it would be much wiser to tax auto emissions on fuel-inefficient cars and reduce taxes on small business in some commensurate way. It might well be that we should tax sulphur emissions, for example, from certain industrial processes and not tax other features of what those companies do and are currently taxed upon. My point is that by excluding this particular section, the minister may be limiting some creative and what would be widely acceptable tax restructuring. However, it may simply be that he has to do this for some procedural reason. If so, could he answer that, and that would satisfy me.

MR. KLEIN: Briefly, there is nothing creative about that, really. Basically, what is left in section 13 are those things that really are creative, such as emission trading, incentives, subsidies, fees on emissions, effluent, and waste disposal, and differential levies. These are very creative economic instruments. The problem with taxes is that taxes go into general revenue, and when you want to dedicate those moneys to a specific environmental cause, I don't care who the government in power is. Whether it's a Liberal, an NDP, or a Conservative government, trying to get money out of Treasury for certain things is very, very difficult from time to time, believe me, so it's best to have these revolving funds dedicated to a specific purpose. Taxes go into the general pool, into the General Revenue Fund, and it is very, very difficult. This was witnessed – I'll just make one brief mention. This is the problem, I think, with the tire disposal fee that was brought in in the form of a tax on car registration in Ontario, which went into the general revenue pool but never came out to address the problem of tires in the province of Ontario. You saw what happened there with the disastrous fire in Hagersville.

MR. McINNIS: Perhaps in some respects the Member for Edmonton-Meadowlark's heart may be in the right place. He referred to using the tax system to create incentives and penalties, incentives for things that are environmentally sound and friendly and penalties on things that pollute and so forth. I remember quite distinctly one political party suggesting that was an alternative to the GST, but I don't think that the Liberal Party went very far along with that. As far as I know, they're GST supporters at the present time, at least at the national level.

But I think a very important point has to be made here. What section 13 as originally drafted would do would be to give the minister the authority to levy taxes. Now, I don't think that the population of the province, if you put it to them, would be very comfortable with the idea of ministers levying new taxes on any given day of the week provided that they accord with the regulation, particularly, God forbid, if the people were ever fooled enough to vote the Liberals into office, because we know from recent experience that when the rubber hits the road and the financial problems become evident, their first call and their first sentiment is in the direction of new taxes. I believe that's what they were talking about at the recent convention; in fact, even a sales tax.

Most people I talk to seem to think that politicians should do a better job with the tax revenues that they have rather than dreaming up new taxes to solve new problems. In fact, the idea of having a single minister levy a new tax I think would frighten certain people, because they couldn't be sure who the minister would be and exactly what would motivate them and whether it would be done precisely to cure environmental problems in a fashion that's revenue neutral or be done to raise more money or to take the easy way out on financial problems. So I think we're better off dealing with taxes under legislation than we are under ministerial order.

MR. CHAIRMAN: The hon. Member for Vegreville.

MR. FOX: Thank you, Mr. Chairman. I just want to respond briefly to the amendment under section A of the minister's amendments to Bill 23, where he defines what "agricultural operation" means with respect to the Environmental Protection and Enhancement Act. I think that's a good response to concerns raised with the minister, with me, and with other members of the Assembly by agricultural groups, by Unifarm in particular, but it's also a concern expressed by the Western Stock Growers association and the Alberta Cattle Commission, groups that are involved with the intensive husbandry of livestock in the province. I think from conversations I've had with these groups that there is a definite commitment on the part of the farm groups to working towards defining what is good practice in their industry, making sure that they're leading the pack in terms of responsible practice with respect to looking after animals and managing the operations that involve animals.

They want to make sure that people know, that the urban, consuming public knows that farmers have been, are, and will continue to be very responsible managers of the resources that they're involved with, recognizing that there may be from time to time people who violate good practice, people who cut corners, people who don't do the things that they're supposed to do. I think there's a real willingness in the industry to take a look at current practice, to defend what is sound and what needs to be defended so that people can learn from it, and if there are changes that need to be made, it's the industry that's going to make them. I know there was a lot of concern about the open-endedness of the Bill with respect to section 105(1) dealing with offensive odours, and I think the minister's amendment clarifies that to the degree that most people can put those fears to rest and look to the Agricultural Operation Practices Act for some further clarification.

9:20

MR. CHAIRMAN: The hon. Member for Cypress-Redcliff.

MR. HYLAND: Thank you, Mr. Chairman. Just a few words on the amendments. I wonder if on the amendment related to agricultural operation the minister can assure us that we are now back to the stage where we were with the ag group that met in Calgary in midsummer of last year and pounded out an agreement of what would be acceptable to them, where they would have a part in operating it to make sure it was updated and to make sure that their industry did live up to the guidelines. Are we now back to that stage? Because it seemed like we were at that stage, and then we went off track when the Bill was introduced. Can the

minister assure us we're now back on track with these various groups and have their support for this amendment?

Another comment I'd like to briefly make – I didn't make it in second reading because it would relate to part of the Bill – is the part relating to the Department of the Environment giving guidelines to local municipalities, small municipalities and others. We've heard questions in the House relating to developments on the Bow and Elbow rivers regarding sewage from subdivisions, et cetera, that are built above Calgary. It can happen anywhere. We hear those concerns about the sewage and the water contamination there, and then we turn around and these people have to go through many hoops and studies, et cetera, to prove that the water can be used or that the sewage isn't going to do any harm.

Then we go to small rural communities. In the community that I come from, 20-some years ago we built a lagoon because the department told us back then that we had to look after our sewage; we couldn't continue to dump it into a creek. A lot of money was spent at that time. Now we're approaching the stage where we have to build it again because it's too small because the town has grown. Rural communities have faced this. Calgary has faced it and has made improvements to the sewage system. Edmonton hasn't. They've chosen to go blue box and do high-profile things and continue to dump raw sewage into the river as their treatment, because they have a river approximately five times bigger than the river in Calgary.

I wonder if somewhere in this legislation, Mr. Chairman, we're going to get to the stage where when cities open up large housing developments, they have to be able to prove that they can handle the sewage from those developments. If you're in a small town, if you can't handle the sewage, they won't allow you to build any more houses. You're stopped. Yet if you're in a big city and you can scream enough: go ahead and continue to pollute the rivers rather than clean them up. I think the difference between Calgary and Edmonton is, as I said, that you're dealing with a river one-fifth the size. Calgary cleaned up their sewage because they had to. In Edmonton the river's big enough to dilute it, so you keep on going. Are we going to get to the stage where all levels of government, big and small, in this province will have to live by the same guidelines, rather than having one for one and a different guideline for the other?

Thank you.

MR. CHAIRMAN: Any further questions or comments?

SOME HON. MEMBERS: Question.

MR. CHAIRMAN: The question has been called on the package of amendments proposed by the hon. Minister of the Environment.

[Motion on amendments carried]

MR. McINNIS: I take it from the earlier vote that we're dealing with amendments in an omnibus way. I think that's probably the most . . .

MR. CHAIRMAN: The reason I asked about the package – the hon. member has several amendments per amendment. I guess we'll deal with amendment 1 as a package. The committee has agreed that it would do that if the hon. member wishes to do it that way.

MR. McINNIS: Well, I have no desire to prolong the proceedings. I thought I might just run through the works of them.

MR. CHAIRMAN: The whole works?

MR. McINNIS: Sure. Why not? I know I've got the rapt attention of the hon. minister of culture.

This is a package of amendments based primarily upon the results of the public hearing process but also on some other research and information. It's our desire in the Official Opposition to try to make this the best possible legislation that we can for the province of Alberta. This legislation will serve as a framework for the operation of the Environment department and for the protection of our environment for a good many years to come. It may be changed from time to time, but if we have the ability to strengthen it now, I think we probably should do that.

The first group of amendments deals generally with the idea of putting the role of the ecosystem at the centre of this legislation, which is what it should be. I note that in the Act as presently drafted, we're dealing with that concept but in a way that I think represents if not a misunderstanding at least a misstatement of the relationship between ecosystems and the environment. Subsection (a) says that "the protection of the environment is essential to the integrity of ecosystems and human health," as if ecosystems were a by-product of the environment. Well, nothing could be further from the truth. In fact, the integrity and function of ecosystems are what is essential to the health of the environment. Without healthy ecosystems you cannot have a healthy environment and all that pertains therefrom. So we would like to try to put that concept into the purposes of the Act, and that's done in several different ways.

In addition, item C of the first amendment adds the operation of the forests and forestry to the purview of this legislation, because the forest is also an ecosystem, or at least a complex series of ecosystems. I don't think that in this part of the 20th century we can draw a rigid line between what is the environment and what is forestry and say that we're going to have environmental laws and procedures which apply to the roughly 40 percent of the province which is not forested land but don't apply to the 60 percent which is forested land. So we want to make that inclusion.

[Mr. Jonson in the Chair]

Amendment 2 adds a significant item to the duties of the Minister of the Environment. I referred in second reading debate to the all but meaningless clause (i), which says the minister "shall generally do any acts the Minister considers necessary" to promote certain things related to the environment. Well, that business of saying the minister "shall" do whatever he considers necessary is really a play on words. It's a "may" that begins with the clause "shall." In order to really take that kind of drivel out of the Act and to put in something which is real and meaningful, we're suggesting here that the minister "shall enforce all provisions of this Act in order to promote the protection of" the environment for the benefit of the people of Alberta and future generations. That's really not an atypical thing for a law enforcement official to be committed to, and in fact the Minister of the Environment is a law enforcement official among many other things. Just as the Solicitor General and the Attorney General have those responsibilities, so too does the Environment minister, and for that reason we propose adding that to the duties of the minister.

The third amendment, to section 33, is lengthy on the face of it, but really the concept behind it is very, very simple. Section 33 is that portion of the Act which deals with freedom of information. Now, there's a significant change between the draft tabled in this Assembly a year ago and the draft tabled just recently.

The difference is in whether information is considered to be public or not. What the section 33 now drafted says is that it "shall be disclosed to the public in the form and manner provided for in the regulations." All that means is that if there is a regulation that says it's public, then it's public, whereas the previous draft said very clearly that information in the possession of the government is public and shall be disclosed to the public. Those words "is public" and "shall be disclosed" are what's missing from this Act. Essentially, all that's done here is that section 33 is taken from last year's draft, where it was in pretty good shape before the caucus and the cabinet got to it, and to restore at least that measure of freedom of information within the legislation. That's amendment 3.

9:30

The fourth amendment makes alteration to the environmental protection and enhancement fund. It does a couple of things. One is that it establishes an independent board of directors to govern the fund. This fund, as we see it, is going to be a very important part of environmental policy in the future in terms of all of the functions that it has assigned to it under the present Act dealing with reclamation and enforcement of environmental orders and that kind of thing. We think there are grounds to put the operation of that under an independent board because it's going to be such a significant and substantial element of environmental policy in the future.

The second thing that this series of amendments does is to establish a source of funds to clean up so-called orphan sites in the private sector. Now, for many years, as members know, the Heritage Savings Trust Fund has been a source of funding for cleanup of sites that are publicly owned by the province or by municipalities. What's proposed here is the ability to "establish classes and subclasses of businesses" which have an environmental impact and, in particular, those that are shown or known to have an environmental hazard that's greater than the others to pay into a fund in order to do that kind of cleanup work. This is a kind of superfund, if you will, but it extends that concept and provides a source of funding which is not the taxpayers, because it's very difficult for the taxpayers to clean up the messes of industry in addition to the awesome burden that they now have to clean up the messes of this provincial government. I mean the financial messes, which we won't be debating this evening.

The fifth amendment proposed adds to the purposes of the environmental impact assessment process under section 38 to make certain that the purpose of environmental impact assessment is to ensure that projects "are compatible with the survival of healthy functioning ecosystems" and also brings forward and gives some life to this idea of "adverse effects," which is one of the innovations that's in this legislation: the idea that there is such a thing as adverse effect and the definition of it. These are positive new developments. We simply want within the purpose of environmental impact assessment to add that the process is

> to determine whether a project should be approved and to ensure that projects which would have significant adverse effects on the environment are not approved.

If that concept has any meaning at all, surely it should have the meaning that we don't go out of our way to approve projects that create adverse effects on the environment.

Amendment 6 deals in a number of areas with the concept of recognition of intervenors and the provision of funding for intervenors in environmental processes. The language that's used in this legislation is the language of "directly affected." That's the language that's in the Natural Resources Conservation Board Act and in other legislation. It really goes back to the way the Energy Resources Conservation Board is operated. It's the idea of local intervenors, that you have property owners in the immediate vicinity who are obviously affected because of the fact that they live or own property nearby, and they can have input into the process on that basis.

Well, as has been pointed out so often, many of these development projects with potential adverse effects take place on Crown land. If they're on Crown land, there are no local intervenors by definition, so you need a different test. I mean, the absurdity of this was pointed out recently when the Natural Resources Conservation Board set out a list of intervenors for the Kan-Alta project in Kananaskis. They threw the whole works out, Mr. Chairman, every last one of them, because Kananaskis is on Crown land and there are no local residents. Therefore, there are no intervenors. The board obviously felt that there was an injustice. They had no choice because of the way the legislation was written. They obviously felt there was an injustice because they took what they described as board funds and gave it to some people to try to get some semblance of a hearing going. Well, the way I read it, they don't have any authority to give, because there are no board funds. There are taxpayer funds in this instance, but they had to really sidestep the legislation in order to overcome an obvious injustice.

Well, we've got an amendment here which would prevent the injustice in the first place under the enactment of this legislation by stating that if people have a legitimate concern about a project – and there are various tests that are available to make sure that these are not frivolous or for any ulterior purpose – they should be included in the process as well. It's a more inclusive language than the one which is clearly not working which was employed in the Natural Resources Conservation Board Act.

Amendment 7 deals with decision-making criteria. We find, Mr. Chairman, that the criteria for making decisions in this legislation are altogether too vague and in some cases downright political. They need to be tightened up a little. For example, where it says in section 62 "Where the Minister is of the opinion that a proposed activity should not proceed because it is not in the public interest," we think that's altogether too vague, that we should put "is not compatible with the survival of healthy, functioning ecosystems." Then we say that the minister "shall" direct that no approval be issued to the project.

Similarly in section 65, where the director is making decisions, again we want some real environmental criteria to put into the Act.

With regard to the eighth amendment, this deals broadly with the area of discretion in legislation as opposed to duty and responsibility. It's been noted particularly in the public hearings that when it comes to process, the legislation is fairly firm and strong. It says that this shall be done, that shall be done, the other shall be done, but when it comes to decision-making, it just falls to pieces: this "may" be done, that "may" be done. Well, as we know already this evening dealing with discretion among public officials, if you say a thing "may" be done, then it may not be done as well. The concern was felt quite deeply by the public that there was too much discretion and too many avenues for uncertainty as to outcome and perhaps uncertainty as to criteria and values. If nothing else, I've learned in the last three years that environmental policy should be value driven as opposed to being politically driven, because it's the political decisions that have got us in the trouble we're in in many areas today.

The ninth amendment does precisely the self-same thing for the minister as was done for the director under amendment 8.

The 10th amendment deals with the area of certificates of variance. In the past, I daresay, Mr. Chairman, there has been quite a bit of uncertainty, not to say abuse of process, over exemption of the provisions of permits to pollute. People who live

in the vicinity of plants such as the Procter & Gamble pulp mill on the Wapiti River have no real basis for knowing what may or may not come out of that pulp mill on any given day because they can read what's in the operating permit, which is a matter of public record, and they can read what Alberta Environment says are the standards, but they may not even be aware that on this given day a letter of permission has been issued. I'm glad to see that's taken out of the Act, but there are certificates of variance which again mean that these pollution permits cannot be relied upon. We simply say that a pollution permit should be legally binding, and if not, then how can the public have any real understanding of what's going into their environment and for what reasons these certificates of variance may be issued.

9:40

The 11th amendment deals with the environmental appeal board, a very important amendment. The environmental appeal board is there to give an opportunity for persons who are unhappy with decisions from the department, especially from the director, to appeal those decisions, but when you strip back the layers, you realize that the decision of the environmental appeal board is not binding in any sense. It's advisory only to the minister. So you have a situation in which the minister is forced to sit in judgment on the actions of his or her own department on appeal. Now, I think that anybody who's had the experience of being a minister could tell you what a difficult position that places them in, because a minister depends on a daily basis on the advice of his or her officials. How can the minister sit in judgment upon that advice where there's an external appeal if indeed the minister is dependent?

I think there's a further problem as well. Under present legislation the director's judgment may not be fettered by the government. There was a court case, as most members probably know, where . . .

MR. DEPUTY CHAIRMAN: Excuse me, hon. member. Could we have order in the committee, please? [interjections] Order please.

Proceed, hon. member.

MR. McINNIS: Thank you, Mr. Chairman. We've already had a court case where it was alleged that the director of standards and approvals' judgment was fettered by the actions of the minister and the cabinet. Now, just think for a moment. If the minister sits in judgment on appeals from decisions by the department, what position does that put the minister in in relation to those decisions? Are the officials not going to have to try to consider what action the minister is going to take on an appeal from that decision before they make it?

I think the system contains a lot of legal fiction the way it is. I recall one instance not long ago where I was at a meeting up in Bonnyville dealing with the water levels, and the Minister of the Environment began the meeting by saying, "Well, I've got to be careful; I can't fetter the discretion of the director because that's illegal." That's what he said, but at the end of the meeting he was saying, "Well, I'm going to take all of these concerns that we have at this meeting and give them to the director." I sort of wondered: was he going to put them in a brown paper envelope and slip them under his door in the night so he didn't know that they came from the minister? Just think this thing through to where you have the minister receiving appeal decisions and deciding whether they go or they don't go. I think the structure is wrong.

This particular amendment makes those appeal decisions final except on questions of law, where they could be appealed to a court. Further, because the members of that appeal board would have a quasi-judicial responsibility, under this amendment it goes on to state that they have to be unbiased, free from conflict of interest, political interference, and have the expertise necessary to do the job.

So that's the 11th amendment. We're nearly there, Mr. Chairman.

Amendment 12 states that the director would be required to issue an environmental protection order where a site is contaminated. Now, I think that's kind of important, and we talked a little about this earlier. Either a site is contaminated or it isn't. If it is contaminated, then why would the director not issue an order saying that it is? Under the present drafting, it's discretionary: "the Director may." We've gone the next step, since there is no discretion, of saying that such an order could be appealed to the environmental appeal board. I don't know why it can't be appealed at the present time, because that's a pretty substantial type of an order. If you say that a site is contaminated, then there are a whole bunch of things that follow from it and it's an issue that's sufficiently important that I think the right of appeal should be provided. That's also there in the 12th amendment.

We get finally to the 13th amendment, which is one that's somewhat dear to my heart. It's amends section 183 by adding words which would in effect protect from discipline or dismissal by their employers those people who report environmental offences. It's an important idea, because it has often been observed that we're not going to have ecopolice in our province – at least I hope we don't during my lifetime – roaming the countryside trying to find evidence of environmental contamination. Just as the Minister of Forestry, Lands and Wildlife spends money to encourage people to report poachers, I don't see any reason in the world why we shouldn't encourage people to do their part to make our environment a healthy place to be. I mean, if you run across evidence that somebody's illegally dumping, for example, I think it's every person's civic duty to try to make sure that authorities who can do something about it, do something as quickly as they can before damage is done. We all know it's just a plain fact that the tougher you make penalties under laws, the more incentive exists to do things illegally outside the system, so the very least we can do is protect those employees who come forward and provide that information to the system, the law enforcement officials, from discipline or dismissal by their employers.

On behalf of the Official Opposition I move the 13 amendments which are in my name before the committee.

MR. DEPUTY CHAIRMAN: Is there further debate on amendments 1 to 13? Member for Banff-Cochrane, do you wish to speak?

MR. EVANS: Very briefly, Mr. Chairman. I want to commend the ND member for these amendments because I think they are brought forward in good faith.

It is clear, however, to me by reviewing these that for the most part what the member is saying is: let's deal with these issues in essentially the same way. With a couple of notable exceptions I think his amendments are just saying the same thing in a slightly different way with a slightly different emphasis, but again I would congratulate and commend him for bringing the amendments forward.

I would, however, like to make a comment – it's more a rhetorical question than expecting a response from the member – about his amendment 1 where he talks about striking out subsection (a) of section 2, which is the purposes section, and substitut-

ing for it a phrase that begins: "the integrity of functioning ecosystems". The member has referred on a number occasions to the Environmental Legislation Review Panel that I chaired and his support for the recommendations from that panel. Clearly, the panel did recommend that there be a preamble to the legislation, but the overall theme of that preamble was to preserve the overall integrity of the environment. The ecosystems approach is certainly an important aspect of the environment. I certainly don't question that. I think we're into a problem of definitions, and there are almost as many definitions today of "ecosystem" as there are of "sustainable development."

The question I would have for the hon. member is just whether he would reconsider what "functioning ecosystems" means, because the reverse is a nonfunctioning ecosystem. "Ecosystem" to me means something that is alive and vibrant. I'm not sure that "functioning ecosystems" has any meaning. Again, I don't expect an answer from the member. I'm asking this almost in a rhetorical sense, but I would appreciate him giving that some consideration.

I do have some additional comments on some of the other amendments, but given the hour and the fact that I'm sure the minister is going to make some comments as well, I would just conclude my comments by stating that the recommendations that were made by the panel that I chaired were one very important part of the government's decision as to what matters were to be carried forward in this Act. That was recognized by the panel, and I think it was recognized by all of those who attended before the panel as well. It was an opportunity for public input into the process. There were a number of other processes far less formal but nonetheless processes that the minister was going through at the same time, and subsequent to the report from the panel other processes that were gaining input to other ministries into this same question.

I believe that what is before us today is a very positive improvement on the environmental legislation that we've had before. It does take into account in a very substantial way the recommendations that were made by the panel but also takes into account some of those good recommendations that were made by other Albertans. This is clearly a piece of legislation that's generated by Albertans' input. I think it will serve us very well, and I would like to end by again stating my support for the legislation as presented.

9:50

MR. McINNIS: If he doesn't want an answer, he shouldn't ask the question, but since he did, I'm certainly going to answer it. A functioning ecosystem is one that has integrity and works. I mean, families can be functional or not functional. Ecosystems the same, and ecosystems are quite easily disrupted. I think that's really tied up in the concept of adverse effect, which I think is one of the major innovations in this legislation, that there is such a concept. To me the opposite of a functioning ecosystem would be one that's under stress, and there's a certain point at which the stress becomes so disruptive that things sort of deteriorate from there. So I think when you say "functioning ecosystems" you mean one that has the ability to renew itself and to sustain itself in that sense. If it's not functioning, then there's some disruption in the process.

I'm glad that the member mentioned the report of the committee which he chaired, because as I said, I think there's a lot of important material in that report. What makes it so important to this legislation is that it is the result of a public hearing process, that in fact what I think the committee did was to mirror to a large extent what it heard from the public. One of the things that the report said near the very beginning is that the "sweeping discretionary powers" that were granted under the then draft legislation to the minister, the cabinet, and officials are – and this is a direct quote – "the most disturbing aspect of the proposed legislation." I think that's very strong language, and I think it puts that aspect of this legislation on a plane that's somewhat different than all of the other bits and pieces of it. So it's sort of, you know, you can go through and say, well, we took 80 percent of the recommendations or 60 percent or whatever it is, but if you don't accept what the committee says is the most disturbing act of the legislation, then I think in a broad sense the government has missed the point.

I've said before in this Assembly that sure, the legislation is a lot better than what we have today, but I don't think what we have today is a fair test. I think a fair test is what the state of the art is in environmental legislation, but a fair test is also what the people of Alberta want in this legislation, and to a fair extent they've spoken. That's why so many of the amendments appear to be based on that theme, because that was, according to the public who showed up in public and made their presentations on the record, the most disturbing aspect of the legislation. Other people who make their representation within the privacy of caucus and cabinet, they have different views, and obviously their voices are heard over and above the voices of the public as reflected in that particular report. I really think that's why so many of the amendments appear to the member's eye to be similar, but there are, of course, exceptions, as was mentioned.

MR. DEPUTY CHAIRMAN: Any further speakers on amendments 1 to 13? The Member for Vegreville.

MR. FOX: Mr. Chairman, I'm puzzled by the lack of response from the government side. The minister and the Member for Banff-Cochrane both acknowledged a substantial amount of thoughtful effort that's gone into the preparation of these 13 amendments to the Bill. I really haven't had an indication from the government side about how they're going to vote on these amendments. Usually when you speak in this Assembly, you speak either in favour of or against or try to moderate what's being discussed here, and I don't have a clear indication of whether or not the government's going to accept some or all or none of these amendments. I'd like to know that, but my hunch based on experience in this place is that they're not going to accept any of them. [interjection] I just heard that from the government side.

MR. CARDINAL: I'll tell you why.

AN HON. MEMBER: That was Athabasca-Lac La Biche.

MR. FOX: Athabasca-Lac La Biche? I thought he was an environmentalist.

Anyway, I'm puzzled, because some of these are so absolutely straightforward and commonsense. I want to draw government members' attention to amendment 13. It's the last one in the package provided by the Member for Edmonton-Jasper Place. Amendment 13 proposes that in section 183 – that's on page 112 of the Bill – section (a) be amended by adding the words

> including programs which protect employees who report such acts or offences from discipline or dismissal by their employers

following the word "environment."

If we add that to the Bill, section 183 would read,

> The Minister may establish programs to promote the reporting of
>
> (a) acts or omissions that are detrimental to the environment including programs which protect employees who report such

acts or offences from discipline or dismissal by their employers.

Now, what would be the impact of that? Well, it doesn't require that the minister do anything. If this amendment on its own is accepted, it still says

The Minister may . . .

That means at his or her discretion.

. . . establish programs to promote the reporting of
(a) acts or omissions

plus provide what would traditionally be called whistle blower protection for the employees.

I think we have to agree that in this day and age when people are so very concerned about their environment and abuses of the environment and violations of whatever laws we have in place, we've got to encourage people to come forward and let us know when violations occur, because no monitoring mechanism can be 100 percent fail-safe effective. We can't always know when violations occur. We're going to miss some things no matter how diligent we are in monitoring and policing the Environmental Protection and Enhancement Act if it ever passes through this Legislature. So we need to rely on people, and people should know that if they're going to report an abuse of the environment or a violation of the Act or any other Bills that we have or legislation to protect the environment, that they can pass on that information with impunity, without fear of reprisal, that they can raise their concerns and have them dealt with without having to fear for their jobs, without worrying about being disciplined or threatened or bullied or cajoled into keeping their mouths shut. I think it's important. It's not saying that the minister has to do it. It's not saying that he or she has to go out and establish these programs tomorrow. I know we need to take small steps before we take big steps with this government, but it says that he "may establish programs."

I think it's just so basic, such a reasonable thing to ask that I can't believe that government members would not vote in support of amendment 13.

MR. DEPUTY CHAIRMAN: The Member for Athabasca-Lac La Biche, followed by West Yellowhead.

MR. CARDINAL: Thank you very much, Mr. Chairman. I think I have just a couple of minutes also. I want to speak against the amendment.

The following reasons are why I'm speaking against the amendments. The Member for Edmonton-Jasper Place, who proposes the amendments, I believe cannot be taken seriously. As the NDP environmental critic, I think his credibility is questionable. So is his whole party. The reason I say that is very simple, and I'll be brief. When the city of Edmonton last summer dumped . . . [interjection] Listen now. When the city of Edmonton last summer dumped 1.6 million litres of raw sewage into the North Saskatchewan River, this same Member for Edmonton-Jasper Place was running around pointing fingers at Al-Pac, at Daishowa, at other projects, pointing fingers everywhere else except in his own backyard. Therefore, any environmental issues he addresses or proposes amendments for cannot be taken seriously, and I would move that his amendments be defeated.

10:00

MR. DEPUTY CHAIRMAN: The Member for West Yellowhead.

MR. DOYLE: Thank you, Mr. Chairman. I didn't get the final words from the Member for Athabasca-Lac La Biche, but I didn't necessarily agree with anything he said anyway.

Mr. Chairman, I stand in support of the Member for Edmonton-Jasper Place's amendments to Bill 23, the Environmental Protection and Enhancement Act. They've already been put on the record. Many of the things the Member for Vegreville spoke of – for instance, to provide the whistle blower's protection in amendment 13. We can't, of course, say that we would have known of such things as the Hinton disaster, because many people didn't know for quite some time what had really happened, but we wouldn't have the same problem in Alberta if we had proper environmental protection for coal miners, proper equipment to sniff out methane gas. History will tell you that the employees of the coal mine in Nova Scotia on many occasions came to their management and told them that there were problems in the mine. The safety hazards were there. They were relevant day in and day out. Some of them worried enough that they left, quit, came back. Some moved to Grande Cache and other coal mines in the area to protect themselves. Others stayed behind, and now we know where they are.

If we had whistle blower's protection for these employees, they could have carried it on further. They would have made sure that this company wouldn't have been allowed, especially with all the government money that was put in it through the federal and provincial governments in Nova Scotia. These people would have been protected and probably been alive today, and that mine may never have opened. I understand the minister of Occupational Health and Safety was in Grande Cache today, and I hope he learned firsthand that those possibilities are there. A former miner myself, I realize that we must have protection of the coal miners, and whistle blower's protection must be provided not only for coal miners, Mr. Chairman, but it must be provided for other people who work in pulp mills and know that too much effluent is being put in the water. It's only recently that it came to the public light, although the report was tabled, I believe, in 1990, that the Athabasca had been polluted from Hinton to the delta, at the end past Fort McMurray. We have to make sure that these people come forward, that they're going to be protected so they don't lose their jobs, and that strong action will be taken to make those who pollute clean up their act.

We have to also have something in here that the minister has failed to put in – eliminate the certificate of variance or pollution permit – that would then be legal and binding. The minister could perhaps answer if the municipalities have permits for putting their sewage in the rivers. Is there anything in the Act – I didn't clearly find it – where municipalities have any right to actually dump their sewage in the rivers, regardless of what municipality it is or whose riding it's in? That's something we have to start taking more seriously, Mr. Chairman, because we've let it go on far too long, putting the sewage in the rivers and allowing mills and other companies to pollute. All we have to do is take a look at the companies who are asked to do something and made sure to do something, much like Cardinal River Coal, Luscar, Gregg River, and those who have rehabilitated the land that they have disrupted. They've planted new forests. They've brought back the animal life. They've stocked man-made lakes out of the old pits. They've provided protection for the bighorn sheep, many of them on the cliffs, where they have their little ones or stay when they're not in their best health. They've done a remarkable job of enhancing the environment after they took the coal. I would hope that the minister would take a good look at some of the things that can be done when the land is disrupted to make a good profit, a good profit not only for the companies but for the people who work there and the municipalities.

To see the job they did in the Coal Branch is just remarkable. I would hope that as things proceed under the environmental Act,

all companies will be made to return the soil back to the way it was, and that some day their rivers will be turned back to the way they were. I know these things don't come quickly, Mr. Chairman. I know they're expensive, but I'm sure the minister, if he has our feelings, will work towards cleaning up our rivers.

Thank you, Mr. Chairman.

MR. KLEIN: Thank you. Just to address very briefly the amendments of the hon. Member for Edmonton-Jasper Place. Mr. Chairman, I think that the hon. Member for Banff-Cochrane spoke to amendment 1, and indeed the hon. Member for Vegreville alluded to this side of the House not paying that much attention to the amendments. Indeed, that's not the case. As I indicated earlier, the hon. Member for Edmonton-Jasper Place was kind enough to submit to all members of this Legislature the amendments well in advance. Indeed, we had an opportunity – "we" being myself and my colleagues in government and officials and some of the legal people – to go through the amendments and give them a great deal of thought and consideration. That could have only come about as a result of having advance copies of those amendments.

I guess, like the legislation, Mr. Chairman, nothing is perfect in this world, and all the amendments aren't perfect. I would just like to respond very, very briefly to some of the problems we see. First of all, with respect to whistle blower's legislation there is ample opportunity for anyone who sees a crime of pollution taking place – and I talk about a crime of pollution. That is deliberate violation of our land and our air and our water, for which there are proposed significantly increased fines. There is a responsibility, just a commonsense sense of responsibility on the part of any citizen to report that kind of crime, just as a citizen would report the crime of a bank robbery or an attempted murder or a burglary or any other crime. We don't need legislation to achieve that kind of thing; there is a responsibility on the part of society. Moreover, if you're going to introduce legislation such as whistle blower's legislation, then it should apply to all aspects, all components of government, not just to the environment. In other words, what I'm saying here is that if legislation is to be passed with respect to the protection of those who report anyone committing a crime, particularly as it relates to the workplace, then perhaps that should be more appropriately considered under labour legislation rather than specifically environmental legislation. Maybe the hon. members for both opposition parties might consider going in that direction if they want amendments.

With respect to certificates of variance, I know that the hon. Member for Edmonton-Jasper Place has expressed from time to time his concern over the issuances of certificates of variance. I would simply point out, Mr. Chairman, that without these certificates we could be facing some very serious problems. I think the hon. Member for Athabasca-Lac La Biche pointed out one of those problems. If we didn't have the authority or the opportunity to issue a certificate of variance, indeed, we could have a lot of backed up toilets right here in the city of Edmonton. A certificate of variance is to allow people under certain emergency circumstances to do things that could otherwise cause harm in another area.

10:10

In the case of the city of Edmonton, for instance, when it rains very, very hard in this city, in some of the older areas the eavestroughing goes back into the house and back into the sanitary sewage treatment system. When you get what is ostensibly storm water combined with sewer water and it goes to the plant, the plant simply can't handle it. It simply doesn't have the capacity. So what we have to do is give a certificate of variance to open the gates and unfortunately allow that raw sewage to go into the North Saskatchewan River. Otherwise, it would back up, and there would be tremendous flooding and very serious circumstances, much more serious circumstances in the homes throughout this city. We have to have the ability to issue a certificate of variance, and believe me, it is a last-ditch remedy. We don't and never have and never will in the future issue these certificates without exceptionally good reason, Mr. Chairman.

With respect to the environmental impact assessment process, the hon. Member for Edmonton-Jasper Place wanted clarification of the mandatory list, and he wanted to eliminate the ability to exempt projects or classes of projects. Well, there are just so many activities going on. Mr. Chairman, common sense has to prevail. You have to have the ability to say, "This needs an environmental impact assessment," or "That project doesn't need an environmental impact assessment." Otherwise, we would be forced into applying an environmental impact assessment to virtually everything that takes place. So we have to have a mandatory list; we have to have a list of those things that could be subject to an environmental impact assessment and then common sense prevails relative to those things which would automatically be excluded. There has to be that discretion. Yes, we have put in this place in this legislation and the accompanying proposed regulations a mandatory list, which clearly spells out those projects that have to go for a full-blown environmental impact assessment and a hearing before the Natural Resources Conservation Board. I think you can't have legislation so tight so as not to allow common sense to prevail.

With respect to the minister's and the director's discretion, throughout the hon. member's amendments he refers to the minister or the director "shall" do this, that, and the other thing. I simply think that this would be unworkable. I think that any director or any minister who shall do practically everything and fails for some reason or another to do that could find himself spending more time in court than in his office or in this Legislative Assembly or in the communities in this province. "Shall" is a very, very restrictive word, Mr. Chairman. Relative to the administration of this Act, I think there is an all-encompassing phrase, and it's contained in section 16, and it says, "Except as otherwise provided in this Act, the Minister is charged with the administration of this Act." That is a commonsense statement. It simply says that if you have a law in place, the minister is charged with the administration of that law. I think that should be sufficient in terms of the minister's responsibility for making sure that environmental law is carried out in this province, Mr. Chairman.

I do thank the hon. member for his amendments. Obviously he's put a lot of thought into them, and believe me, we have given those amendments serious consideration.

Thank you, Mr. Chairman.

MR. DEPUTY CHAIRMAN: Ready for the question?

HON. MEMBERS: Question.

[Motion on amendments lost]

MR. DEPUTY CHAIRMAN: Considering the amendments proposed by the Member for Edmonton-Meadowlark.

SOME HON. MEMBERS: Question.

MR. MITCHELL: Thank you. I welcome the haste with which the members of the Conservative caucus want to embrace these amendments and their clear enthusiasm in calling for the question so early in this debate. I appreciate the opportunity, Mr. Chairman, to address these amendments. I have a series of them, which have been distributed. I will address them as briefly as I can and not prolong the debate this evening unnecessarily.

My first amendment is to section 1. What this amendment deals with is the strengthening of the manner in which ozone-depleting substances will be treated by this particular Bill. I know that it is not normal to specify what substances would be dealt with in a Bill of this nature. This is normally left to regulations. However, I am concerned that the draft regulations for Bill 23 were inadequate, as they did not include any mention of HCFCs and made no provision for the collection and recycling of ozone-depleting substances. If ozone-depleting substances are classified as designated substances, then my hope would be that regulations would be passed stating how they are to be collected and recovered. This would be section 166(p), the keeping of records and labeling.

I would like to note, Mr. Chairman, that this Bill is deficient to the extent that it deals only with CFCs and does not deal, for example, with HCFCs and with halons. It is important particularly because HCFCs are being touted as a replacement for CFCs, and while they have some merit as an interim replacement, it is important to note that they are persistent and effective ozone-depleting substances. In fact, they're about 50 percent as effective as CFCs, and CFCs are significantly bad, of course, in and of themselves. Other provinces are beginning to address ozone-depleting substances other than CFCs, so it is important that this province does.

It seems to me that while people can argue about the vagueness or raise questions about the existence of certain environmental problems, there can be simply no doubt that the ozone layer is being depleted. We have clear indications of what substances deplete it, and we are now encountering, experiencing, a direct effect on our health and the necessity to make not insignificant life-style changes to address that effect on our health. This amendment to section 1 would have the effect of broadening this Act to include designated materials such as chlorofluorocarbons, halons, and hydrochlorofluorocarbons.

Amendments to section 22 on the second page deal with the purchase of development rights. What I think we all acknowledge is that urban areas encroach increasingly on quality, first-class agricultural land, and it is not appropriate to expect that farmers should be required or expected to defend the existence of good agricultural land when market forces would reward them for selling their land for other purposes, such as urban development. So what we would like to do is amend this section to acknowledge that there is a role for society to assist the farmer, giving farmers value for other uses that their land could be put to without taking that land out of agricultural production. The way that we would do that is to create a function for the purchase of development rights. This amendment does that. It refers only to class 1 and class 2 land. The process of purchasing development rights – that is, to give a farmer value for his or her land that goes beyond its agricultural value – can be triggered either by the landowner or the municipal district under these amendments. The value of the purchase rights would be set by arbitration as under the Alberta Arbitration Act. The extent to which development rights could be purchased would depend on the funds available.

10:20

Not all the money has to come from government. In fact, corporate donations, private donations, would be acceptable. Individuals can make gifts if they want to ensure that their land stays in agriculture in the future, for example. It isn't as though this has to be inordinately expensive. There is experience in the United States where at least 10 states have actual purchase of development rights programs, with funds set up by governments to purchase these rights. Connecticut has particularly high land prices but has spent only $44 million over a 10-year period, Pennsylvania has a $100 million bond issue to support this initiative, and California has a $60 million bond issue to support this initiative.

The fact is, Mr. Chairman, that this is an enlightened initiative, to support the preservation of irreplaceably valuable agricultural land that is being encroached upon by urban development, and it is designed so that farmers are not expected to bear the economic cost of that when market forces would drive them to give them a benefit that goes beyond the value of their agricultural land. This allows society, through government and through individual initiative, corporate initiative, to step in and protect the farmers' interests and society's interests in defending the agricultural value of land around urban areas.

Section 28 we would amend simply in support of this development rights initiative by setting up the fund and specifying that not only would government money support this fund, but the fund could also accept money from private and corporate donors.

The amendment to section 33 addresses the issue of disclosure of information. It acknowledges the importance of confidentiality with respect to a certain trade secret, for example, over which a company or an individual might have proprietary rights. But at the same time it says: you do not have to disqualify an entire document because one section of it may have some trade secret, as it were. Therefore, what we do is establish a process that would exclude the trade secret from release publicly but not inhibit the release of the rest of the document.

Section 42. We would like to say that we acknowledge, along with the government, that the purpose of this Act should in part be to recognize the shared responsibility of all Alberta citizens for ensuring the protection, enhancement, and wise use of the environment, of course with some concern about what "wise use" really means, through individual actions. But then the Act goes on to limit the potential or the possibility for this to work effectively by providing a very limited definition of those public participants who could become involved in the review of certain environmental issues. That is to say, we are concerned with the manner in which so much of the effect of this Bill hinges upon the definition of "directly affected." We would like to broaden that by substituting words such as "has a legitimate concern in." That is to say, a member of the public who has a legitimate concern in an issue would, therefore, for example, be able to be an intervenor. This has implications throughout the Act, section 42(6) as well as subsections under sections 84 and 111. The fact is that "directly affected" does not allow many people with interests in issues on Crown lands, for example, that are in relatively isolated areas but still may have downstream effects, cumulative effects, and so on – it does not allow a broad enough cross section of individuals in our society to have input. If it is to work at all, this Bill is to be premised upon the idea of public input.

[Mr. Schumacher in the Chair]

Amendments to sections 51, 52, and 57 are designed to curtail the possibility of undue political intervention in environmental decision-making processes. These amendments would give more power to the NRCB, thereby reducing the potential for political influence.

The amendments to section 51 mean that an EIA for a nonmandatory project would be submitted to the NRCB, not to the minister. The NRCB would then decide whether they wished to review the project or whether it might go ahead without a review. Amendment (e) in our amendment package would also permit the NRCB to conduct a review of a project for which no EIA has been carried out.

Deleting section 52 removes the power of the minister and cabinet to make a decision on a given environmental impact assessment. It does, however, provide for the minister to receive a copy of the EIA report and would enable him to make recommendations to the director under section 53.

Amendments to section 57 would remove the power of cabinet to exempt in a broad-brush way, as is now provided for in the Act, "activities or classes of . . . activities" from the EIA process.

Amendments to sections 90, 91, 92, and 93 affect the environmental appeal board. The powers of the environmental appeal board depend on the type of issue it is handling. It has now under this Bill the power to decide issues dealt with under 84(1)(k) and (l), while for other issues it only makes recommendations to the minister, who may "confirm, reverse or vary the decision appealed." We think the board should make final decisions rather than recommendations. While the government would still have the ultimate political recourse to overrule even decisions of the board, it is very much more difficult for them to do that than it is for them to overrule a recommendation, which would be inherently much weaker.

Section 97 brings us back to the ozone-depleting issue because section 97 has implications for that issue. This amendment would prohibit the release of CFCs, halons, and HCFCs unless permitted in the regulations. The text of the amendment allows for exemptions, as there is no immediate substitute for some CFC products used in animal or health care applications, including bronchodilators, inhalable steroids, and topical anesthetics. These would be specified in draft regulations.

Section 105 amendments with respect to odours. This section has caused some concern amongst farmers. Our amendment puts in a grandfather clause which makes it much more difficult for a newcomer to an area to move in and complain about the odour from an existing farm operation. This meets the concerns raised by Unifarm, and it also should be noted that this kind of concern isn't simply an issue with respect to agricultural odours but would also deal with odours from manufacturing processes.

Section 106 amendment with respect to ministerial regulations. This section, which allows the minister to make regulations prescribing visible emissions and a program for the certification of visible emission readers makes it appropriate to introduce a parallel amendment, which we are doing, making provisions for the minister to establish a program for the certification of people working with CFCs, halons, and HCFCs. This issue is not now regulated by the federal government. We need trained personnel to ensure that these ozone-depleting substances do not leak. Manitoba and New Brunswick will both require special training and certification to ensure that the proper repair, recovery, and recycling procedures are followed.

10:30

Amendments to section 164: our amendment specifies that trained technicians must collect CFCs, halons, HCFCs, and other ozone-depleting substances "from refrigeration, air conditioning and fire extinguisher systems."

Amendment to section 184 provides better whistle blower protection. That is to say, clearly under this Act as it now reads, two persons in Alberta can apply to Alberta Environment for an investigation of an alleged offence. There is no protection for them from being dismissed from their employment, for example, for having done that. The minister says, "Why should we only apply whistle blower protection to this Bill when in fact such provisions should apply to all government?" That's an interesting argument, but he directly contradicts that argument with respect to his disclosure of information provisions, which are specified in this Bill but of course should apply, as they do not now, to all government as well.

Our final amendment affects private prosecutions. We simply would require with this amendment that "a private prosecution [cannot] be discontinued except by order of the Court in which it was commenced." That would have the effect of not allowing a potentially politically motivated Attorney General to overrule a private prosecution unilaterally.

Thank you, Mr. Chairman.

MR. CHAIRMAN: Are there any further . . .

The hon. minister.

MR. KLEIN: Yes, just very briefly. We really haven't had the opportunity to examine these proposed amendments in detail other than to make a few notes as the hon. member went along. All I can say, Mr. Chairman, is that I thank the hon. member for his thoughtful consideration of these amendments, and I do appreciate that he filed them before the Legislative Assembly this evening.

HON. MEMBERS: Question.

[Motion on amendments lost]

MR. CHAIRMAN: Are there any further questions or comments?

HON. MEMBERS: Question.

[Title and preamble agreed to]

[The sections of Bill 23 as amended agreed to]

MR. CHAIRMAN: The hon. minister.

MR. KLEIN: Thank you, Mr. Chairman. I move that Bill 23 be reported.

[Motion carried]

MR. ANDERSON: Mr. Chairman, I move that the committee rise and report.

[Motion carried]

[Mr. Speaker in the Chair]

MR. SCHUMACHER: Mr. Speaker, the Committee of the Whole has had under consideration certain Bills. The committee reports the following Bills: Bills Pr. 1, Pr. 2, Pr. 3, Pr. 4, Pr. 5, Pr. 7, Pr. 8, Pr. 10, Pr. 12, Pr. 14, Pr. 15. The committee reports the following Bills with some amendments: Bill Pr. 6, Bill 23. Mr. Speaker, I wish to table copies of all amendments considered by the Committee of the Whole on this date for the official records of the Assembly.

MR. SPEAKER: Having heard the report, those who agree with concurrence, please say aye.

HON. MEMBERS: Aye.

MR. SPEAKER: Opposed, please say no. Carried.

MR. ANDERSON: Mr. Speaker, tomorrow afternoon it's intended that the Assembly will debate various Bills for second reading on the Order Paper, starting with Bill 1.

[At 10:36 p.m. the Assembly adjourned to Wednesday at 2:30 p.m.]