

Legislative Assembly of Alberta

Title: **Monday, April 24, 1995**

8:00 p.m.

Date: 95/04/24

[The Speaker in the Chair]

THE SPEAKER: Please be seated.

head: **Government Bills and Orders**

head: **Second Reading**

Bill 19

**Freedom of Information and
Protection of Privacy Amendment Act, 1995**

[Adjourned debate April 12: Mr. Day]

THE SPEAKER: The hon. Member for Calgary-*Buffalo*.

MR. DICKSON: Thank you very much, Mr. Speaker. I'm pleased to rise to speak this evening to Bill 19. Firstly, I'd like to make two general observations. The first one is that Bill 19 is somewhat atypical in terms of Bills in the sense that although second reading is designed to talk about the principles of legislation, Bill 19 is little more than a collection, a random collection of amendments which involve . . . [interjections]

THE SPEAKER: Order.

MR. DICKSON: It's nice to elicit this sort of animated reaction, Mr. Speaker. Thank you.

Second reading on a Bill like this has of necessity to look at some of the detail, some of the elements. I recognize that straight off, and I'll be talking about principles, but I'm also going to be talking about some of the detail, because that's what we have that we can deal with in a Bill like Bill 19.

The second point I want to make is that I saw that the Government House Leader at page 1235 in *Hansard* last week got carried away and, I suggest, was wallowing in hyperbole, as he's wont to do sometimes. Mr. Speaker, I just want to be clear with all members that I think what is at issue, although it seemed to have been lost, is that it's a matter of elementary courtesy. I have no problem in accepting that Bill 19 is the Bill sponsored by the Minister of Public Works, Supply and Services, and if that minister is not available when a Bill comes up, I mean, I think it's perfectly appropriate that the Bill should be held over to be debated another time.

In the same fashion, Mr. Speaker, we have designated critics in the opposition, and it would seem to me just once again a basic courtesy that if it's indicated by the Government House Leader that a particular Bill is coming up at a particular time and that the Government House Leader is going to change it, at least it would be changed to a date that the opposition critic also would be available. This isn't a question of anybody having any specialized knowledge or particular knowledge; it's a question of basic courtesy. One of the things I've always found about practising law is that people may be aggressive and argue hard their various points of view, but at least there's a recognition that the whole system works much better if there's a recognition of some basic courtesy both ways.

Mr. Speaker, there are some amendments in Bill 19 that I support and that I encourage all members in the Legislature to support. I want to deal very quickly with those amendments that I think are meritorious and are positive: amendments 2(1)(a), (b),

(c), (d), section 3, section 5(a)(iv), section 5(b), section 6, section 9, section 12(c), section 13(a), section 16, section 18.

THE SPEAKER: Order please. The hon. Deputy Government House Leader is rising on a point of order.

Point of Order Relevance

MR. EVANS: Thanks for recognizing me, Mr. Speaker. It's on 459 of *Beauchesne*. I appreciate the hon. member opposite sharing with us specifics of what he likes, and presumably he's going to get eventually to what he doesn't like about the Bill. The hon. member's been a member of this Assembly for quite some time, and I'm sure he does recognize that the point at second reading is to deal with the broad principles of the Bill and then at committee to go into specific sections. Quoting verbatim from sections, which I presume he might be getting to, would be entirely out of order. I would suggest that it's out of order to even refer to sections of a particular piece of legislation at second reading because it is not relevant to the broad principles of the Act, and I'd ask for your opinion on that.

THE SPEAKER: The hon. Member for Calgary-*Buffalo* on the point of order.

MR. DICKSON: Mr. Speaker, if I've been here a little less than three years, the member who's just raised the point of order has been here since at least 1989. I'm astonished that he would raise – not only has he got the wrong authority, but how on earth do you deal with a Bill that is nothing but a collection of amendments without referring to the specific sections and the different amendments? There's no statement of principles in this Bill. There's no overarching philosophy. This is a 'hob-globin' of things that the government either overlooked before or things that they've rethought. I have not read out a section. I've referred to some numbers, and frankly I thought I was being helpful to the hon. minister and his colleagues by telling them straight off what parts of the Bill I took no issue with. So I would respectfully submit that there's absolutely no point of order, and in fact I think the hon. minister misapprehends what we're about this evening.

THE SPEAKER: Well, the Chair would suggest that there is something to the hon. member's argument that this is really not a brand-new Bill. It's a Bill to amend an existing Act. The Chair would not feel it's necessary to intervene with respect to what the hon. member has said that he's agreeing with in the Bill anyway so far.

Debate Continued

MR. DICKSON: Thank you very much, Mr. Speaker. Moving on, I'd identified a number of sections that I had no difficulty with. The other section – and I want to note that this is of interest – section 4 in Bill 19 is identical to the amendment that I proposed in the spring of 1994 in this Legislature to what was then Bill 18. I represented at the time that this was an error that had been identified by archivists and the archives association in Alberta. The response at the time was that the government voted it down, and it's a curious thing to see the amendment resurrected now. Absolutely nothing has changed. That's section 4. I just have to point out that if we're anxious to save tax dollars and legislative time and so on, I'd encourage the government to look more positively upon concrete suggestions and amendments

proposed from the opposition, because here's an example where we could have saved the taxpayers some significant dollars if the government had been prepared to accept an amendment which made sense then and obviously makes sense now since the government's brought it forward.

Mr. Speaker, I want to move on and talk about a principle, and the principle is manifest in five sections of Bill 19: sections 13, 14, 15, 17, and 19. They're what I'd call collectively the Clark amendments. I go back and say that on October 28, 1993, the Premier, amid a whole lot of hoopla and fanfare, announced a new appointment process. The Premier said at the time that we want an "unbiased view of candidates' qualifications," that we want a fair and open process to appoint people to a host of agencies and so on. I'm having some trouble in reconciling that fine and inspiring rhetoric from the hon. Premier with what we see in the Clark amendments.

The minister, in moving second reading last week, said that this was in response to the recommendation from the Information and Privacy Commissioner Search Committee. What he didn't note was that all three opposition members on that committee objected. The recommendation was not unanimous, and it's not because any of us on this side have less respect or less confidence in the ability of Mr. Clark, who has been, I think, a first-rate Ethics Commissioner, but I think it's apples and oranges, Mr. Speaker. We recognize that when you're spending tax dollars, public dollars, when you're installing somebody in one of the most important positions this province has created, you can't avoid an open competition. That's the way you test to make sure you've got the best man or woman. If the hon. minister believes that Mr. Clark is absolutely the best candidate we can find in this country, by all means let's encourage Mr. Clark to apply for the position in an open competition. If his qualifications are vastly superior to all other candidates, we can be confident he'll secure the job, but the position itself will be invested with the commensurate kind of importance that I think it requires.

8:10

Now, as a member of the search committee for the office, it was interesting to me when the minister said at page 1231 of *Hansard* that this was going to reduce the "costs of government" – and I say here the notion of having the Ethics Commissioner also serve as the Information Commissioner. To me this is an argument that just doesn't make sense, Mr. Speaker. The reason I think it's an absurd claim is that the Ethics Commissioner's total budget is approximately \$200,000. That's everything. His office staff and facilities and phone and everything is only about \$200,000. The aggregate budget for freedom of information is something in the order of \$1.5 million for 1995-1996 alone: \$1.5 million. That's the budget that's been set aside for the commissioner. That's the cost that's being spent by the Department of Public Works, Supply and Services. Then you factor in the costs that are being incurred in each of the 27 departments, and what you find is substantial cost. The expectation here is that Mr. Clark is going to be paid more money if he holds both offices. So where is the saving?

The minister referred to an amalgamation of two offices, but all that's happening is that one person will hold both offices. The two legislative offices aren't being rolled into one. They're not going to share secretaries. They're not going to share office space. So we have two different offices. It just happens we've got one person running back and forth between the two offices. The best I can calculate, the apparent saving at its very best would be approximately \$40,000 per year. There's an old expression that I think is apt here about being penny-wise and pound-foolish,

and for anybody who thinks that you're going to potentially save at most perhaps \$40,000 by having one person hold both positions, it's an incredibly short-sighted move because what we're doing is we're jeopardizing that \$1.5 million in taxpayer expenditure.

Secondly, the minister said the other day at page 1231 of *Hansard*: "By selecting the same official to oversee both offices, we are maximizing our use of the resources and talent" we already have. Well, what about the recommendations, Mr. Speaker, from the Premier's all-party committee on freedom of information? That unanimous report, filed in November of 1993, indicated on page 13: "The Office of the Commissioner should be separate and not combined with other offices." The reason was that at the time there'd been a proposal from the Ombudsman – not the Ethics Commissioner but from the Ombudsman – to have one person occupy both offices. That all-party committee, the four members on the government side, the three opposition members, looked at it and decided that the job was too big, that it wasn't a good fit. I have to say that the Ombudsman and the kind of work that the Ombudsman does is far more analogous to what this commissioner will do than what the Ethics Commissioner does.

Now, a third point I want to make is that at the time the search committee met, there was an assertion by the government members on the committee that it would require a couple of minor amendments so that the Ethics Commissioner could sit as the Information Commissioner. Well, those couple of minor amendments now appear to be six major amendments. At the first committee meeting on November 30, 1994, when it was suggested that Mr. Clark be appointed, this member pointed out then that it was impossible because of section 31 of the Conflicts of Interest Act, at which point the chairman of the committee, the Member for Taber-Warner, advised that he had a little memorandum here on this dual commissioner approach, and he started handing out the memorandum. So what was apparent at that meeting on November 30, 1994, Mr. Speaker, was that the fix was in. The government had already decided they were going to install Mr. Clark, and the government was simply going through the motions.

I have to tell members that on April 3 of 1995 there was a conference on freedom of information co-sponsored by the Department of Public Works, Supply and Services, and the minister stood up to welcome people at the beginning of the conference and announced that Mr. Clark, the current Ethics Commissioner, was to be the new freedom of information commissioner.

Now, Mr. Speaker, I didn't get elected to come here and rubber-stamp decisions made in secret outside this Chamber. I don't expect that other members came in prepared to rubber-stamp private decisions. I just encourage members to consider the problems that go along with doing that.

Mr. Speaker, there are a number of, I'd say, compelling reasons why one person shouldn't hold both offices. I think that I will get a chance later to go through them. I'm happy to identify each of the 13 reasons, but I think it's important that we understand that really what we're doing in ostensibly an effort to save a few dollars is compromising what in fact may be one of the most important positions that has been created in this province. I think that's a problem we're going to have to deal with for a very long time in Alberta if in fact Bill 19 is passed as it is.

There are some other amendments that I wanted to specifically indicate, some other provisions in the Bill that I oppose, and I'll explain why. There is a provision in section 7 to double the time to respond to requests when a request for information has to be transferred. This is section 7 of course. The doubling of time is

from 15 to 30 days. Access delayed is access denied. I remember specifically that the Member for Calgary-Shaw in fact was a member of the panel that argued that we have to ensure that Albertans have a response within 30 days when they make a request for information.

It was interesting that when the hon. minister introduced his Bill and spoke to his amendments, what he spoke about was the convenience to government departments. Well, Mr. Speaker, I don't give two hoots for the convenience of government departments. What the freedom of information Bill is genuinely about is giving information to Albertans. From the perspective of an Albertan who wants information on a timely basis – that's why the Member for Calgary-Shaw fought so hard and so persuasively and told us that we had to make sure that there's a response to that person within 30 days. Hon. minister, there's already a provision for extending the time if you need more, but the default provision is a 30-day turnaround. I encourage all members to oppose that change.

The minister said at page 1232, "This change better captures the original intent" behind this Act. Well, all I can tell the minister is the extent to which the freedom of information Act reflected recommendations from the all-party panel. The all-party panel wanted an absolute 30-day turnaround period, and the minister does not have accurately what the intention was.

Section 8: this is the provision where we are going to change section 19 so that where the Minister of Justice decides not to prosecute, he may but he's not obligated to provide reasons to the family of a victim. I see the minister shaking his head, and I'm just going to ask him to read the section again. I think that in 1995, when we have a high level of victims concerned with the lack of dignity that they receive, when many Albertans are concerned about the lack of basic respect we give the victims of violent crime, to see the government come along and say, "Oh, we're not sure we're always going to give victims or families of victims reasons why we don't prosecute," is preposterous.

I'm astonished that the government would do this. It's important to note that in British Columbia, section 15(4) of the British Columbia Act provides basically the same assurance to victims that we had under the original freedom of information law. If the minister is concerned about having to reveal the details of investigations, I encourage him to read the balance of the provision that deals with the law enforcement exemption. There is ample protection there. One can only conclude that this allows the government basically to cover up. If there's been a problem with a police investigation, it allows them to hide those secrets from the people who are directly affected, the victim and the family of the victim. I think it's time that victims of crime, particularly victims of violent crime, received some respect, and I think this government had better rethink that amendment.

8:20

There's loss of control of personal information, section 12, that I disagree with. Section 5: 4(a)(i). The minister talked about wanting to strengthen the privacy provisions. Well, hon. minister, when the all-party panel looked at this Act and we talked about privacy, we were not concerned about the privacy of cabinet ministers and members like the Member for Calgary-Shaw, for example, who sits wearing the hat as chairman of some kind of board or agency. We were talking about the privacy of regular Albertans. It's preposterous. The government comes along now and starts talking about the privacy of cabinet ministers or the privacy of MLAs who are occupying some kind of a dual position.

Another point where we've got an inaccuracy: the minister said at page 1231 of *Hansard* that changes to section 4 are in keeping with the all-party panel recommendations. This had to do with the records of MLA expenses. I'd just say to the hon. minister that I think that once again he misunderstands what the recommendation was from the all-party panel. What we said is that phone records between constituents and MLAs should be protected, and the way we recognized that was we said that MLA offices would not be covered by the freedom of information regime. But what we also recognize – and in fact I have a legal opinion from a lawyer that has confirmed to me that section 16 and the exception for protection of personal privacy adequately ensures that when Joe and Jane Albertan phone a member opposite, the telephone records are already protected. The amendment proposed here goes much further than required.

I have other comments, and I'll catch up with them later at committee stage. Thanks, Mr. Speaker.

THE SPEAKER: The hon. Member for Fort McMurray.

MR. GERMAIN: Thank you very much, Mr. Speaker. You know, there are many pluses and minuses to sitting in this Legislative Assembly, but one of the great pluses is to have a chance to follow debate of the quality of the hon. Member for Calgary-Buffalo that this Assembly has just heard on very important freedom of information. For 20 minutes he provided a thesis, an argument, and a rationalization confirming that what we have here is not freedom of information legislation, but what we really have is the imprisonment of information. If the government were true to the dictates and the precedents in this particular legislation, the hon. minister who brought this legislation forward would stand up and acknowledge that and in fact change the name of the legislation.

I want to come back to those themes, the three themes of this amendment, Mr. Speaker, but first I want all Members of the Legislative Assembly to close their eyes for a moment, lean back in their chairs, and drift away while I describe Anywhere, Alberta. A place in Anywhere, Alberta, may be your community, may be Red Deer, may be Medicine Hat, may be Grande Prairie. It's late at night, and a charming and frail woman in her late 70s is walking quietly down the street. Sometimes the shadows coming out from between the houses scare her. Sometimes the sound of the cars two blocks away frightens her. She clutches her rosary in her hands, and she's walking quietly down the street, thinking about her life and thinking about the province that she lives in, harming no one, asking for nothing, simply walking home from her church service.

Suddenly out of the darkness three thugs wearing T-shirts and covering their faces, as the cowards that they are, scuttle out of the dark and smash this woman about the head and about the face and about her body, driving her to the ground and tearing from her arm her purse and running off into the night, running off into the night and leaving that frail woman, perhaps living in your town, perhaps in my town, perhaps in Red Deer, battered and beaten on the street.

Can you imagine, Mr. Speaker? Can you imagine for a moment the impact it would have on her family and on this woman when the three thugs who assaulted her are finally apprehended and brought to justice but immediately before the case is called and immediately before the first witness is put on the witness stand, the Crown attorney stands up and says to the judge: we're staying the charge; we're calling no evidence. Can

you imagine when that family goes to the hon. Minister of Justice and asks, "Why were the perpetrators of the crime against the 70-years-plus, frail member of our family doing nothing but walking home at night, walking from her prayer meeting, not prosecuted?" the hon. minister saying: "I'm sorry. We won't tell you. We don't feel we have to tell you, and we are not obliged by the freedom of information Act to tell you."

That is the anecdote that I want to start my commentary this evening with, and I want to ask all Members of this Legislative Assembly, as they come back to the Assembly from that anecdote, if that's what they intend, if they intend shortly to stand up and vote to say: "Yeah. We don't think you have a right to know. We may give you the answer, but you don't have a right to know." Can there be any circumstance in this province, Mr. Speaker? Can it be to protect an informant? Can it be to protect the police officer who has erred in the collection of the evidence? Can it be to protect the Crown prosecutor who has overstepped his negotiating discretion? Can there be any reason in the province of Alberta why a victim, an innocent victim of a crime should not be guaranteed fundamentally the right to know why the people who persecuted her and who abused her in the darkness of the night would never have to face the glaring lights of a courtroom in this province? Can there be any member in this Legislature that is prepared to stand up and vote for that? Well, my friends, I say to you that if you vote for this amendment to Bill 19, that is exactly what you are voting for.

I want to say one other thing to you. If you think that in Red Deer, Alberta, the public would not be concerned about that, if you think that in the downtown area of Calgary the public would not be concerned about that, if you think that on 97th Street in Edmonton, on Franklin Avenue in Fort McMurray, on the main street in Grande Prairie, or wherever you live in the province of Alberta the people would not be concerned about that, then I suggest that you go home after tonight's meeting, take the advice of hon. members, and phone some of your constituents. Ask them if fundamentally they say that there are any circumstances during which a victim of a crime should not be told why their victimization is not going to be prosecuted in the Alberta courts.

Frankly, Mr. Speaker, I can't think of one. I hope that hon. Members of this Legislative Assembly opposite will rise and try and educate me as to when and under what circumstances the victim of a crime ought not to be told why their crime and the criminality and the criminal element behind their crime was not prosecuted.

Now, Mr. Speaker, this Bill deals with three things. What it does to the Freedom of Information and Protection of Privacy Act that we passed in this Legislative Assembly some months ago is three things. First of all, the list of exclusions, those items that are excluded from disclosure, gets larger. The delays get longer, and the office of the chief officer administering this Act shrinks to a part-time position. I am not convinced that that is the message the Premier of this province was intending to convey to Albertans when he said that we want the best information Act that we possibly can. He made that commitment to Albertans, and now, in the darkness of the Legislative Assembly late at night, we begin to retract on that commitment that the Premier made to all Albertans. Either we are going to have freedom of information in this province or we are not.

8:30

Now I want to move on with some other matters that trouble me greatly in this particular legislation. I don't think that any conscientious, responsible member, Mr. Speaker, cannot be

troubled by a trend that was exhibited here, expressed so eloquently by the hon. Member for Little Bow a few weeks ago – and I paraphrase him only in the abstract – when he said: you pesky Liberals, you come up with good legislation; the only problem is you bring it up before we get a chance to do it, so then we have to vote your legislation down so we can bring in our own legislation saying the same thing sometime down the road.

Now, when you travel around Alberta and you list the litany of things that people say we waste money on – and you've even had in this particular Legislative Assembly that great time economizer, that master of brevity, the hon. Minister of Labour, standing up and saying: oh, you're wasting time in this debate. Well, I can't think of having anything more wasteful than having good amendments to sound legislation brought forward and be defeated simply because somebody wants to play one-upmanship. I hope that the hon. minister who sponsored this Bill will at the end of this debate stand up – and the room will go quiet, and everybody will quieten down – and tell this Legislative Assembly in a hushed voice: we were wrong, the government was wrong, and we admit we were wrong to not accept the amendment on the archives and the disclosure of information on the archives that the hon. Member for Calgary-Buffalo put forward last year.

It was an apolitical, positive amendment. There was nothing to be lost by the government in adopting it. The only thing they would have saved is the three or four or five hours of debate that now this amendment will generate as it comes forward anyway. The independent member, the hon. Member for Lac La Biche-St. Paul, a few months ago lamented that there was much talk in this Legislative Assembly and very little follow-through action. I am deeply regretful that on that particular debate he did not stand up and say, "This would have been a good amendment." I hope that he will stand up in tonight's debate and say, "That is a good amendment, government, and you were wrong in not accepting that amendment when the hon. Member for Calgary-Buffalo brought it forward many months ago." Now, when you calculate the dollar an hour or whatever the per hour rate is of the Members of the Legislative Assembly, Mr. Speaker, you can see that it would have been less wasteful and more productive to have grabbed that amendment when it was going by the first time and not to adopt the political philosophy of the hon. Member for Little Bow: you pesky Liberals, you bring forward good legislation; then we have to embarrass ourselves voting it down only so that we can bring it in at the right time later.

I want to move on, if I might, Mr. Speaker, to my concerns about what the public tells me they do not like about the government. Collectively, they throw us all into that same pot when they talk about the government, because the reality is that public perception does not clearly define between opposition and government. They recognize intuitively that everybody there is wasting their money. They sense that deeply as taxpayers, and they chafe and they resent it, much like a young stallion resents sometimes the bridle and the saddle. Now, I want to say that there is a move in this particular legislation to curtail the amount of public information that individuals can get about how their own elected MLAs carry on business. There is an attempt to curtail the amount of information that will flow on perks. There is an attempt to curtail the amount of information that will be released about committee fees, about travel, about transportation, about how taxpayers' money is spent by the people that they elect to govern them. That is simply wrong.

I agree and I support the comment that has been made that constituent concerns brought confidentially to their MLA should

be kept confidential. The hon. Member for Calgary-Buffalo has obtained a legal opinion that says that the old draft of the Act presently on the books does that. I know that the hon. minister is too shrewd a legislator to not have that same opinion. He knows that. He knows the old Act does that, Mr. Speaker, and what he wants to do is avoid embarrassment, avoid the embarrassment that flows from people asking: "How come you're getting all these extra committee fees? How come you're getting all of this travel? How come you get all of these perks?" The public resents that. I want to say that when the government tries to prevent people's access to that, it's like being told you can't go to a meeting. If you can't go to a meeting, you assume that something nasty is happening at that meeting that's going to affect you. So let's open the doors, and let's provide and release this information. Let's make it clear that the constituent private concerns to their MLA will be protected, and the rest is on the table.

You know, in the province of Saskatchewan right now hon. Members of that Legislative Assembly, past and present, are being taken to court as to whether they properly or improperly have disposed of funds that were provided to them to run their offices. We don't need that. If the hon. Member for Fort McMurray spends \$100 buying jackknives to hand out to Scouts, I shouldn't be afraid or ashamed to say that. If the public comes to me and says that \$100 would have been better spent on health care in the province of Alberta, they have the right to know the information and make that constructive criticism. Let's get that information flowing.

Now, each of the MLAs, Mr. Speaker, is obliged by law to disclose their assets, their wherewithal, and provide all of that to the Ethics Commissioner. So, too, are top-ranking government bureaucrats, yet that information is not made public by virtue of this particular legislation. There is now a specific exclusion making that legislation public.

You know, everybody worries about whether the Member for Fort McMurray has a few shares in Imperial Oil. I'd be just as concerned about knowing how many shares in what oil companies the Deputy Minister of Energy has. You can expand that allegation. I would be just as interested in knowing whether the deputy minister of the department of transportation has any shares or interests in any aggregate companies, rock crushing companies, or road building companies. I would be interested in knowing if the Deputy Minister of Health has any interest in pharmaceutical labs, pharmaceutical companies, lab technician service companies. All of those are important, and that is information the public is entitled to have. I would urge the Members of this Legislative Assembly to vote appropriately on those issues.

Now, much has been said about the issue of whether or not the Ethics Commissioner should fill a dual role as our first Privacy Commissioner. In fact, in exhaustive cross-province research – as I understand it, Mr. Speaker, that is a rather rare event – the freedom of information commissioner in most provinces is a full-time job and his plate is not diluted, his cup of tea is not diluted by other jobs and other responsibilities. I want to say that the individual who presently holds this role in Alberta is an honourable and ethical individual. I would be happy to endorse him as the commissioner for the freedom of information mandate, but I do not support the concept of one individual having this dual role. I envisage, in fact, that there could be conflict issues that arise between the role of the Ethics Commissioner and the role of the commissioner of the freedom of information mandate. I want to therefore add my concern to those concerns that have been raised by other Members of the Legislative Assembly on this issue. The

saving will not be significant. If the Ethics Commissioner feels that he can make a greater contribution to the province of Alberta in the role of Privacy Commissioner, then he should give up the Ethics Commissioner job and we can find another suitable, worthwhile, part-time candidate to do that job.

I want to offer some resistance to the dual role, and I urge all members to heed well the warning of the Member for Calgary-Buffalo that that will be an area that we may find ultimately was not the best solution or the best suggestion. From the point of view of the Ethics Commissioner, if he wants this new job, fine, he should accept it, if it is offered to him, but renounce and give up the role of the Ethics Commissioner.

8:40

Mr. Speaker, I think I've challenged the Members of this Legislative Assembly enough on this particular Bill. There will be opportunity again in the committee stage to talk about amendments and the like. But I want to urge all members of the Assembly: we're now two years into this mandate; do something right for freedom of information in this province, and vote against this particular Bill at second reading.

Thank you very much, Mr. Speaker.

THE SPEAKER: The hon. Minister of Justice.

MR. EVANS: Thank you, Mr. Speaker. The Minister of Public Works, Supply and Services will of course be dealing with the majority of the sections of this Bill, but I have listened to both the Member for Calgary-Buffalo and the Member for Fort McMurray concentrating their efforts and their concerns on section 19(5) and arguing the point that we are trying to keep information from victims. That is not the case. As the hon. Minister of Public Works, Supply and Services has pointed out, the proposed amendment is to change the words "must not refuse to disclose" to "may disclose."

Now, Mr. Speaker, I will give two very important examples of where "may" is an important consideration. In deference to the two gentlemen who have spoken on the other side, I think they may be misinterpreting what the early provision in subsection (5) reads when it says "a police investigation is completed." The police investigation is completed with respect to the individual who will not have a charge proceeded against him or her. There are many cases – and both of the hon. gentlemen across are lawyers. They both practised in the courts; they're well aware of this. There are many examples where there may be other parties who are under investigation and who have not been charged, and to make comments about all of the reasons for not proceeding against one of those accused or one of those potentially accused could impair the investigation and could impair the Crown's ability to proceed against others and to effect the type of justice that these hon. gentlemen are asking for on behalf of the victims or relatives or friends of the victims.

There may be a number of accused in a multiple accused situation where a decision is made to drop the charge against one of those accused because, as the investigation proceeds, it becomes evident that one of those accused or perhaps more than one should not be accused. Rather than have the time frame prolonged when an individual involved in this investigative process was found not to be of guilt or probable guilt, a decision is made to end the proceedings against one or the other of those multiple accused. I don't think either of these gentlemen, Mr. Speaker, would argue in those two cases that when there is an opportunity to have a finding of guilt against other accused in

multiple accused or others who may be charged later, all of this information would be made available to the victim, because that would not serve justice nor the victim well. Again, we're not talking about just the victim; we're talking about a number of other categories of individuals who could have the same kind of access. So all we are asking for is the use of reasonable discretion in the appropriate circumstances.

Now, the hon. Member for Fort McMurray has waxed eloquent, as he often does – and I quite enjoy his hyperbole – about the poor, innocent victim, a little old lady whose purse is snatched. Well, Mr. Speaker, I challenge either member to bring forward to this House or to me at my office any examples they know of where this kind of a process or power has been abused, because it is my information and it is clearly the policy of the Department of Justice that we . . .

THE SPEAKER: The hon. Member for Calgary-Buffalo is rising on a point of order.

Point of Order Questioning a Member

MR. DICKSON: Just wanting to query the minister in terms of whether he'd be prepared to entertain a question under the authority in *Beauchesne* that allows me to pose such a question to him.

MR. EVANS: I'd like to finish my comment, Mr. Speaker. Then I'll be happy to answer a question.

Debate Continued

MR. EVANS: The point I was making, Mr. Speaker, was that there is a policy in the department that in the appropriate case we give the information to victims as to why prosecutions are stopped, ended, not completed. That has worked well in the past, and I would challenge the hon. member or the hon. Member for Fort McMurray or any member of the Liberal caucus to give me specific examples where they feel that that process has not been working. If it ain't broken, there's no need to fix it.

Now I'm happy to answer the question from the Member for Calgary-Buffalo.

THE SPEAKER: The hon. Member for Calgary-Buffalo with a question.

MR. DICKSON: Thanks very much, Mr. Speaker. I thank the minister for undertaking the question. I'd ask the hon. minister: in view of his comments how can he reconcile what he said with the fact that in British Columbia, since their Act was passed on June 23, 1992, they have a provision that says that

after a police investigation is completed, the head of a public body must not refuse to disclose under this section the reasons for a decision not to prosecute if the applicant is aware of the police investigation,

and the B.C. authorities have had absolutely no difficulty with the enforcement or application of that section? How does he reconcile his concern with the actual experience of the B.C. authorities with a comparable provision?

MR. EVANS: Mr. Speaker, in the event that British Columbia has not faced the two examples that I have given already, the examples of multiple accused or a continuing investigation which may lead to other accused being charged, then I'm sure that they will face that inevitable situation in the future. Were their

provision to be exactly word for word what was in our piece of legislation, investigation, being investigation of one particular individual, would cause the same kind of problems that we see caused by an imperative that that information be released. We are merely trying to give some flexibility, which has worked well in the past, and we feel it can and should continue to work in the future so that the real issue, which is a finding of guilt and recourse to victims of crime, can be addressed and we can get at the truth and have findings of guilt in the appropriate case.

THE SPEAKER: The hon. Member for Edmonton-Mill Woods.

DR. MASSEY: Thank you, Mr. Speaker. I, too, would like to speak against the amendments as they've been introduced and give some reasons in particular why one person shouldn't hold both the office of the Ethics Commissioner and the Information Commissioner office. Our system of government has a long history, and one of its powers is that it is stable and brings stability to a democracy. The other power in our system of government is that it changes to meet new circumstances, and those changes come to us over a long period of time.

8:50

I'm particularly proud in our province that we've made a number of changes that have made people feel more confident in our system of government, that have helped to dampen some of the cynicism that sometimes abounds. Those changes are changes that surround the legislative offices that have been created, and I think of the Ombudsman and the work that that office does and in particular the Ethics Commissioner and this new freedom of information commissioner. They're two very, very important offices in terms of making the public confident that government is being conducted in an open and honest and aboveboard manner. So I give both of these positions a great deal of respect, and I think they deserve a great deal of respect. I think it's important that in putting them in place, in particular the Information Commissioner, we do it right and make sure that right from the very beginning there can be no criticism of this important office. That's why I think there are a number of reasons why the Ethics Commissioner and the freedom of information office shouldn't be combined.

I think that if you look back – and it's just several years ago – there was a provision in the Ethics Commissioner statute that barred that individual from taking part in any other sort of business or occupying any other office. Obviously, those provisions were there for a very good reason. In the wisdom of the Bill drafters of that day there was some concern that the Ethics Commissioner had to be absolutely free of any burden, from any other kind of obligations he or she might undertake. So we go back, then, to when the Ethics Commissioner was created, and it was obvious that there was no intention that that individual would ever hold another office, let alone a legislative office. I think the reasons were valid then; the reasons are valid now.

Another reason why I think it doesn't make good sense to combine the offices: the job is going to be just too big. The Information Commissioner is going to be trying to set up systems. He or she is going to have to spend a lot of time gathering information. They're going to have to spend a lot of time finding their way around government, and it just doesn't seem to make sense to, again, burden the Ethics Commissioner with that office. It doesn't seem to do justice to the new office that's being created to handicap them with having to spend half their time working on other obligations. As has been mentioned, I think the appointment

of the present Ethics Commissioner – and everyone has attested to the Ethics Commissioner and his integrity. I think we've all gone out of our way . . .

DR. WEST: God bless the taxpayer. Spend, spend, spend.

THE SPEAKER: Order. Hon. member, please let the hon. Member for Edmonton-Mill Woods continue.

DR. MASSEY: Thank you, Mr. Speaker. As I was saying, the integrity of the Ethics Commissioner has never been questioned in this debate. I think everyone in this Legislature has paid just homage to his ability and the way that the office has been conducted. So that is not what we are concerned about.

There was a promise that appointments – and appointments are important to the public. How appointments are made must not only be open and done openly but must be seen to be open. The automatic appointment of the Ethics Commissioner I think takes away from that openness and that public perception that this is an open process and that everyone who might be interested in such a position had an opportunity to apply for that position and that we really and truly have the best person for the position. As has been pointed out, we are all confident that should the current Ethics Commissioner actually apply, he would certainly be one of the most desirable of candidates.

I think, more importantly, that the Ethics Commissioner becomes less effective when the two positions are combined. The present Ethics Commissioner is fond of telling us that he acts 95 percent in his role as a confidant – someone who advises us, who tries to bring wisdom to any of the conflicts, any problems that we may have – and the other five percent as a policeman. I think it's worked extremely well for members of this Assembly as he's played that role, and he's certainly an ideal individual to play that kind of role. But this brings attention to the two positions: in the role of advisor and as the freedom of information commissioner having to make some judgements about cabinet ministers and their actions. The possibility that he's going to find himself in conflict is really very real as he tries to carry out the duties of both those offices.

I think, more importantly, and I would think it would be of major concern to the Ethics Commissioner, the impact of combining both offices may make MLAs more reluctant, less open in terms of sharing confidences with the Ethics Commissioner, knowing that the information is now commingled and information that is given to that individual as the Ethics Commissioner may now be used in his role as the freedom of information officer. So I think the result would be a lessening of confidence in going to the Ethics Commissioner and asking for his advice on matters.

I think both offices are weakened by the hybrid. You can think of the documents now that the commissioner is going to have and those documents appearing as information under the Ethics Commissioner role and also now being in a position where he might have to rule in his role as the freedom of information officer on whether those documents should be made public. So the hybrid weakens both offices. It leads to that difficulty with the commingling of information. Employees under the Ethics Commissioner statutes take a secrecy oath. What happens if that office now is privy to information that can be ruled on by the freedom of information officer? It seems to me that it puts the employees in an impossible situation.

In concluding my remarks, Mr. Speaker, I'd like to refer to the Premier of British Columbia, who just recently found himself in

the kind of situation that we're describing here this evening, or the possibility of being in that situation, where documents of his dealings with a former colleague could have been sought by a Vancouver publisher under the freedom of information Act. It seems to me that that would have put the Ethics Commissioner in that province in the very kind of dilemma that we are fearful will arise here.

Thank you, Mr. Speaker.

THE SPEAKER: The hon. Member for Bow Valley.

DR. OBERG: Thank you, Mr. Speaker. It's certainly a pleasure to rise to speak to this Bill tonight. It was something that was completely unintended by me; however, the very eloquent speech from the Member for Fort McMurray sort of led me to it. As he asked me to lay back and close my eyes, I didn't fall asleep like the rest of the people in the Assembly but actually thought about what he was saying. Essentially, what he was saying was that he was concerned because the family of the victim, the poor 70 year old or poor 80 year old who was mugged, could not find out the details of why someone was not prosecuted. When he said that, I suddenly sat up and my eyes opened wide. It became obvious: probably because the guy was innocent. Now, there is something in Alberta and I'm sure in most democratic countries that states that you're innocent until proven guilty.

THE SPEAKER: The hon. Member for Redwater is rising on a point of order?

Point of Order Decorum

MR. N. TAYLOR: Yes. I was very interested in what the member was saying, but he's carrying a poster around his neck that seems to suggest some other type of activity than debate. I was wondering if he'd mind sort of tucking the end of it in his shirt so I could then concentrate on what he's saying.

DR. OBERG: Thank you, Mr. Speaker. Actually, this around my neck is Lucille Ball, and he does remind me of Mr. Mooney.

9:00

Debate Continued

DR. OBERG: To get back to the point, Mr. Speaker, I suddenly realized what could happen if this amendment was not put forward. What could happen is that anyone off the street – because it states "to any other member of the public, if the fact of the investigation was made public" – could ask why that victim was let off, why he was innocent, how the investigation was made to prove that he was innocent. I'll even take it one step further. In the recent Oklahoma bombing there was a \$2 million reward.

THE SPEAKER: The hon. Member for Fort McMurray is rising on a point of order.

Point of Order Questioning a Member

MR. GERMAIN: Thank you, Mr. Speaker. Would the hon. member entertain a question pursuant to rule 482 in *Beauchesne*?

DR. OBERG: I would love a question.

Debate Continued

THE SPEAKER: The hon. Member for Fort McMurray.

MR. GERMAIN: Thank you. Would the hon. member not agree that if the individual that he is speaking of in his hypothetical was deemed to be innocent, that would be a sufficient reason to be given under the rule as it now exists? When they inquired, "Why didn't you prosecute?" the answer would come back, "Because we concluded there was not sufficient evidence." Would that be an adequate reason to satisfy the rule?

THE SPEAKER: The hon. Member for Bow Valley.

DR. OBERG: Thank you, Mr. Speaker. In response to the question, under the section it does not say that a simple explanation is warranted. What happens if I go and say: "Well, why was he proven innocent? Why was this prosecution stopped?" It could be because I was in Oklahoma. It could be because I was in Hawaii. It could be because I was having some . . . [interjection] I didn't say that. It could be that I was someplace very private that had no bearing on this case that was brought forward. What this amendment states is that it must disclose the reason for the prosecution to be stopped, and it must disclose it to anyone who has an interest in the case. It does not say in the amendment that clearly the prosecuting body could get up and say, "Because he was innocent." What it says is that there must be details there.

What I was going on to, Mr. Speaker, before the question was the Oklahoma bombing. I think that's a tragedy that we all recognize. It's something that we're all very sympathetic to, but there were thousands of tips in that Oklahoma bombing. There were thousands of police investigations. Well, there is such a thing here as privacy. It's freedom of information; it's also privacy. If I was implicated in the Oklahoma bombing because someone threw my name out, I don't necessarily want my alibi known to anyone in the public, and that's what this amendment says. What it says is that they may disclose it, and it allows their discretion that if it is going to harm me as someone who is innocent in an investigation – it allows them not to disclose it.

If this amendment does not get put forward, then there is a problem that the privacy of innocent victims can be violated through this present wording, because under this amendment as it is right now, the body would be forced to tell them why the charges were dropped against me after the investigation. Mr. Speaker, that's a blatant violation. In Canada, in all democratic countries you're innocent until proven guilty. If someone wants to come in and find out my alibi, where I was on a certain date, that is no reason.

THE SPEAKER: The hon. Member for Edmonton-Norwood is rising on a point of order.

MR. BENIUK: Not so much a point of order but a point of clarification. Did he suggest that the person who may have committed something was the victim? I think *Hansard* will show that you referred to the person who may have committed the crime as being the victim and not the victim being the victim.

DR. OBERG: If that, according to the Standing Orders, was a request for a question, then I will certainly answer that question. Mr. Speaker, if there is someone who is deemed innocent and is forced to tell his whereabouts under this Bill, then, yes, indeed he is a victim of this situation. That is privacy, and he is a victim because his privacy has been violated. Under this amendment, the way that the wording is right at the moment, he will have to be forced to have his whereabouts, his activities, his whole alibi,

which is why he was proven innocent and the charges were dropped, exposed to anyone who asks.

Mr. Speaker, if you want to go and ask the reason why so-and-so had their charges dropped in the Oklahoma bombing, according to this section they would have to tell you. They would have to tell you the whereabouts, where the people were, the alibi, what they were doing, what their investigation was, and why it was stopped. I think I can only express, you know, my support for changing that one simple word to "may." In response to the hon. Member for Fort McMurray, the answer is quite simply because he was innocent. I think that's wonderful, and I think that the term "may" under this section 19(5) would expedite that but the "must . . . disclose" will not.

Mr. Speaker, as I've had three points of order, I guess I can reiterate for the third time that this is Alberta, this is democracy, and you are innocent until proven guilty.

Thank you.

MRS. ABDURAHMAN: Mr. Speaker, I certainly want to rise and speak to Bill 19. If there's anything that made me decide to enter provincial politics, it was because of the lack of accountability and open government. Quite frankly as I listened to the Member for Bow Valley speak, I couldn't believe my ears, because I never ever thought that the Member for Bow Valley would come to me as a bleeding heart. He seemed more interested in the person who was under investigation than the person who had been victimized. That's exactly what you were saying. To suggest that section 19(5), as it presently reads, does the very thing that you have put forward in this Legislature does a disservice to the victims. The very thing that I have heard in Alberta, as I've traveled around this province, is that Albertans are sick and tired of bleeding hearts.

THE SPEAKER: The hon. Member for Bow Valley is rising on a point of order?

Point of Order Questioning a Member

DR. OBERG: Yes, Mr. Speaker. Would the speaker entertain a question?

MRS. ABDURAHMAN: No, not at this time. I'd like to proceed. [interjections] If the government members will allow me the same courtesy that they did the Justice minister, when I've finished explaining why I'm making the statement that I am making, I'll answer your question.

9:10 Debate Continued

MRS. ABDURAHMAN: Let's look at section 19(5) as it presently reads so that people that read *Hansard* can follow this debate and understand exactly what the Member for Bow Valley was trying to state in his comments.

Before I read it for the record, Mr. Speaker, I also want to say that to liken Bill 19 to the tragedy in Oklahoma – I actually feel a level of discomfort, because no way can this Bill 19 describe what Oklahoma and the residents of Oklahoma have gone through and the victimization that has taken place there. To suggest that Bill 19 somehow takes away the justice from an Oklahoma I think does no one any great service quite frankly.

So 19(5) states:

After a police investigation is completed, the head of a public body must not refuse to disclose under this section the reasons for a decision not to prosecute . . .

Now, this is where I believe the member indeed makes it sound frivolous, and it isn't frivolous.

- (a) to a person who knew of and was significantly interested in the investigation, including a victim or a relative or friend of a victim, or
- (b) to any other member of the public, if the fact of the investigation was made public.

Now, what I'm hearing from the Member for Bow Valley suggests that someone is going to walk in off the street, demand that all the information that was collected by the authorities suddenly has to be disclosed. If you read section 19(5)(a) and (b), it does not say that. I would suggest that it would allow the authority, which would be, I would assume, the prosecutor or indeed the RCMP or the city police or whoever the authority is, to share the level of information that would point out why indeed the prosecution did not move forward.

I heard time and time again, to the Member for Bow Valley, that this is what Albertans who have been victimized are looking for so that they can understand what the judiciary is all about. Unfortunately, in the province of Alberta and indeed in Canada we tend to protect the criminal. We don't seem to have the sensitivity to look after the victims, and I'm saying that to use Bill 19 to put forward the idea that somehow we're undermining their right of privacy by not introducing this amendment does no justice to Bill 19 or to freedom of information.

So, Mr. Speaker, if the Member for Bow Valley wants to ask me his question now, I'll entertain it.

THE SPEAKER: The hon. Member for Bow Valley.

DR. OBERG: Thank you, Mr. Speaker. The hon. Member for Clover Bar-Fort Saskatchewan was going on quite eloquently about the victim. My question to her is: if someone is found innocent of a crime, which is what this amendment makes, and his reason for innocence, which is his private reason, is asked for by some stranger, is not his privacy violated and does not he also become a victim by the very fact that his privacy was violated and he was innocent of the crime he was accused of?

MRS. ABDURAHMAN: Mr. Speaker, in answering the Member for Bow Valley's question, indeed that information can be shared in a responsible way. If through investigations it was found not to be possible for that person to be involved in that crime, I would suggest that if I were that person being investigated, I would welcome that being shared: that there was no possibility that I could have committed that crime, beginning and end of it. I listened to the laughter that was going back and forth during the exchange, and if it was being suggested that the Member for Clover Bar-Fort Saskatchewan couldn't have committed this crime because I happened to be in a bedroom somewhere at such and such a time in such and such a place - if that's what you're suggesting is going to be shared, that's ludicrous. There is no way that detailed information needs to be shared. A simple explanation that that individual in no way could have been at the scene of the crime or whatever it was because there was evidence to show that indeed there was no possibility of them committing that crime: beginning and end of it.

Now, Mr. Speaker, getting back to Bill 19. I made in an opening comment the fact that I felt it was time in the province of Alberta that we had an open government, that we had an accountable government, that there was an opportunity for the information that should be shared with Albertans to indeed happen. I, as I traveled this province and campaigned in my own constituency,

heard I think extensively from all candidates, irrespective of their political affiliation, that that was the one thing that they desired for the province of Alberta. I was optimistic that through an all-party committee freedom of information was going to become a reality. I was optimistic that at last we had a government that's going to keep its word. In fact, it's ironic that what this government is putting forward now is: a promise made, a promise kept. All I'm seeing in this Legislature is promises being broken.

I think back to our rural hospitals not being closed. Nancy Betkowski was the one that was going to close the rural hospitals; the Liberals were going to close the rural hospitals. Who is going to close them? This government. That is a broken promise.

Now we're looking at Bill 19. Here we are with another broken promise. This Bill does not allow for full freedom of information.

I think the other insulting factor to Albertans is the suggestion that we now use the Ethics Commissioner to be our freedom of information commissioner. I would hope that we never put an honourable gentleman like Bob Clark in that position. You know, you talk about doublespeak. I can think back to when many people across the province of Alberta were suggesting that we utilize our dollars effectively and allow the Ombudsman to be the mental health advocate; in other words, to take over the responsibility of ensuring that the mentally ill are protected, whether they were voluntary or involuntary. Oh, no, no, you couldn't do that. So we created another bureaucracy, the mental health advocate's position.

Now, I would suggest that if you're wanting to make the best utilization of your dollars, it isn't looking at having a part-time Privacy Commissioner and sharing it with the Ethics Commissioner. What I would suggest, Mr. Speaker, if we really want to start making our dollars work is: let's give some more responsibility to the Ombudsman. Let's make sure that the voluntary and involuntary psychiatrically ill have full access to the Ombudsman, and we don't really need that office of the mental health advocate. Utilize some of those dollars, then, towards the Privacy Commissioner.

Indeed the Privacy Commissioner, I believe, would be in direct conflict of interest if he's both the Ethics Commissioner and the Privacy Commissioner. It flies in the face of what this government is supposed to stand for, and I don't believe that any one of those sections, whether you call them - and I hate to do this, Mr. Speaker, but you can call them the Clark amendments. I think it does Bob Clark a disservice, and those amendments don't serve Albertans well.

When it's been suggested that we can't allow the level of freedom of information that all Albertans desire because we might share information about telephone bills and somehow expose whom Albertans are contacting, that's an insult to our intelligence. It was in this very House where we saw a government member wave a telephone bill and say that it was a Liberal telephone bill. That's when we can see a violation of privacy and Albertans not being protected. To suggest that we need Bill 19 to protect Albertans, that's not the case. What Bill 19 is doing is trying to protect a government that really doesn't want to share full information.

I would say that this is just another delaying tactic, because the bottom line is that if you've an effective public accounts process, you'd have effective freedom of information. We would probably, I would suggest, Mr. Speaker, start to get to the bottom of where all Albertans' money went, why we have the colossal debt we have. I don't think it's just a case of concern about who's phoning whom. I really think that this government wants to delay

as long as they possibly can the ability of Albertans and the Official Opposition to access the kind of information that we need to make sure that government is held accountable.

Now, Mr. Speaker, if indeed these amendments are carried, I think it's a sad day for Alberta. I believe that what this government campaigned on is no longer there. I firmly believe that. I also believe that democracy has been struck another blow. I've seen many instances during this session where that has happened: in Bill 41, and I also look at Bill 15. I look at the ramifications of where we're going in our whole attitude towards gambling and who in essence benefits from that. This is just another example, and quite frankly I find it frightening.

I wish that Albertans understood that every time government uses arguments like the Member for Bow Valley, it's just a smoke screen. They're trying to create diversionary tactics, when in actual fact the very people that we should be looking after are the victims out there who time and time again don't seem to get the acknowledgement. They don't seem to get the type of support systems, whether it be from government or the social services agencies, because they're actually there for the people who have violated the law.

9:20

Mr. Speaker, I can see that there's a level of discomfort across the way with some of the things I'm saying, and I'm getting time-out signs from the minister of transportation. It's probably hitting a chord. He doesn't like it. Actually, I get some sense of positive feeling when I see that. It means that they're listening and that you really are needling them when you start to see time-out: we don't want to hear what you're saying. It's because they don't like what you're saying. The truth hurts, Mr. Speaker. It truly hurts. When the minister of transportation sits over there and professes that we have to look after the law-abiding citizens and look after the victims – and I've heard him time and time again – and deal with the people who commit crimes, and then they put forward an amendment like this, tut, tut. You can't have it both ways quite frankly.

The other is that when I look across the way, Mr. Speaker – and we're talking about fiscally accountable and open government and a promise made, a promise kept. Quite frankly this breaks all those promises. It breaks the commitment that the members across the way made when they were campaigning to get elected to this House. It breaks the most recent promise. I noticed actually at the trade fair in Sherwood Park – the minister of transportation was there, and he was standing right next to it – that there was this picture with the Premier's face on it. What did it say? A promise made, a promise kept. Well, I would say to the government of Alberta: start keeping your promises.

Thank you, Mr. Speaker.

THE SPEAKER: The hon. Member for Calgary-Montrose.

MR. PHAM: Thank you, Mr. Speaker. I did not intend to rise and join the debate today, but after listening to the arguments from the Member for Fort McMurray and the Member for Calgary-*Buffalo* and especially the Member for Bow Valley, I am so excited about the content of the Bill and about the debate of my hon. member friends, and I would like to join the debate now.

The Member for Fort McMurray talked about the need to have information open to all Albertans and that they should have the right to access the detailed spending records of the MLAs in each constituency office. He wanted to have all this information open to the public at any point in time. Personally I have no problem

with that suggestion. However, all this information is already made available today through public accounts. You can open a public accounts book, and you can find out exactly how much money is being spent on travel, on extra pay, on committee work, and so forth. So I don't know what the argument is about.

The second point the member raised regarding the possibility of criminals getting away and not being prosecuted and the reasons not being told to the victims I find very difficult to believe. In this society that we're living in today, it is almost impossible for any government agency to tell the victim: I am not going to tell you the reason why I don't want to prosecute this person. What the Act says is that it may, and the Minister of Justice has pointed out several cases where telling the public why they do not prosecute one person may actually hinder the process of prosecuting the other real criminals out there. So I don't know what the real motive is behind the member's argument.

I also noticed that the Member for Calgary-*Buffalo* talked passionately about freedom of information. Ever since I have been a member of this House, he has always talked about freedom of information as if it is the primary cause of his election and the primary cause of why he's here. I was so disappointed in the last round of the leadership election for the Liberal Party. At that time the hon. member was one of the candidates, and I was actually expecting that he would do very well and was waiting for him to do well in that race.

What happened after that race was very interesting. Many of the members, including the Member for Edmonton-Roper and the Member for Fort McMurray, tried so hard to get information from their own party as to why the result was announced the way it was, and also they were trying to find out from their own party how the election was run. I thought that this information should be made available to the public or, if not, at least to the Liberal members who spent the money and the time to come and vote. Jesus. After an investigation for two months, they came back, and what did they tell us? There was no way you can get this information; it is private information. It is even worse; even the candidates themselves do not get this information. They have to go to a session where they are briefed by the president of the Liberal Party and the disputed winning leader over there. If I were a member of the Liberal Party, I would have been deeply insulted by that move. Therefore, I think that the principle doesn't apply in this case.

When you want to talk about freedom of information, you have to be consistent. You cannot be a marching group: today you march to the left; tomorrow you march to the right. Left, right, left, right. It doesn't work. The people of Alberta elected 51 of us in the government caucus. We have a lot more responsibility than to sit and go through paper and find out where you spent 50 cents on a pencil, where you spent another 70 cents on a pen. We have a budget of 12 point something billion dollars. Every year we have a budget of 12 point something billion dollars. We have to look after governing this province. Right after the session we have to start on the process of preparing the next three-year business plan. So we have to put all these things in perspective. You cannot govern by micromanagement. That is very, very important. I think that the members from the other side, especially the Member for Calgary-*Buffalo*, have to learn that concept if they are going to have any hope of forming the next government.

With that, I will sit down and allow the other members to join the debate. Thank you, Mr. Speaker.

MR. WHITE: Mr. Speaker, I too am stirred by the sterling quality of debate and this right, left, right, left dance the member opposite is into. Normally I would start off in this debate dealing

with freedom of information and would not get into these kinds of things that the Member for Calgary-Montrose has gotten into, but I shall.

There is only one fundamental difference. Somewhere in his zeal to express this outrage that he seems to have, somehow the hon. member got right carried away. The fundamental difference between the dollars that that member was speaking of and that the member from this side and this member shall be speaking of is that they're not public dollars. I say again, sir: public dollars. They are private dollars, in fact, dealing with the party, not public dollars, and you might make that distinction should the matter ever make that . . .

THE SPEAKER: The hon. Member for Calgary-Montrose is rising on a point of order.

Point of Order Questioning a Member

MR. PHAM: Yes. I'd like to ask the hon. member if he would entertain a question during debate.

THE SPEAKER: The hon. Member for Edmonton-Mayfield.

MR. WHITE: Absolutely, Mr. Speaker. However, I would like to finish my remarks first on this particular matter and two others, and then the member opposite will have his time to ask his question. Perhaps he could work on the question in the interim.

9:30 Debate Continued

MR. WHITE: Mr. Speaker, there's something fundamentally wrong with a member that on one hand can argue and start off with a wonderful statement that says yes, he believes firmly and completely that the disclosure of those moneys that are spent by a constituency office should be made public and then, in the same segment of debate, ends with waving the finger at members opposite and saying that we're hiding something and misses the point entirely between public and private dollars. We're talking about a piece of legislation where at the heart of the legislation is the public's right to know how their dollars that they invest in a government in order to collectively manage a number of items are in fact spent, not how they spend their money privately, whether it be to finance one cause or another, whether it be political or private, whether it be corporate or individual, or whether they squander the money putting it into the no-armed bandits that this government seems to rely on heavily for its income. That simply is not the point.

[The Deputy Speaker in the Chair]

The member opposite has gone off on some strange tangent about whether in fact information, private information – if he had ever taken the time, he would know that it is private information – and those kinds of items that are made public are for the public's good only if the private member of the public decides it is so. This is not the case with this piece of legislation. This piece of legislation is fundamental to democracy. It's one of those things – the Premier said it well in his opening statements on Bill 1. He certainly did that some time ago in this House. We've heard two, three members of this Legislature from the government side say precisely that. And then to fly off on these strange tangents when the average person, the average soul out there, if you asked them if they would like to have the opportunity, not

that they would exercise the opportunity, to know how those funds are spent in a constituency office – most members here would have no difficulty. I think we all just recently received a whole year's accounting of them. There's not one single item this member would have difficulty explaining to any member of the public and thinks that should be made public and has no difficulty with that. The average person would say that yes, that's to be done.

There's a recent history. There was a case in Saskatchewan, and there was not one, two, but three – and I believe they were Tory members, perhaps, of the Legislature – who had difficulty explaining why they would buy with those funds a saddle and the appropriate tack. They tried very hard, and the arguments were found to be lacking. That information would only come to light with freedom of information. Now, that piece of freedom of information legislation is not nearly as strong as this piece of legislation originally was when the committee filed its report.

I should start from where I intended to start at the beginning of this discussion. The all-party committee – and I have to compliment all members and certainly the chairman for working very hard to bring something together that actually reflected what the public were asking for: pure and simple knowledge of where their dollars were being spent. Now, the intricacies of protection . . .

AN HON. MEMBER: Misspent.

MR. WHITE: Or, more to the point, misspent. That's correct.

The chairman of that committee went to great pains to explain, as he should have done, how the meetings were conducted in public, the information that was gathered, and how in fact they came to the conclusions that were come to. One of the conclusions was not to combine the offices and denigrate this office to a part-time job. This is, at least initially, a full-time job. The perception of the office is as important to democracy as the reality. This office has to take a very, very important place in this Legislature and in government in general. It has a substantive workload to review a backlog of items that certainly the environmentalists and some of the cattle producers would like to see. There's information that they'd like to have, and there's information that should be made available. Through this piece of legislation it in part will, but not fully and not as completely as some would like, certainly not members on this side. But it should be noted that the perception is just as important as the reality in this item.

If you're talking about combining these offices, regardless of the personnel involved, combining these offices may have a savings of some \$300,000 or \$400,000 should a completely separate office be set up. But there's no reason that the offices couldn't share common offices and common staff and all other things save and except the commissioner. The commissioner cannot be in the position of choosing between reviewing something which is brought to him privately by a private member or a cabinet minister to deal with on his own private business. He should not have to make the choice between that piece of business and a piece of business that is brought to him by the public, where he has to make some ruling as to the declaration that it is public or is not public. That certainly goes against the fundamental grain of this item.

We're talking about savings of what? If this government had freedom of information many, many years ago, chances are that members opposite and members on this side would have been able to delve into a number of items that were questionable in the public eye. We're talking about the NovAtels and Gainers and all

of those others that we've heard many times before. If you do a rough tally on those numbers and the savings that this government intends to save annually topped up to the worst case scenario, we're talking about less than one-half of one-tenth of 1 percent. You're talking about the annual savings of the operation of this office well into the hundreds and hundreds of years.

If there's just one item that is not discovered by reason of having a single person running both offices, just one item that doesn't come to light, the savings could well be there. The public's right to know and therefore to shed light on those shady areas and delve into the errors that we would love to know do not occur in and around government – we know they do, and it's difficult to ferret those out but twice as difficult if you have to go through an office that is overburdened. This particular member feels that perhaps at some point in the future when there is a demonstration that this is purely a part-time job, then I'd say yes. Then I'd review the item and decide that yes, perhaps it is worth the risk to that element of democracy to say that there is reason to denigrate this job to a part-time job.

To return to a section that the Member for Bow Valley mentioned. He seemed to skip over the fact. He was talking at great length about innocence, the victim that was the accused who was found not guilty. That person could then in fact become a victim because of freedom of information had this amendment not been put forward, section 19 I believe. Well, if that section reads as I read it – now, I practised engineering; I didn't practise law. I would assume that the member opposite practised medicine, as I understand his past history, and not law also, but both of us should be able to read plain, simple English. The matter is before prosecution, which in my interpretation, a layman's interpretation albeit, means that that is before trial, the time up until presumably the first witness is called, because that is when the official prosecution does commence, not at laying of charge or filing of information or anything else. That's before trial, so I'm at a total and complete loss as to how the member opposite would bring all those arguments to bear on this item when he was not dealing at all with the guilt and innocence of a party. This was before, so that the prosecution, the Crown, would at some point or another withdraw the charges or enter an application to stay the proceedings or some such instrument as that so as to not get to prosecution.

9:40

That to me would mean that there are no statements that are made publicly. The victim of the crime for which that person or persons are accused would like to know, plain and simple, a simple statement of fact of why the prosecution did what they did and not prosecute. Now, I don't have a great deal of difficulty understanding that. I don't understand how the members opposite have a great deal of difficulty understanding that. Yes, there have to be a number of exceptions and there has to be a fundamental test – someone will have to make that judgment – but this is a specific prohibition of release of that information. It's ridiculous how this could say that the judgment is beyond any one soul, that it is prohibited. Now, I find that abhorrent, that a member who has knowledge of the areas of the law – and I can read it – brings up this matter.

I should like at this point to allow the Member for Calgary-Montrose – he's been very, very patient, Mr. Speaker, in allowing me to go on without interruption. Thank you for that.

THE DEPUTY SPEAKER: Under *Beauchesne* 482, a question, Calgary-Montrose?

Point of Order

Questioning a Member

MR. PHAM: Thank you, Mr. Speaker. First I would like to thank the Member for Edmonton-Mayfield for allowing me the opportunity. Before I ask the question, I would like to be put on record that I have a lot of respect for that member.

The member explained in his debate that the reason he wanted information to be public was because it involved public money. It's the public's money; therefore, the public has the right to know. Based on the same argument, I have talked to some of the Liberal members, and they say that it's their money that paid for the leadership. Therefore, with the same argument they say: because it's our money, we have the right to know. Because the Liberal members paid for the election, they have the right to know. They ask the question: why was the information denied? If you believe in the principle that because it's public money, the public has the right to know, then you have to believe in the same principle that because it's Liberal members' money, the Liberal members have the right to know.

THE DEPUTY SPEAKER: The hon. Member for Edmonton-Mayfield in reply.

Debate Continued

MR. WHITE: Yes, Mr. Speaker. I have a great deal of difficulty understanding the question here, in that it appeared to me that the question was put as to a definition of public moneys. Public moneys, in this humble member's estimation, are moneys that are collected from the public by the government or by a government to expend in a manner that they see fit to deliver services to the public, being different than moneys collected from the public to do any other thing, whether it be to buy bones for dogs. I mean, it doesn't really matter what the matter is if it is coming from a member of the public to a cause, whether that be a common cause or whether it be – I have difficulty understanding that.

So, Mr. Speaker, unless the member has further questions on this particular matter, I'll take my seat. Thank you, sir.

THE DEPUTY SPEAKER: The hon. Member for Calgary-Shaw.

MR. HAVELOCK: Thank you, Mr. Speaker. As a member of the all-party panel which traveled throughout the province to solicit the views of Albertans on this issue, I certainly would like to make some comments. I appreciate some of the queries raised by members of the opposition. However, for me this is not a simple issue of full disclosure. I think we have to temper that philosophy with some degree of reasonableness. We as elected members have a responsibility to implement legislation which is practical, which reflects the views of Albertans, and which I feel does not unfairly penalize selected members of society, yet without some restriction on full disclosure, we may be doing just that.

In particular, I would like to respond to the comments made by the hon. Member for Calgary-Buffalo and the hon. Member for Fort McMurray regarding section 19(5). Now, while perhaps not argued as eloquently as one would like, the simple point the hon. Member for Bow Valley was attempting to advance was as follows: there is some justification for not disclosing the reasons why a prosecution was not pursued; it may be an unreasonable invasion of privacy. Do we as a public have an unfettered right to know the particulars of an accused's alibi, for example, if it completely exonerates that individual from complicity in the offence? I'd suggest, Mr. Speaker, that the answer to that would

be no. I might add that I have some degree of confidence in our law enforcement agencies making a determination as to whether or not that information should be disclosed. That, quite frankly, is what section 19(5) is attempting to accomplish. Another example cited earlier this evening, Mr. Speaker, by the Minister of Justice is that full disclosure relating to one accused may actually hamper an investigation which is proceeding against another accused or a co-accused. To look at this, I think it would represent a reasonable restriction on full disclosure if it were determined that to so disclose would undermine an investigation.

Mr. Speaker, in conclusion – unlike some of the members on the other side of the House, I would like to keep my remarks brief – we should not ignore the fact that if the head of a public body refuses to disclose the reasons for not prosecuting, my understanding is that that is appealable to the freedom of information commissioner. Consequently, I am of the view that the overriding concern for the rights of the individual and the public's need to know are adequately balanced by the proposed amendment to section 19(5), and I would hope that once we get into committee, certainly if the hon. members have any comments they'd like to make, I'd like to hear them at that time.

So I would urge members to support this Bill at second reading. Thank you.

THE DEPUTY SPEAKER: All right. Do I have two points of order or just convergent thought?

The hon. Member for Calgary-Buffalo is rising on a point of order. Would you share it with us, please, the citation?

Point of Order Questioning a Member

MR. DICKSON: I simply wanted to cite *Beauchesne* 482, and I wanted to know if the Member for Calgary-Shaw would entertain a question, Mr. Speaker.

THE DEPUTY SPEAKER: Okay. The Chair thought the hon. Member for Calgary-Shaw had concluded, which would then presumably preclude, but if you were sitting down because there was a point of order . . . Did you conclude your speech, Calgary-Shaw?

MR. HAVELOCK: Well, I had concluded. However, I would be more than happy, if you were to grant permission so to do, to answer any question which the hon. member may wish to put.

THE DEPUTY SPEAKER: Hon. member, either you concluded your talk or you did not. If you concluded it, then that would obviate any questions. It was inferred that you had said toward the end – and I'm sorry the Chair did not hear it – that we now move second reading? Did I hear that?

MR. HAVELOCK: Yes.

THE DEPUTY SPEAKER: Then there is no point of order, and we'll hear from one of the three members who offered to speak to second reading.

Edmonton-Whitemud.

9:50

Debate Continued

DR. PERCY: Thank you, Mr. Speaker. I rise to speak to the amendments to this Bill. Thinking about what the Minister of Justice has said about the issue of speaking to principle and trying

to somehow integrate the amendments into a coherent package, the only way that I can do that is to draw upon the principles underlying the initial Act itself, which would be the Freedom of Information and Protection of Privacy Act.

Section 2 sets out the purposes of the Act. In the purposes of the Act there are five elements set out which I would like to use as an integrating theme. The first purpose of the Freedom of Information and Protection of Privacy Act is:

- (a) to allow any person a right of access to the records in the custody and under the control of a public body subject to limited and specific exceptions as set out in this Act.

So it's clear that that purpose, then, is to allow people to know what the government has on record and the commitments and claims against government and also what is on file about a particular individual.

- (b) to control the manner in which a public body may collect personal information from individuals, to control the use that a public body may make of that information and to control the disclosure by a public body of that information.

And that then integrates both the freedom of information as well as the protection of privacy itself, the trade-off between these two conflicting ideals.

- (c) to allow individuals, subject to limited and specific exceptions as set out in this Act, a right of access to personal information about themselves that is held by a public body.

I think this is particularly relevant to the issue that the hon. Member for Bow Valley brought out. It's rare that I disagree with that member, but this evening I will.

- (d) to allow individuals a right to request corrections to personal information about themselves that is held by a public body, and

finally,

- (e) to provide for independent reviews of decisions made by public bodies under this Act and the resolution of complaints under this Act.

When I look at the principles that underlie the Freedom of Information and Protection of Privacy Act and then look at the amendments, I mean, we can see it in the context of debate this evening, Mr. Speaker: the concern for complete information and weighed against that is concern about the privacy of individuals.

So I want to speak to the principle on the first point, which is with regards to section 8 in the amendments. It's here that I actually do disagree with the Member for Bow Valley. The logic of his argument was that, you know, the alibi itself might be damning and that the way that the section is phrased compels the public body or the authority to provide all of that and that there is no discretion on their part. When I read that, it doesn't appear that it actually has to spell it out in detail; it's sufficient to say that in fact the information exonerates the member. I'd much prefer, then, an Act that would require knowledge as to why a prosecution is not brought forward as opposed to one where it's left in discretion, because, again, if we're to accept the argument that's made by the hon. member, I think the discretion then comes in the amount of detail that is provided in the explanation of why a prosecution has not been followed. I'd much prefer that to be the area where there's discretion as opposed to the issue of discretion of whether or not the public authority is going to say why. I mean it's a question of where you have the discretion.

So I read this, and I think it's too strong. I would much prefer to keep this section of the Act as it is, prescriptive, and allow the discretion to come in with regard to how much information then is provided with regard to why the public authority did not choose to prosecute a particular incident. Again, when people are concerned about crime and we are concerned about the rights of

victims, I think we ought to make the freedom of information Act prescriptive in this sense and ensure that victims have a right to know why a particular individual was not charged. Again, the hon. member does make the valid point that the person whom it has been alleged has committed a particular offence does have rights. The issue is, then, at what point are their rights addressed? I think it would be appropriate that an explanation must be given for why the prosecution is not to be followed, and then that the Act, if it in fact is as prescriptive and that the full résumé of exactly what that person was doing when, with whom, or whatever – if that is in fact how the Act is interpreted by the hon. Minister of Justice, then it ought not to be that way. The explanation has to be more generic in nature, that in fact the evidence exonerates the individual. That would be useful information for all parties to know: that an individual is exonerated on the basis of their alibi and it has been checked through. Again this is an issue of polar ideals – freedom of information versus the issue of protection of privacy – and is an issue of how to sequence these in a way that the rights of both parties are protected. I guess I read the current Act as having the right mix, from my perspective. So I certainly have concerns about section 8.

Another area that I have concerns about – and again I have ambivalence in this regard, as I think a number of members do – concerns section 5(a)(iv). It attempts to exempt from the freedom of information Act any record created by the office of a MLA "that is in the custody or control of the Legislative Assembly Office." On one hand, I certainly have to say that as an opposition member who has had many calls from the public concerned about various issues, offering information, basically whistleblowers, I don't want telephone records available. When some records were in fact waved in the House, I think for all members it brought forward a real shudder. If there's no protection of your telephone records, who is calling you, whom you're calling, then you've got very serious problems with being able to do your job as an MLA.

That issue about the protection of your records and the issue of your privilege as an MLA I think is quite distinct from the issue of MLA perks, expense accounts, transportation, accommodation, et cetera. I think, Mr. Speaker, there is a very clear right of the public to know who gets what and how much. I read that particular section, and I think that if we're going to try and rehabilitate the image of government and the image of politicians, that can best be done by allowing government to be as transparent as possible, particularly with regards to remuneration for elected members. Certainly the amount of remuneration for elected members was a central issue in the last election campaign, and I think we want to maintain a tradition and a requirement that we be as open in this regard as possible. I want to see that type of information available, yet I certainly do not want to see public our telephone records, et cetera, available on grounds of issues of privilege and our ability to carry out our jobs.

Other areas. Section 7 I have some concerns with. The reason I have concerns with section 7 is that it now provides that within 30 days the head of a department must respond to a request, and this was section 14. Now, if the request should be rerouted to a different department, the head must transfer within 15 days of receipt. There are provisions to extend the initial 30-day period where appropriate. I think the issue there is that information delayed is often justice denied. I think you want to have benchmarks in there for the expeditious treatment of requests for information and you don't want to get it in the endless loop of going from a department head to a department head to buy time. I think that defeats the purpose of the Bill, which is to ensure

freedom of information but also accessibility within a reasonable time frame.

10:00

I think a government that is going down the route of specifying benchmarks and setting out criteria by which communications are to be met – for example, I know a number of the business plans set out that communications are to be speedily and readily addressed. What we see here is a little move away from that, and instead of ensuring an expeditious treatment of these types of requests, we see a mechanism put in here just to stretch it out and stretch it out indefinitely. So I would oppose that simply on the grounds that it provides too much slack. It's not consistent with any reasonable type of benchmarking or an effort to set tight limits on the extent to which a request for information can just be delayed by being rerouted indefinitely.

With regards to what one can generically call the Clark amendments, again here, I mean, is an area where I have difficulty, having dealt with the incumbent, right now the Ethics Commissioner. I think he's an outstanding individual, and I have complete and utter trust in his judgment and his capability and his integrity to carry out his job. I guess where I have a concern is that again we come to the issue of whether this is part-time or full-time, and I'm sure many of my colleagues wish to address that in some detail. However, regardless of whether it's specified as a full-time position or as a part-time position, Mr. Speaker, the issue is open competition. I think the Premier committed himself to significant appointments being held through open competition. There would be an appointment process set up where the Public Service Commissioner would specify a board.

There is no more significant appointment I think than the freedom of information commissioner. So I would think that if there is any appointment that ought to be significant in nature, it is this appointment, and it is really worthy, then, of an open competition. With the criterion of whether it's full-time or part-time, it's still an issue that this ought to be dealt with through a competition to make sure we're getting the best person regardless of duration of appointment or within a year whether it's part-time or full-time. Certainly I would think that Mr. Clark would apply.

So the bottom line is that I am really of a mind that you can't go wrong by having public competitions and that it's a bit of red herring to say that because we're going to specify this for a particular individual, we can't have a public competition. There must be others out there over and above Mr. Clark who could have applied if it was a part-time position. Again, I say this with the greatest respect for Mr. Clark. This has nothing to do with the individual. This has everything to do with transparency and openness and the need, then, for public competitions for significant appointments and a process that is seen to be arm's length and a process that clearly chooses the best candidate possible.

So with those comments I would move adjournment on this Bill.

THE DEPUTY SPEAKER: The hon. Member for Edmonton-Whitemud has moved that the Assembly do now adjourn debate on Bill 19. All those in favour of that motion, please say aye.

HON. MEMBERS: Aye.

THE DEPUTY SPEAKER: Those opposed, please say no. Carried.

[At 10:06 p.m. the Assembly adjourned to Tuesday at 1:30 p.m.]