## Legislative Assembly of Alberta

Title: **Tuesday, May 9, 1995** **8:00 p.m.**
Date: 95/05/09

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

[Mr. Tannas in the Chair]

THE CHAIRMAN: I'd like to call the committee to order. As members will recall, we're in Committee of the Whole, and we recessed at approximately 5:30 this afternoon until this moment in time.

### Bill 16
### Workers' Compensation Amendment Act, 1995

THE CHAIRMAN: We have under consideration Bill 16, and we had before the committee an amendment which we designated A1. The Minister of Labour was on that. This is the one where the hon. Member for Leduc moved that section 4 be amended, and that is what we're on now.

You were speaking on that. Are you wishing to speak further? Okay. So it's now open.

MR. WICKMAN: Mr. Chairman, when you refer to A1, I'm looking at section 4 being amended, and my understanding is that this amendment is going to allow for injured workers to be on the board.

THE CHAIRMAN: It's your amendment.

MR. WICKMAN: My understanding is that the Minister of Labour, the minister responsible for the Workers' Compensation Board, has had the opportunity to review this amendment and then to review the amendment that is going to follow. I wouldn't mind hearing his comments when I complete my comments, Mr. Chairman.

On the question of representation on the board by injured workers themselves, I think it goes without saying as to the benefit or the substance to it. I realize that at the present time there is representation that's done on a voluntary basis or whatever terminology we want to use. In other words, it isn't mandatory for that procedure to be followed at the present time. So even though there are two injured workers on the board that do represent the interests not only of injured workers but of the board just generally speaking, to ensure that that practice continues and that we don't see two years down the road a board where we don't have that representation, this amendment ensures that there will be that representation of the injured workers on the board.

I'll conclude and wait to hear from the minister.

MR. DAY: Mr. Chairman, on that particular issue, it was raised by the Member for Leduc and actually also raised with me by the Member for Lethbridge-West. It's a difficult issue, difficult to actually put that in legislation for this reason. In doing the research and looking at it, as I indicated to the Member for Leduc and also to the Member for Lethbridge-West, there's some risk element here. To define in legislation somebody's handicap or lack thereof as a qualifier for a particular position is a tenuous thing to try to do at best. It could be challenged, for a number of reasons that I think all members here would be quite familiar with, to actually designate that a person must be in fact disabled, hurt, or injured before they could fill a certain position.

There's the other aspect, too, in terms of a practical aspect. If you did have a person there as an injured worker and designated as that, leaving out the human rights considerations that you could run afoul of, then what happens when the worker in fact gets better and no longer is injured? Are they then no longer an injured worker and therefore no longer representing the interests of injured workers?

The present legislation calls for three people to represent the interests of injured workers, and I think the record will show that they do that quite effectively. It is interesting to know that on the board there are actually two people who are visibly identifiable as injured workers. One of those is confined to a wheelchair, and another has an obvious disability though it does not in any way impede that person's performance on the board. So the demonstration is there very clearly that it is a benefit to have someone there who does know what it is to be an injured worker, but to try and put that in legislation would be something that we would not want to do for the reasons stated.

I do appreciate the input from the members for Leduc and for Lethbridge-West on that point. I have talked with the Member for Lethbridge-West in some detail on that particular concern, and he is in agreement with the difficulties that would be raised by designating somebody as injured or handicapped. I haven't had time to go into detail with the Member for Leduc, though I've gone briefly over some of these things in sitting down in some discussion with him.

So it's for those reasons that we would not be supporting the amendment but also realizing that it does happen, in fact, that injured workers are indeed on that board.

MR. WICKMAN: To close debate, Mr. Chairman, I understand from the Member for Leduc that the minister has received another amendment that is somewhat similar that will be introduced. It's my understanding that he's already had the opportunity to review it. While I can appreciate that he doesn't find this one acceptable, possibly after we deal with this and we deal with the next amendment and I introduce that third one on behalf of the Member for Leduc, he may find that one acceptable.

*8:10*

[Motion on amendment A1 lost]

MR. DAY: I would like to have distributed here an amendment, Mr. Chairman.

I do appreciate the input that I've received in the debate on the Bill itself, and I have responded in detail to each member on the points raised. I felt it would be important to do that as debate continued on so that I would have the time to actually look at the points raised and address in detail, as I've said, a number of items raised by members opposite. I did also send copies not just to individual members who had points, but I wanted everyone to see the response to the other members' points that were raised. For that reason I think that has helped the debate move along, maybe just by sharing information that members may not have been aware of.

If members now have a copy of the amendment or as it's being distributed, I'll just bring members up to speed on this. In going over, again, the Bill with the Auditor General, there was a request made from the Auditor General to amend section 87(1), which would just give him greater comfort in terms of the ability he would have to make a full and complete audit, along with some

specific items that he felt would be just cause for the type of reporting that would be comfortable to him and to his officials. So we did some significant consultation on this. We looked at the ramifications. We looked at other . . . [interjection] I'm not talking about the amendment yet.

We looked at other provinces, other jurisdictions, and we did feel that the Bill as presented was adequate, yet in consideration to the Auditor General and to show that what we had there would indeed give full consultation that was the spirit of the existing Bill and its amendment, we nevertheless deferred to his request. That's why I think all members now have before them a copy of the amendments, and you can see the main body of the amendment there in the bold print in front of you. This is a request from the Auditor General and just gives to the Auditor General what he feels is an even broader and more succinct way of determining how audits would go.

So 87(1) says:

> The financial statements of the Board shall be audited at the direction of the Auditor General by an independent auditor appointed, in consultation with the Board . . .

That was our original amendment there, also adding that the cost of the audit is borne by the board. Then in (1.1):

> The independent auditor's report produced pursuant to subsection (1) shall be addressed to the board of directors of the Board and the Auditor General.

So just to clarify that. Then section (1.2) indicates:

> The Board shall have an Audit Committee composed of no fewer than 3 members of the board of directors of the Board, a majority of whom must not be officers or employees of the Board or any of its affiliates, and the operations of the Audit Committee shall be guided by the provisions of section 165 of the Business Corporations Act.

So it makes it consistent with the Business Corporations Act and just provides that greater level of comfort for the Auditor General in terms of the audit process.

This was raised actually by a number of members also, not in terms of specifics but there were questions about the ability of the Auditor General to fully conduct an audit. I think this now clarifies that. The Auditor General has indicated that this would clarify his concerns and give full and complete ability for the type of audit that he thinks is necessary.

THE CHAIRMAN: Before recognizing Edmonton-Rutherford, I would just say that the amendment that has just been moved – I trust he moved it – by the hon. Minister of Labour will be called A2 for further identification.

The hon. Member for Edmonton-Rutherford.

MR. WICKMAN: Mr. Chairman, we're now dealing with A2. He has simply introduced his other amendment, but A2 stands before his amendment; correct?

THE CHAIRMAN: We could have a lot of amendments circulating, hon. member, but you have to move them, and the rules are normally that you only have one amendment at a time. So one was A1, and that's why we keep saying, before the debate really begins, what amendment we're on. There are other pieces of paper that are circulating, but they haven't yet been moved or recognized by the Table and given an identification number.

MR. WICKMAN: But the one that I will refer to, Mr. Chairman, as A3, after we deal with A2, has been distributed. It has not been moved, but it's been distributed.

THE CHAIRMAN: Well, that could be A3, A4, whatever. But right now there are only two: A1, which was defeated, and A2, which we have before us.

MR. WICKMAN: Yes. Mr. Chairman, speaking to A2, it's my understanding that this has been a request by the Auditor General, and it will simply tighten up and ensure that proper auditing procedures are followed that protect the interests of the board, the interests of those that pay contributions or premiums, mainly the employers, into the board. So this is to the benefit of all people involved, and we don't have any difficulty with it.

[Motion on amendment A2 carried]

MR. WICKMAN: Mr. Chairman, there was an amendment that was distributed or circulated by the Member for Leduc a couple of evenings ago that deals with the amendments to the section dealing with the appointment of the president of the board.

Now, Mr. Chairman, do you have copies of that, and has that been distributed?

THE CHAIRMAN: I don't know, so we'll just talk for a moment, hon. member. This again is moved, on the paper, by the hon. Member for Leduc. Section 5 is amended in section 4.1(1) – is that the one we're talking about?

*8:20*

MR. WICKMAN: That's the one, Mr. Chairman.

THE CHAIRMAN: Okay. This will be known as A3.

MR. WICKMAN: Mr. Chairman, speaking to A3, which has now been circulated to . . .

THE CHAIRMAN: The hon. Member for Edmonton-Rutherford has moved on behalf of his colleague A3?

MR. WICKMAN: Right. Speaking to amendment A3, which has been distributed to Members of the Legislative Assembly, amendment A3 calls for the appointment of the president of the WCB by the board of directors rather than the Minister of Labour. That's the bottom line as to what will occur if the amendment is accepted by both sides or all members of the House. Mr. Chairman, I don't have to go to great lengths to talk in terms of the possibilities that can open or the doors that can open when the minister has that type of discretion to make that appointment, the temptation that may be there to make a political appointment rather than the person that may be best selected for that particular position. What this amendment does is ensure that there is a much greater chance of a reduction of the potential for patronage appointments by having the president of the WCB appointed by the board of directors rather than by the minister responsible for Labour and workers' compensation.

This amendment sends a message to the public that we are accountable, we are above reproach, we do not fall into that trap of political appointments, and we want to ensure that we have open competitions. We want to ensure that when a person is selected for a position of great responsibility, that the person is selected on the basis of the qualifications that person has to offer and that there is no patronage for whatever reason that may be deemed appropriate by the minister responsible for that particular appointment.

So I would ask that all members of the House support this amendment, which would ensure that the appointment of the president of the board is done in an open and fair manner.

MR. DAY: Well, Mr. Chairman, for the very reasons enunciated by the member, we have put this change in the Act that the president shall no longer be appointed by the minister. In fact, "the board of directors . . . shall select and appoint a person to be the President of the Board." The very fact that this entire board is subject to a number of provisions, not the least of which is the Auditor General and other provisions related to both the Business Corporations Act and others – the board itself, having representation from business, labour, and the public, could do nothing else but ensure that it would be an absolute full and forthright and public process. The added responsibility that's given to the board virtually determines and requires that it has to happen that way.

The fact the government is no longer backstopping unfunded liabilities, the fact that now the board must stand on its own underlines that this will be dealt with and done in a public way using all means available, not even possibly restricted to what it says in section 16(3) of the Public Service Act, because they would want to be able to scan certainly all of Alberta, certainly all of Canada, and perhaps beyond to make sure they're getting the best person for the job. So the very reason it has moved this way is to make it public, to make it broad, to make it fully open to all kinds of circumspection and all kinds of inspection.

It's only for that reason that I am saying no to the amendment, that the board would not want any restriction at all, which even may be an unintended aspect of section 16(3) of the Public Service Act. They would want to scan the entire globe, if it came to that, using very broad and public parameters to get the best person for a highly responsible position. So I believe, with respect to the Member for Leduc, that the very fact that we've taken this out of Executive Council, out of the hands of the minister, and put it in the board, which is subject to all these provisions as I've indicated, shows that this is going to be a public process. The board itself, the stakeholders would stand for nothing less than a full and public process. So the spirit of this I believe is already reflected. That's the only reason I am not supporting the amendment. The spirit of it is reflected. I appreciate the input, but I believe it's already accommodated.

MR. WICKMAN: Mr. Chairman, the amendment as proposed by the Member for Leduc, however, takes it that one step further. I do acknowledge that the minister is correct, that if Bill 16 is adopted as brought forward by him, it will ensure that the appointment of the president is done by the board of directors rather than by the minister, as in the present case. What the amendment distributed by the Member for Leduc earlier does is go one step further and not only ensures that the appointment is done by the board rather than by the minister, but it ensures that there's an open competition in accordance with the rules and procedures laid out in the Public Service Act, that it takes that extra step and ensures there is no appointment, period. It's an open competition that any qualified person has the opportunity to apply for, and that, Mr. Chairman, puts the icing on the cake to ensure that the best person indeed is selected and would take away any possibility of the appointment smacking of patronage, whether it be by a minister or by persons on the board. So the amendment, Mr. Chairman, stands as a good amendment.

THE CHAIRMAN: We have before us, then, for our consideration the amendment to Bill 16 known as A3, as moved by the hon. Member for Leduc.

[Motion on amendment A3 lost]

MR. WICKMAN: Mr. Chairman, in speaking to the Bill just prior to introducing one last amendment that has been prepared by the Member for Leduc and initialed by Parliamentary Counsel, it's a different type of wording that ensures that generally the same intent would be reached as would have been reached in the amendment that you classified as A1. I'm now classifying this as A4. What A4 does is ensure that there would be not less than two representatives of the interests of injured workers on the board. This would again take it that one step further that the board would not be restricted to just having two representatives of injured workers. It could in fact have three. It could in fact have four. If the minister wanted to avoid that situation where he makes the argument that if one of those persons on the board is an injured worker who is only injured on a temporary basis and not permanently – in other words, the time will come when he or she is no longer an injured worker – by having three or four representatives of injured workers on the board you would at no time, then, risk the possibility of going less than two. What this amendment does, Mr. Chairman, is ensure that there will always be at least two representatives of the interests of injured workers.

Mr. Chairman, the minister made reference that one's disability should not be a criterion in terms of representing a particular group on the board. While I can agree to a certain extent in that that person shouldn't be restricted to representing those interests, it ensures that those interests are looked upon much more carefully. At the same time there is no reason to assume that these two, three, or four representatives, whatever the case may be, would not just as suitably represent the interests of all functions of the board, not just other injured workers.

I think it goes without saying that when we talk in terms of a group within society that does have a vested interest – in this case because they're injured workers receiving benefits from the board, they of course do have a vested interest. Then you want representation of that vested interest to have an input, a very, very solid input in the decision-making process.

If we took the minister's argument one step further, if you had the Premier's Council on the Status of Persons with Disabilities: would it be of any benefit to have people on there with disabilities? Of course it would be, and there are. You can look at a women's council. Why is there is a preference to have women on the women's council? Because they can identify with the issues that affect the particular group they're speaking for.

Mr. Chairman, I have to reject the minister's arguments that a disability an injured worker may have is not necessarily an asset. I see that as an asset, but I would also assume that that person appointed to the board had a great number of assets in addition to the disability, which would be an asset in this particular case. I assume that those persons appointed to the board would be knowledgeable persons that could serve the interests of the board, just generally speaking. In addition, they have this little bonus in that they're able to identify on a firsthand basis the problems that injured workers encounter.

*8:30*

THE CHAIRMAN: Okay.

Edmonton-Centre.

MR. HENRY: Thank you very much, Mr. Chairman. I just want to speak briefly to the amendment. I'd like to share with members that in the very recent past, in the last week I've had two constituents approach me, and they were concerned about

another section of the Act that I will draw back in here. The Act itself does not allow recourse to the courts after the appeal has been exhausted in terms of the worker. We understand that one of the motivations for creating the Workers' Compensation Board is to avoid the lengthy and costly procedure of going to court and being able to provide a way that employers can contribute and then take care of injured workers when they indeed are injured. I raise that because both of these gentlemen separately, when they talked to me, expressed a frustration from their point of view that the Workers' Compensation Board did not fairly represent their views. While they recognize that the purpose of the WCB is to avoid the court system, they did not feel that they had received justice, and they hadn't any recourse to do that. We all know that quite often perception is reality, and for these gentlemen the perception is that they don't have fair representation, that the WCB represents the employers and not the injured employee.

So in terms of the intent of this particular amendment I applaud the Member for Edmonton-Rutherford because the intent here is to bring not only a direct representation but a perception for injured workers that they are indeed represented on the management of the Workers' Compensation Board. I know that every member in this Legislature wants the Workers' Compensation Board to be there for the injured worker when they want them. So I'd urge all hon. members to consider – and I grant that the government has been responsible in the past few years in terms of the individuals appointed to the board. I know many of them to be of very high quality and high integrity. But I think it sends out a very clear message that injured workers do have a right to have a say in how the service that serves them – not only the employer but also the injured worker – is operated.

So I'd urge hon. members to put aside their partisan differences and support an amendment that would allow injured workers direct representation on the board of directors of the Workers' Compensation Board and, by doing this, ensure that the Workers' Compensation Board never, ever forget why they were created and who they are there to serve.

Thank you very much, Mr. Chairman.

THE CHAIRMAN: The hon. Member for Fort McMurray.

MR. GERMAIN: Thank you very much, Mr. Chairman. I'm honoured to rise to speak in favour of this amendment today. I want to draw for the Members of the Legislative Assembly some parallels. The minister of advanced education will recall that in the administration of the colleges you do not exclude students. On every board of governors of the colleges in the province of Alberta there is a student representative because it would be nonsensical to exclude the individuals for whom the system is designed to enhance their opportunities.

Now, you're going to say: how is that parallel to this? Well, what we have here is an opportunity to put interests on the board representing the injured workers, and there is nothing wrong with that. From a corporate strategy it makes good business management. On every board of governors of every publicly traded company they will often put an individual representing the small block interests or the minority interests as they're often referred to.

This is an opportunity for this government to show some heart, Mr. Chairman. It's a challenge for this government to show some heart. I'm honoured to be able to speak in favour of this amendment, and I want to ask every Member of the Legislative Assembly: what message will rejecting this amendment tonight send to the province? What message will it send to the minister of agriculture's riding? What message will it send to the minister of public works' riding when we have a workers' compensation scheme that does not guarantee that the interests of injured workers are represented on that board? In every professional association and body across the province now, Mr. Chairman, there are lay representatives appointed to the boards to bring balance and to also report back to their constituent group that everything is going well and everything is above board. There is no downside to the minister in improving this amendment. There is only upside, and the upside is a sense of equality and fairness.

So I'm happy to speak to this amendment.

[Motion on amendment A4 lost]

[The clauses of Bill 16 as amended agreed to]

[Title and preamble agreed to]

THE CHAIRMAN: Shall the Bill be reported? Are you agreed?

HON. MEMBERS: Agreed.

THE CHAIRMAN: Opposed? Carried.

## Bill 31
## Securities Amendment Act, 1995

THE CHAIRMAN: The hon. Member for Sherwood Park.

MR. COLLINGWOOD: Thank you, Mr. Chairman. I'm pleased this evening to speak to Bill 31 in Committee of the Whole. I made some of my remarks in second reading of this particular Bill in outlining the significant changes that are going to take place in the Alberta Securities Commission with the move to make the Alberta Securities Commission an industry-funded corporation that will become an agent of the provincial government.

Now, the move to an industry-funded corporation is a move that I and my colleagues have supported because it is an entity that should be funded by the industry that does use the facilities and the regulatory function of the Alberta Securities Commission. I would submit that being an industry-funded corporation is one thing within the context of the regulations and legislation that exist under securities legislation. But it is quite another for the industry-funded corporation to have and to be given the rule-making power which arises under this Bill, which in my understanding is given to the commission so that it can become more flexible and more responsive in the capital markets and better serve the brokerage community and those who use the capital markets.

What we do in committee stage, of course, is to look at a number of the sections specifically, and where I want to start this evening is with respect to section 196.1(1), which is the rule-making power of the commission given by this particular section. Essentially what this section says is that the Alberta Securities Commission will have the ability to make rules in respect of which the Lieutenant Governor in Council could have made regulations. So what we have, Mr. Chairman, is section 196, which in fact consumes eight pages of this particular Bill, which are the regulations that the Lieutenant Governor in Council may make, and then the 196.1(1) provision allows the Alberta Securities Commission to make those same regulations under section 196. Now, when the commission makes those regulations, according to the Bill those are rules, not regulations. But indeed

it is a significant change to give the commission the same power to make those kinds of rules that the Lieutenant Governor in Council has.

Even more specifically, Mr. Chairman, I refer to section 196.1(4), which says that

> a rule made by the Commission under this section has the same force and effect as a regulation made by the Lieutenant Governor in Council under section 196.

So we give the commission by this Bill the rule-making power, and the rule-making power has the same force and effect as if it is a regulation passed by the Lieutenant Governor in Council. Now, as I say, those are significant and fundamental changes. I do, though, in fact make some assumptions about the reason why we see this in Bill 31. My assumption is that securities commissions in other jurisdictions in Canada have been challenged on the rules they made for themselves . . .

MR. HLADY: Policy.

*8:40*

MR. COLLINGWOOD: Okay; on the policy they had developed. Thanks to the Member for Calgary-Mountain View for the correction.

They were challenged on the policy they had made, and the courts did agree that the commission had gone beyond its jurisdiction in developing policy to which others would have to comply.

Now, what I would like to do is simply ask of the Provincial Treasurer, the sponsor of the Bill, or the Member for Calgary-Mountain View, if indeed that is the reason we see the rule-making authority being given in this Bill and, if at all possible, if this Bill is modeled in any way after any other changes to securities legislation in other jurisdictions that are going to the rule-making power. Are we the first to do this, or have in fact there been other jurisdictions that have gone to the rule-making power? We did not, Mr. Chairman, get an explanation in the introduction of the Bill in second reading. This is one of the key and fundamental components of the Bill. So what I'm looking for and I would hope the government would be able to provide for the record is the explanation as to why the Bill gives the commission this new power and why it comes forward in the form that it does. Now, on that point, speaking specifically on the point, what I'll do is provide to the Member for Calgary-Mountain View some questions that I have, and perhaps the member can respond. I just want to go through some of the sections specifically that deal with the concerns.

The next question I have is with respect to section 196.1(5). We have already seen in subclause (4) that these rules will have "the same force and effect as a regulation made by the Lieutenant Governor in Council," but in subsection (5) "the Regulations Act does not apply to a rule made by the Commission." So on the one hand they have the same powers as the Lieutenant Governor in Council to make these rules, which would otherwise be regulations, and on the other hand the Regulations Act does not apply to rules made by the commission. Now it seems to me, Mr. Chairman, that that may indeed be a double standard where the commission gets the benefit of the rule-making authority but not the burden, which is what the Regulations Act is there for. So my question is: why has the Regulations Act been excluded from the rules that are made by the commission, which will have the same force and effect as a regulation made by the Lieutenant Governor in Council?

I go next to section 196.5. That indicates, Mr. Chairman, "that a regulation or rule [can] incorporate by reference . . . standard, procedure or guideline." Now, the Securities Commission has many policy statements that have been developed over the years. There are notices. There are blanket orders. There are orders. There are national policies and local policies and notices. My question then is: if those rules are elevated to a higher authority by virtue of this Act, and those are, I suppose, referenced in the *Gazette* – and I'm not sure if that's the way the procedure would work – will residents then be deemed to have knowledge that they have those?

MR. HLADY: Yeah.

MR. COLLINGWOOD: I'm hearing the member say yes, Mr. Chairman, to that, so I will take it that that's indeed the way the process is going to work on those which will be published in the *Alberta Gazette*. Thank you.

I raised with the Member for Calgary-Mountain View section 196.2(3)(b), which is indeed on the same page. The concern I have there, Mr. Chairman, is that a rule that is made must be published in the *Alberta Gazette* and once it is published in the *Alberta Gazette*, then residents are deemed to have notice that the rule does exist. The (b) subclause says, "the rule is deemed to be valid notwithstanding any irregularity or any defect in the rule-making process." Again my concern is that these rules have the same force and effect in law as a regulation made by the Lieutenant Governor in Council, yet once again there is a relaxation of the rules. There is an exemption provision provided so that even if there's an irregularity in the process, it gets the benefit of the higher authority, but it doesn't take the burden so that it must follow the same procedures. I leave that question with the member and simply ask: why is that included in the Act as well? Again I'm looking at the double standard of taking the benefit and not taking the burdens.

I'll move at this point, Mr. Chairman, to section 53.3 of the Act, and for the benefit of the member, that's page 27 of the Bill. I raise this concern. Section 196.1 is essentially a delegation of authority from the Lieutenant Governor in Council, who, prior to the Bill, would have and would have today developed and passed by order in council regulations that regulate the Alberta Securities Commission. That delegation under section 196.1 now moves over to the Alberta Securities Commission.

In section 53.3, then, there's a further subdelegation to the self-regulatory organizations. So now the stock exchanges that are recognized and the self-regulatory organizations that are recognized get the subdelegation power for Part 5 of the Securities Act. Part 5 of the Securities Act is all of the registration provisions for underwriters, investment advisers, brokers, and so on. So not only do we get a delegation of the regulatory authority down at the commission, they then subdelegate down to the self-regulatory organizations. My question on this is: why was it necessary to go to the subdelegation approach? This, of course, brings back the whole issue of Bill 57 that has come and gone a couple of times: why the commission has to delegate their rule-making authority for registration to a self-regulatory organization. If that was the intent, then why was that not done in the legislation, simply pass on the registration provisions directly to the self-regulatory organizations rather than having the delegation and then the subdelegation? I don't, Mr. Chairman, suggest that it's good or bad. I just don't know. We do have a delegation of significant authority down to an industry-funded corporation, and then from there we go down further yet to a subdelegation down to the self-regulatory organizations. It's a powerful subdelegation, and again I think the government should be prepared to explain why the process went that way.

*8:50*

Mr. Chairman, I'll continue on with my questions on the specific sections. I take the member to section 2 on page 1. Under the legislation as it currently exists, the Securities Act creates two bodies. It creates the Alberta securities agency and the Alberta securities board. Under the Bill the commission will be created by law, and the commission through its chairman, which is the chief executive officer, will appoint the executive director.

Previously the legislation created the agency and the chief of securities administration, and it created the board and the chairman of the board. Under the new structure the commission with the chief executive officer is created, and the chief executive officer then appoints the executive director. So the two-pronged structure which was introduced in the Act in 1988 now goes, and we're back to where we were before with the one-pronged structure, where the board side appoints the agency side in the position of the executive director.

It had been decided in 1988 that the two-pronged approach was preferable because it separated the quasi-judicial function from the day-to-day operation. I am concerned that by moving into this structure, we've lost the distinction again. We've got a blending again of the commission role and the day-to-day operation. The quasi-judicial and the day-to-day operations blend, and I am concerned with that again. I did recall the Treasurer saying that that system didn't work. The Treasurer did not elaborate, and I would be very pleased if the Treasurer or other members could elaborate on what didn't work about that system and why it has to change to this system now.

I want to move now, Mr. Chairman, back again to section 196.1(2). That section specifically refers to the fact that the commission has the rule-making authority, but it does not have the rule-making authority for those regulations in section 196 that are found at subclause (z) and subclause (bb). The (z) regulation is for the setting of fees. So while the commission will have the rule-making authority, it will not get the authority to set fees that the commission can charge. That has been, by virtue of that subsection, left to the Lieutenant Governor in Council.

Now, the difficulty I have is that when I go back to 196 and I go to subclause (s), subclause (s) gives the Lieutenant Governor in Council the authority to set by regulation "costs in respect of matters heard before the Commission or the Executive Director," so costs related to the hearing, and the second clause, "costs in respect of investigations." Now, that tells me, Mr. Chairman, that the Securities Commission will have the authority to make rules over the setting of the costs that it can charge with respect to hearings and with respect to investigations. What I don't understand is: why have the fees been pulled out and left exclusively to the Lieutenant Governor in Council, but the costs that the commission can charge to respondents that come before it or investigations that it undertakes – the commission can set its own costs that it wants to levy against those respondents. The protection by leaving (z) with the Lieutenant Governor is that the commission could then not choose or set the level of costs for its own benefit. On the fee side it makes a lot of sense; on the cost side it creates a dangerous precedent, potentially, for abuse in the setting of the costs that it can charge vis-à-vis an investigation, vis-à-vis a hearing.

[Mr. Herard in the Chair]

The other example that shows the discrepancy is in subsection (r), so from (s) I just move up into the (r) section. Again, that regulation says that the Lieutenant Governor can establish "fees payable to the commission" from the self-regulatory organizations. So the (z) clause, which has been exempted out and left only to the Lieutenant Governor in Council, is a very restrictive clause. The fees that are paid by self-regulatory organizations in exchanges to the commission could be set by the commission. The costs incurred by a respondent either through an investigation or a hearing could be set by the commission. If the intent of the Bill was to protect residents from the commission setting its own fees, then why was it not all left to the Lieutenant Governor in Council instead of some being left to the Lieutenant Governor in Council and some being left to the commission, potentially, because of the 196.1(2) provision that only exempts out the (z) and the (bb)? That specific provision also concerns me greatly.

That leaves me, Mr. Chairman, to speak to one more section. I'm not sure how I'm doing on my time. Mr. Chairman, how am I doing for time to introduce an amendment?

MR. TRYNCHY: Thirty seconds.

MR. COLLINGWOOD: No, not quite. Five minutes? Three?

Mr. Chairman, what I'll do is speak very quickly to section 167.1. My time may expire. I will rise again to introduce the amendment and speak specifically to that.

Section 167.1(1) is the section that allows the Securities Commission to essentially hold its hearings and, subsequent to the holding of its hearings, to make a decision as to whether or not it should order a person or company to pay the costs. The first subsection is costs with respect to an investigation and the second subsection is with respect to costs related to the holding of a hearing.

Now, again you have heard me raise concern about the fact . . .

THE ACTING CHAIRMAN: Hon. member, I'm wondering: are you moving the amendment now?

MR. COLLINGWOOD: I may run out of time.

THE ACTING CHAIRMAN: Are you moving it now?

MR. COLLINGWOOD: I am moving an amendment.

THE ACTING CHAIRMAN: We need to distribute it, if you don't mind.

MR. COLLINGWOOD: Yes, Mr. Chairman. Let's go ahead and distribute the amendment. I will speak to the amendment. When my bell goes and I rise again, I will deal with the amendment. I'll just quickly finish my comments on section 167.1(1). [interjections] Thank you, hon. members.

Mr. Chairman, section 167.1(1) contains two clauses that give the Securities Commission the authority or the impetus to levy the fees against the person or company which is the subject of the hearing or which is the subject of the investigation.

The first subsection requires the commission or the executive director to be satisfied that there has been noncompliance with the Act. Perfectly logical, perfectly sensible, perfectly reasonable, perfectly judicious: as a result of the investigation or as a result of the hearing, there must be a finding of noncompliance to give the commission the authority to levy fees against that person or company that was the subject of the investigation.

But there is a real concern with the second subsection in that it says that the commission or the executive director "considers that the person or company has not acted in the public interest." Mr.

Chairman, this is for all intents and purposes a quasi-judicial hearing where there are potential monetary consequences to the person or company that is the subject of the investigation or the hearing. It is, in my view, entirely inappropriate to leave with the Securities Commission the ability to levy costs . . . [Mr. Collingwood's speaking time expired]

At that point, Mr. Chairman, I'll take my seat and continue later.

*9:00*

THE ACTING CHAIRMAN: The hon. Member for Calgary-Mountain View.

MR. HLADY: Thank you, Mr. Chairman. What I'd like to do is just wait for the questions to finish, and upon them finishing, I will endeavour to answer them as quickly as possible.

THE ACTING CHAIRMAN: Thank you for that advice.

The hon. Member for Sherwood Park.

MR. COLLINGWOOD: Thank you, Mr. Chairman. As I was saying, the real concern I have is that in 167.1(1)(b) and 167.1(2)(b) the commission has tremendous powers to use a very broad interpretation of what it considers to be a person or company not acting in the public interest, and based on that broad decision, it has the authority and power to levy the cost of the investigation or the hearing against that individual. It is my submission that that is far too broad and that those kinds of provisions should not be in there, essentially to protect the public interest. I say that because the commission, as we've now discovered, has the ability to set its own costs and now has the broad, sweeping power to simply consider the public interest without any finding of noncompliance and levy the cost against the person or company.

I move and have distributed to members an amendment. The essence and the purpose of the amendment is to delete clause (b) from each of 167.1(1) and 167.1(2). Mr. Chairman, with your indulgence, I would submit to hon. members that there is a bit of a typographical error in there, and I would like to read into the record how the amendment should read. Some members will have a copy that I have started to clarify on the typographical or the grammatical wording; some members will have copies that are not. Let me read for you what the amendment should read, and members can just make a note of what I'm doing.

The first amendment should read as follows: in section 167.1(1), by deleting the word "or" at the end of subsection (a), by deleting subsection (b) in its entirety, and by renumbering subsections (c) and (d) as subsections (b) and (c).

Number two will follow the same wording. With your indulgence, Mr. Chairman, I'll read it into the record: in section 167.1(2), by deleting the word "or" at the end of subsection (a), by deleting subsection (b) in its entirety, and by renumbering subsections (c) and (d) as subsections (b) and (c).

If hon. members are on the Bill and following, they will see that the intent is to simply strike clause (b) from those sections, and the rest of the amendment is pretty much ancillary to making that change, so that (b) is no longer there. As I've said, the (b) amendment takes out what I consider to be far too broad and sweeping powers to the commission, who will now have rule-making authority. I believe it will in fact be in the public interest to delete this clause so that the commission must find noncompliance to levy the cost against the person or company that is the subject of the hearing or is the subject of the investigation.

Mr. Chairman, that is my amendment, those are my comments, and at that point I will take my seat.

THE ACTING CHAIRMAN: The hon. Member for Calgary-Mountain View.

MR. HLADY: Thank you, Mr. Chairman. I'd like to rise and answer at least some of the questions that the Member for Sherwood Park has asked today. A lot of his questions come around to why we're doing it. The main reasons are to create transparency and accountability down in the commission itself and allow them to have the flexibility to make a lot of the things happen.

One of the major areas – and you've mentioned it in a couple of different ways – was your concern about the rule-making ability now given to the commission. It does go back to a court case that was held in Ontario. It was found that it was a policy-making function rather than a rule-making function, and that's where the falling down in the court case had come about. The ability to make rules simply allows the commission to go ahead and follow through where it was policy before now to go into the rules and work. However, the Lieutenant Governor in Council certainly overrides the concerns that you might have that the rules and the ability that the commission would have of making rules is still in place so that the Lieutenant Governor does have the ability to override anything that the commission would have.

Another area of concern that you had was in regards to the quasi-judicial function, comparing the administration to the board itself. The day-to-day functions will still be at the executive director and below level, whereas the board will be at the judicial level. The executive director is the only one who has the ability to call into function the investigative powers. It was not possible for the Chair to be able to do that; strictly the executive director. That's what creates and allows the definition and the splitting of the powers. Only the executive director can do that.

Again, your concern in regards to the last areas we were just talking about here, which were – what was the section we were just dealing with?

MR. COLLINGWOOD: Section 196.1, page 65.

MR. HLADY: Section 196.2.1(3). Right?

MR. COLLINGWOOD: Right.

MR. HLADY: Okay. On publication of the rules in the *Alberta Gazette*, the rule is deemed to be valid, and that will be something that anyone does have access to. It would be in the weekly *Gazette* that the rule will be published before it would come into effect. All right?

Fees' being set by Lieutenant Governor in Council allows for a certain amount of control. There's always a concern that you can see boards going out of control and creating fees at will, as they want. I think that is the concern that is addressed. On the other side, you were concerned about the costs. What was the sub on that one again?

MR. COLLINGWOOD: Subsection (s).

MR. HLADY: Page 63, right. Subsection (s). That was, I understand, your concern in regards to the costs. The purpose of that section is for the commission to have the ability to recoup reasonable costs, and that's what it is there for, to allow the commission to set the costs that are reasonable. That will be flexible and will change as time goes on. What are the costs of

dealing with the lawyers in court or in the quasi-judicial function? How much does it cost to do an investigation? Those sorts of things will certainly evolve over time. This just allows the flexibility for those costs to be dealt with, depending upon when that is in the future. It is not meant to be in a fund-raising position, strictly to be set up as a reasonable recovery of the costs of investigations.

*9:10*

In regard to one other question raised before by the hon. Member for Edmonton-Whitemud, he was concerned over section 31, and I believe he had received a written answer from the chairman of the Securities Commission. The purpose of that was to protect a third party's reputation. I think when you're going through investigations and so forth, it's important to make sure that the third parties are not hurt in this sort of investigation and their privacy is protected. That is the purpose of section 31.

Let's see; what else did we have? I think the one other concern that you had is: what do individuals have to counter if they aren't happy with the decision made by the commission? They certainly have the right to still go to the Court of Appeal, such as appealing costs. So if the commission came with a ruling that there was some negligence and set a certain amount of costs, if they felt that it cost the public $100,000 and the person that has been found guilty disagrees with that, they do have the ability to go to the Court of Appeal and appeal the costs or the actual ruling. So there are the opportunities for anyone to take care of that.

In regards to the amendments in 167.1, which was what page again?

MR. COLLINGWOOD: That is 49.

MR. HLADY: Here we go; 49. Right.

I think what the commission was attempting to do in this is in regards to under 167.1(1)(a): in case there is anything that has been missed, if there is a concern at all, that it has been covered with 167.1(1)(b). I think that's where you have the ability to make sure that they've covered all their concerns. So I don't believe that in either section 167.1(1) or (2) there is a need to amend it, and I think we would like to keep it the way it is and allow us to make sure that we've covered all our bases on that. I'd have to ask that we don't go ahead with the amendment.

I think that answers most of the questions that the member had, and I'd like to call the question.

[Motion on amendment A1 lost]

[The clauses of Bill 31 agreed to]

[Title and preamble agreed to]

THE ACTING CHAIRMAN: Shall the Bill be reported? Are you agreed?

HON. MEMBERS: Agreed.

THE ACTING CHAIRMAN: Opposed? Carried.

## Bill 19
## Freedom of Information and Protection of Privacy Amendment Act, 1995

SOME HON. MEMBERS: Question.

THE ACTING CHAIRMAN: The question has been called. We are voting on Bill 19, Freedom of Information and Protection of Privacy Amendment Act, 1995. On the clauses of the Bill, are you agreed?

SOME HON. MEMBERS: Agreed.

THE ACTING CHAIRMAN: Opposed? [interjections]

SOME HON. MEMBERS: The vote was called. [interjections]

MR. GERMAIN: There's an amendment that hasn't been voted on, anyway. [interjections]

THE ACTING CHAIRMAN: Hon. members, I don't know where you were, but we did vote on Bill 31.

DR. PERCY: No, you voted on the amendments.

THE ACTING CHAIRMAN: Yes, and the Bill itself. Then we announced Bill 19. The question was called, and no one stood up.

SOME HON. MEMBERS: He was standing. [interjections]

MR. GERMAIN: There's an amendment on the floor. [interjections]

THE ACTING CHAIRMAN: Hon. members, order please. I understand that there is an amendment on Bill 19 on the floor. Is that correct?

MR. DICKSON: Exactly.

THE ACTING CHAIRMAN: Therefore, we can't vote on the Bill itself. Thank you.

The hon. Member for Calgary-Buffalo.

MR. DICKSON: Thanks very much, Mr. Chairman. What we're dealing with is amendment A1. This is an amendment to section 1(1) of the Freedom of Information and Protection of Privacy Act and Bill 19, the amendment Act. The amendment was introduced on May 1, and I'll sum up for the benefit of members that may not have the amendment handy. The amendment was to specifically and expressly include police commissions in section 1(1) of the Freedom of Information and Protection of Privacy Act.

Now, there's still some discussion, but straight off, Mr. Chairman, I want to refer the hon. minister to a question that had been asked of him when we were dealing with this on May 1, 1995. I referenced a question in question period, which appeared in *Hansard* at page 1060 on April 5. One of the questions I had put at that time to the Minister of Public Works, Supply and Services was:

> Since the local police commissions, as all members know, play a key role in law enforcement, why is this government willing to allow those police commissions in Alberta to operate outside the freedom of information law?

The response was:

> As I just explained, Mr. Speaker, there are only special circumstances when they can, and they are for good reasons.

Now, Mr. Chairman, when this matter came up on May 1 and we were discussing this whole issue of police commissions, the hon. Minister of Justice was here and gave an explanation. He said that police commissions are covered in the Act, and in fact

at such time as local public bodies become subject to the Act, they will be fully and completely in. I can't reconcile and I'm not sure any member can reconcile the response given by the hon. minister at page 1060 of *Hansard* on April 5 with the explanation given by his colleague the Minister of Justice. So I guess my question is: Mr. Minister, what are those special circumstances when local police commissions can operate outside the freedom of information law? If, as you say, "for good reasons," would the minister be good enough to tell me what those good reasons are, because I'm trying to reconcile those two statements. I wonder if the minister would be prepared to respond to that query now, and then I'd have some further comments to make.

MR. FISCHER: Yes, I can. At that time you were speaking about the police commissions. I was referring to the police commissions being part of the Act and being part of the way that we exempted . . . Not "exempted." I'm sorry, I just haven't got my line of thought right now. I just might need a little bit of help here. Mr. Chairman, I'm just going to sit down for a second and look at my notes here. I will explain it to you.

*9:20*

MR. DICKSON: Mr. Chairman, I appreciate the fact that the minister is responding and attempting to respond directly to my query. I appreciate that. I'll be happy to ensure he has a few moments to review his notes.

Just to sum up, what I'm specifically asking for, Mr. Minister, is: what are the special circumstances when a police commission can operate outside the freedom of information law? If there are good reasons, I'd like the minister to particularize what those reasons are. I guess we'll be able to decide whether they're good reasons or not. All members will.

While the minister is reviewing his notes and the Act to determine that, I just want to come back and summarize, if I can, the arguments that I heard from the Member for Calgary-Shaw, who has some knowledge and experience with freedom of information, and also from the Minister of Justice.

Now, what I had been proposing by my amendment, Mr. Chairman, was that regional police commissions provided for in section 25, police and committees where they exist pursuant to section 23, and municipal police commissions pursuant to section 28, all of the Alberta Police Act, should be expressly included. I heard four objections, and I can summarize them this way. The first one was that the government said they weren't needed because police commissions are already covered, and that was set out in *Hansard* on page 1438. That's the first argument the government made. The second one was that there's no need to be concerned about this because there's a five-year delay and there's going to be a three-year review, so maybe it can be caught then if there's a problem. The third argument I heard was from the Member for Medicine Hat who said: let's not get too legalistic. He wanted to take a commonsense approach. Then, fourthly, the minister said at page 1448 of *Hansard* that in fact the inclusion of police commissions was easily understood, so he doesn't understand the argument we're raising.

Now, if I can just deal with those four arguments before we come to a vote on this amendment. The first one, in terms of not needed and already covered: I've indicated to the minister that I had a legal opinion that said that police commissions are not covered the way the Bill is worded now, and if the minister had a contrary opinion, would he make that available. I'm sorry to report, Mr. Chairman, that I haven't seen any such opinion from the minister. One would think that if he had such an opinion, it would be useful to share that with members now so that we'd be able to vote being aware of all the circumstances.

On the second argument, about the five-year delay, I think the business is this, Mr. Chairman: we're trying to get it right, now. That's what we've been elected to do. That's what we're paid to do. That's why we come together in session, to get it right, now, and that means that we make the best laws we possibly can with the information we've got. I just can't accept and I don't think any member on either side can accept the notion that we sort of play fast and loose, and if we get some of the right elements, that's okay, and somebody down the road can clean it up. We've had altogether too many massive amendment Bills in the last year coming along to clean up things that could have been anticipated and headed off if we'd taken more time and more thought at the first instance. So I think that that is not a persuasive argument. The fact that there's a review on the third anniversary of FOIPP, the Freedom of Information and Protection of Privacy Act, seems to me just not to be a full answer at all. If we can anticipate problems – and I submit we've raised one of them right now – this is the place and the time to deal with it.

In terms of the argument, "Let's not be too legalistic," which had been suggested by the Member for Medicine Hat, I think the short answer is that what we're dealing with here are laws. Laws are going to be interpreted and they're going to be applied. So why not be precise when we can be precise? I think this is an instance where precision is required.

Finally, the minister's argument when he said that the inclusion of police commissions was easily understood. He may have easily understood that, and maybe I'm just a whole lot thicker than the minister, but when I look at it and I expect when many other Albertans look at it, they're going to find that it's not at all apparent that police commissions are included.

Now, just before we vote on this, it's interesting to me that we can look and see what other jurisdictions have done. The other day I had filed as a sessional paper an excerpt from the Ontario Act, an excerpt from the B.C. Act. I thought that was instructive because those are the Acts that our FOIPP Bill is modeled on. You look at the B.C. legislation. They have schedules attached to the Act so that any British Columbian can go to the Bill, skim through the schedule, see at a glance what tribunals, what boards, what agencies are included. It's really simple; it's user friendly. If one looks at the B.C. schedule, it says: British Columbia Police Commission. Boom, it's right there on the list, easy to read, no confusion, and you can determine that very simply.

One looks at the Ontario statute, which is the other statute our freedom of information Bill is modeled after. What do we see there? They define "institution" in their municipal Act. They have two Acts, one at the municipal level, one at the provincial level. If we look at the municipal Act, it says in a definition of "institution":

> "institution" means . . . a school board, public utilities commission, hydroelectric commission, transit commission, suburban roads commission, public library board, board of health, police commission.

So people in Ontario and British Columbia, simply by looking at the statute, know immediately that the police commission is included.

Now, I think that the minister and all members have to look at that and, before voting on the amendment proposed by the opposition, recognize that in hindsight we may have made a mistake in Alberta. We may have made a mistake by not also saying that we're going to schedule all of the boards and agencies that freedom of information applies to.

It's interesting, then, if we look at the 1986-87 House of Commons report that reviewed the federal legislation. What they talked about there in that standing committee report was the need for greater simplicity, making freedom of information more user friendly. It's instructive, you know. The chairman of that committee was Blaine Thacker, who was, I think, a well-respected member of the Progressive Conservative caucus from Lethbridge. He chaired that committee, and I encourage members opposite to have a look at Mr. Thacker's recommendations because what you'll find is that they made sense. He talked about the importance, if an agency is subject to freedom of information, of spelling it out so anybody can access it quickly without a whole lot of foofaraw and difficulty.

If one looks at the federal statute, it's clear in terms of schedules. They also schedule the specific boards and agencies that are subject to. You know, I can't help but note, and I'd be interested in getting some explanation, that when Mr. Thacker's committee was dealing with the shortcomings in the federal freedom of information law, interestingly enough the government of Alberta made a submission. The government of Alberta made a written submission, and I've been unable to access that. I wonder if the minister can tell us. When the province of Alberta made the submission to this House of Commons standing committee telling the federal government what their freedom of information law should look like, how it should be strengthened in 1986, 1987, did the provincial government address this important issue in terms of how clearly subject agencies should be notified?

I think also it's important to note that in terms of making agencies clearly subject to this, there were a number of submissions that the panel on freedom of information had from groups around Alberta that were interested in this. What's interesting is, for example, the submission of the Alberta Civil Liberties Research Centre. In their submission dated October 14, 1993, they argued that "the Bill should be amended to add a schedule to the Act that lists all of the agencies from which access may be obtained." They go on to note that about half the jurisdictions in Canada follow this method. "This creates uncertainty in the public as to whether a [public] entity is covered by the Act" – and they're referring there to a definition of public body – and they say that "listing the various bodies in a schedule would make it clear." I'm asking members to consider, since we haven't done that: how else can we make it clear to Albertans what's covered?

One might go on and look at the submission we received from the Alberta Association of Chiefs of Police, which also stressed the need for specificity in terms of who is subject to it. If we look at the submission from the Freedom of Information and Privacy Association of Alberta, which was made to the panel chaired by the Member for Lacombe-Stettler and the current Minister of Environmental Protection, and I quote at page 4:

> FIPA recommends that the Act retain a general statement that applies to any department, branch or office of the Government but that, in addition, all agencies, boards etc., to which the Act applies should be listed in a schedule to the Act.

We had a further submission from the city of Calgary, and that submission was, and I quote:

> A citizen in Alberta has poorly protected rights to information from politicians he elects to local government or public school boards. In practice, some municipal councils, school boards, library boards, police commissions and hospital boards are more open than others.

This speaks to the importance of having police commissions included.

Then I'd also refer members to the further submission that the Police Act makes no provision for access to information, thereby leaving the dissemination of information respecting policing solely at the discretion of the police commissioners and the chief of police. That was a submission made by the city of Calgary law department. That was an analysis of Bill 1 and Bill 201.

So we have all of those people – all of those people – saying, "Let's make it clear that agencies that are covered by freedom of information – that it's spelled out and it's perfectly clear." We have an opportunity now with this amendment to patch up something that I think we didn't do adequately first time around. I'd encourage members to embrace that opportunity.

I think the other point I might make is that I filed a sessional paper today, an analysis being done that's going to be published by one of the prominent law reviews in this country in the next half year, and in that analysis there's reference to local public body. In that particular analysis that I had tabled this afternoon, it's clear, Mr. Chairman, that police commissions aren't included in the definition of local public body. We have that solicitor rendering an opinion which is, as I say, going to be appearing in legal learned periodicals across the country, and people are going to be looking at it. That gentleman apparently agrees not with the Minister of Justice, not with the Minister of Public Works, Supply and Services, but it appears his position is consistent with those of us who advocate this particular amendment.

I think those are the comments that I wanted to make to that initial amendment at this time, Mr. Chairman. Thanks very much.

*9:30*

THE ACTING CHAIRMAN: The hon. Minister of Public Works, Supply and Services.

MR. FISCHER: Yeah. I wanted to just clarify a couple of things. I wanted to go back to the question there that you originally had asked. Possibly I misunderstood your question just a little bit, but I was referring to the disclosure of the reasons not to prosecute from that particular question. If I recall, your lead-in was about the disclosure not to prosecute.

I had said at that time that in some circumstances future investigations could be hampered and law enforcement activities could be prejudiced if the information was disclosed. I would just like to say that I appreciate what the member is saying about his interpretation of whether or not the police commission is included in the Act and included strongly enough. I think we've gone over this a number of times.

[Mr. Clegg in the Chair]

I did have the opportunity during the break that we had in the last week or two – and I am pleased to get back to this Bill, because it seemed like it would never come up for us – to get some outside, professional, unbiased opinions of whether or not they felt that was in there. Along with the opinions of our Department of Justice and some of the other opinions, I feel very comfortable that the local board means in section 1(1)(i)(xvi) exactly what it is listed in there. If you're going to bring out the police commission and list it somewhere and give it special exemption – not special exemption; highlight it somewhere else in the Act – I guess you would have to do that with a number of the other boards and agencies that are appointed by the public body.

I feel quite comfortable, Mr. Chairman, that this particular amendment is already covered in here, and we also did do quite a bit of research into how the other ones are working in other provinces. I go back to that because I think that we put together an awfully nice Act, an Act that is going to work properly

because we have the experience of some of the other provinces and the federal government to grow from.

So, Mr. Chairman, I would urge us to get on with this. I know that previous to this evening we had spent nearly two hours on this particular amendment. We have spent nearly six hours on second reading. I believe it's time that everything that's been said has been said and repeated many times. I think it would be only appropriate that we move on. So I would urge the members to reject this particular amendment, and let's move on.

THE DEPUTY CHAIRMAN: The hon. Member for Calgary-Buffalo.

MR. DICKSON: Thanks. I just wanted to be clear, and I appreciate the explanation from the minister. Will he specifically acknowledge then that notwithstanding what appears in *Hansard* from April 5 that in his considered opinion now there are no special circumstances when police commissions would operate outside the freedom of information law?

MR. FISCHER: Yes, that is true.

THE DEPUTY CHAIRMAN: The hon. Member for Fort McMurray.

*9:40*

MR. GERMAIN: Thank you, Mr. Chairman. I'm not insensitive to the fact that we have had considerable time spent on this amendment, but there's been such a gap in the time that has been spent that all of our colleagues on both sides of the House might want to consider bringing these Bills back in a more timely way to Committee of the Whole so that the continuity is not lost.

Now, let me summarize, then, very quickly, Mr. Chairman, for the benefit of all members. First of all, the government has said, and at least four members of the government have stated on the record in this House that police commissions are intended to be covered by the freedom of information Act, and as a result the public will have access to the releasable information from those police commissions. So we do not have an ideological difference here.

You know, the hon. Member for Whitecourt-Ste. Anne and I, for example, are identical in position on this point. Police commissions will have releasable information. The government has said so, and at least four members have said so. So if we don't have a difference of opinion, what's wrong with accepting this amendment? We don't have a difference of opinion, but what we may have is a gray area in the law. So if we have a gray area in the law, let's clean it up and clear it up. It's easily done. Now, talk about win/win. What happens is that people who are uncertain about this particular Bill get the certainty that they're worried about. From the government's point of view what do you win? You win, first of all, a clarification of a principle that you believe in, that police commissions are accessible under the freedom of information Act, and you win in another fundamental way. You get to stop those pesky Liberals from going all around the province in the summer break saying that you never listen to us and you never take our amendments. This is an amendment that you can't lose on. This is an amendment that can make you some good strides forward in open and accountable government. So you're about to vote in 30 or 40 seconds from now on an amendment that you can't lose on. But there is one way that you can lose, and the way that you lose is by voting against this amendment. It sends mixed signals. It sends the mixed signals . . .

AN HON. MEMBER: Five amendments.

MR. GERMAIN: We've got eight more.

. . . that maybe, just maybe information from police commissions is not accessible under the freedom of information Act and that when the government has a chance to come and make some clean, straightforward wording and definition in a Bill, they pass on the opportunity to do so.

So I say to all Members of the Legislative Assembly: do yourself a favour and vote in favour of this amendment. That's the last I'll speak to this particular amendment.

THE DEPUTY CHAIRMAN: The hon. Member for Calgary-Montrose.

MR. PHAM: Thank you, Mr. Chairman.

THE DEPUTY CHAIRMAN: Oh, I'm sorry. The hon. Member for Whitecourt-Ste. Anne on a point of order.

**Point of Order**
**Factual Accuracy**

MR. TRYNCHY: The Member for Fort McMurray mentioned something that the Member for Whitecourt-Ste. Anne and the Member for Fort McMurray were on the same wavelength. That is definitely not right. I wish he would retract that.

MR. GERMAIN: Well, in response to the point of order, I was speaking rhetorically, Mr. Chairman, on the basis that the government members and the opposition members both wanted freedom of information from police commissions. If the hon. member is not on that wavelength with me – because I thought that was a government-stated position, stated by the minister.

AN HON. MEMBER: The Premier's number one Bill.

MR. GERMAIN: This was the Premier's number one Bill, by the way, I'm reminded, the freedom of information. So if the hon. member is not on that same wavelength with me, then indeed I do apologize and indeed I do retract my suggestion that we were on the same wavelength.

THE DEPUTY CHAIRMAN: Thank you.

**Debate Continued**

THE DEPUTY CHAIRMAN: The hon. Member for Calgary-Montrose.

MR. PHAM: Thank you, Mr. Chairman. I have listened to this debate for over two hours, and I still do not understand the real intention of this amendment. If the hon. Member for Calgary-Buffalo just wanted to filibuster the Bill, then I am not going to discuss it any further, but I believe that he is an honourable member and his intention is real, and so I'll try to explain this in the simplest way I can.

If you look at page 2 of the Bill, item (xvi), you see that

> any board, committee, commission, panel, agency or corporation that is created or owned by a body referred to in subclauses (i) . . . and all the members or officers of which are appointed or chosen by, or under the authority of, that body.

That means that if we can prove two things, that the municipal government created the police commission and that the municipal government appointed the members of the police commission, then

the police commission will be under this subsection according to the way it is written now.

If you refer to the Police Act, section 28(1): the municipality

(a) has a municipal police service, or

(b) has the approval of the Minister to establish a municipal police service,

shall establish a municipal police commission.

Therefore, we have proved the first point, that the municipal government does create the police commission.

Then we come to the second point: who appoints the members of the police commission? The way I understand it today is that the municipal government appoints the members of the police commission. If it is the case that the municipal government created the police commission and appointed the members of the police commission, then the police commission must be under section (xvi) on page 2 of the Freedom of Information and Protection of Privacy Amendment Act, 1995. Therefore, I cannot see any reason why anyone can say that police commissions are not under this item.

I fully appreciate that we can add another item in here, as the hon. member suggested, to clarify it even further. However, when you write law, not only do you have to write it clearly, but it also has to be precise. You cannot create duplication in this piece of legislation. If you do so, then somebody will ask if you can create a special section for the library commission. The way I look at it now is that if the hon. member disagrees that the municipal government creates the police commission, then I beg the question: who creates the municipal police commission? Obviously, the answer is the municipal government. The second part coming after that is that the municipal government does appoint members of the police commission.

With those two explanations, I move that we reject this amendment because it is redundant. I hope that the discussion on this amendment will stop right here; otherwise, I would have to wonder whether it is a real amendment or is just an attempt to filibuster the Bill.

Thank you.

MR. DICKSON: Mr. Chairman, I appreciate that the Member for Calgary-Montrose is trying to be helpful in terms of making sure we can get the best Bill we want, but I want to disabuse him of one notion right now. He made a suggestion in terms of a filibuster. A filibuster, as I understand it, is where typically opposition parties simply try and drag out a piece of government legislation for some particular advantage.

I want to be clear with the member who raised that: these are amendments put forward in good faith. We gave them to the hon. minister at second reading. One of the amendments I was going to put forward I've been persuaded to withdraw. Each of these amendments we're putting forward is because we think they make the Bill better. We may disagree. Reasonable men and women may disagree in terms of the interpretation that I've given some of the amendments and the sections we're amending, but I want to be crystal clear with the Member for Calgary-Montrose and all other members that we're trying to make this Bill better.

I simply remind the Member for Calgary-Montrose that there's at least one amendment in the package in Bill 19 that we had suggested last spring and that the government voted down. How many other amendments in this package are going to be voted down because they come from this side of the House, and then a year from now you're back patching up the legislation again? Let's make sure we get it right. That's the spirit in which all of these amendments are tendered. We're prepared to economize on time, and it was for that purpose that I met with the minister and spent an hour and a half talking to him and his senior advisers to see which of these amendments we could get some agreement on. So I want to be very clear with the member in that respect.

Thanks, Mr. Chairman.

*9:50*

THE DEPUTY CHAIRMAN: The hon. Member for Edmonton-Roper.

MR. FISCHER: Mr. Chairman, I just wanted to say a word, and then he'll get a turn.

MR. CHADI: Okay.

MR. FISCHER: On that very point, I do say with the greatest respect to the Member for Calgary-Buffalo that, yes, we have thought a lot about your amendments, and I don't think for one minute that we would throw them out if we felt strongly that they would improve the Bill. I feel very comfortable with that, and we have talked about the interpretation of this for an hour and a half before, not all on that particular item.

The Member for Fort McMurray mentioned that there was a gray area. Well, the gray area is only the gray area that you people yourselves are seeing. It seems like there isn't anyone else that sees that gray area, and it is written in there about as plainly as the noses on our faces. So I think I'd like to see us carry on from this amendment.

Thank you.

**Chairman's Ruling**
**Speaker Order**

THE DEPUTY CHAIRMAN: Okay. The Chair has been lenient. When I call Edmonton-Roper, I will follow the instructions I give, because the Chair does have control. I'm sorry, hon. minister, but you didn't rise as quickly. So if there are two in a row, it's because he didn't rise quickly enough.

Edmonton-Roper.

MR. CHADI: Thank you, Mr. Chairman. I had no problem at all in taking my seat when I saw the minister rise, because I know he was going to offer an explanation to comments made by my colleague. That's quite reasonable, and that's why it's called debate.

**Debate Continued**

MR. CHADI: I really think what we need to do perhaps is maybe listen to some of the debate from both sides of the House and the arguments that are coming forward. When the minister speaks of a gray area that may be only in the minds of the opposition or members on this side of the House, I have only to fall back on the comments made by the Member for Calgary-Buffalo wherein he stated that in fact he has received a legal opinion to suggest that police commissions may not be included in the freedom of information legislation that's before us, that in fact it could be argued that they should not and ought not to be included for some reason.

Now, we've also heard the minister of public works telling us that he has also received a legal opinion stating that in fact they are included and that the legislation as drafted would have no choice but to have them included. The Member for Calgary-Montrose certainly interpreted the amendment Act of the freedom

of information Bill as saying that in fact it has to be included, because we talk in subsection (xvi) about

> any board, committee, commission, panel, agency or corporation that is created or owned by a body referred to in [the] subclauses.

Of course, within the subclauses they talk about "a municipality as defined in the Municipal Government Act."

The point I'm making here is that when Calgary-Buffalo got up, he spoke so eloquently about so many different precedents of freedom of information Bills from across the country, including the Canadian freedom of information Bill, which police commissions are included in. The freedom of information draft original Bill included, from my understanding, that police commissions would be included in the final piece of legislation. Of course, they were taken out.

Now, when you have all those sorts of precedents and those arguments and reasons why it should be included and why we should get away from creating a piece of legislation that has a gray area – and the gray area, Mr. Minister, is the fact that it's being interpreted in one way, because the Member for Calgary-Buffalo has got a legal opinion saying this is not included, and you say you've got a legal opinion saying that it is included. The Member for Calgary-Buffalo also challenged the minister, Mr. Chairman, to table those documents. Give him the documents. Forget about the tabling. Just throw them over. Hand them over to him. Walk them over. Show him. Show us that you have a legal opinion saying that it is included. Then I'll back off. I'll sit in my seat, and I'll allow this to go ahead. I happen to think that it's not there. You probably don't have a legal opinion saying that, and we have to have this. If you have it, Mr. Minister, bring it forward.

Now, if you have two legal opinions, one contradicting the other, I think then at that point it's incumbent on all legislators in this Assembly today to spell it out in the Act. Come on. Goodness gracious, it can't be that difficult to just include police commissions. When we talk about the Metis Settlements Act that is included in the freedom of information, when we talk about the Drainage Districts Act, when we talk about things like the Mortgage and Housing Corporation Act that is included, we can't talk about police commissions? We define these. Are these not boards of government under the Municipal Government Act in some fashion? Can we not fall back, if you will, on subsection (xvi) at any given time? Yet we spell them out in these subsections. So let's spell out the police commission as in this amendment. It could harm no one, but it could clearly give all Albertans the freedom of knowing that police commissions are subject to freedom of information without any gray area, if you will, or the right to argue the matter.

I think I heard the minister on a number of occasions – and if it wasn't the minister, it was perhaps the Member for Calgary-Shaw who rose to suggest that the only reason we are not putting the police commission in a subsection within this amendment Act is that we have a deal with the municipalities that we're going to allow them a five-year grace period, so why are we putting it in anyway? That is the argument that I heard as to why we would not want to include it in here, along of course with the argument that it is already somehow included in here: it may not be spelled out quite clearly, but it is in there. So the argument about the five years – that's, I would assume, in the regulations and dealt with in the regulations, but five years are going to go rather quickly, Mr. Chairman. I suspect that what we need to do is fall back on the legislation that we have before us, because when those five years are up, we're going to have to have Albertans, the people that elected us, fall back on a piece of legislation that has no gray area in it whatsoever.

With those comments, Mr. Chairman, I would encourage all members to please take part in this debate. This is a very important part of creating the best possible piece of legislation that we can. It's not going to affect anybody in any way, shape, or form, but it's going to tighten up this legislation to where Albertans, I think, would be the benefactors.

Thank you.

[Motion on amendment A1 lost]

THE DEPUTY CHAIRMAN: The hon. Member for Calgary-Buffalo.

MR. DICKSON: Thanks, Mr. Chairman. I have a second amendment, which I'd ask be distributed now. While it's being distributed, just before speaking on that, I want to make an observation. This morning I got a phone call from somebody in my constituency, and they said to me, "So we understand the Legislature is going to be finished the end of this week." I said, "Well, I don't know that for a fact." This constituent said, "Oh, no, he'd heard that government ministers and members of the government had said that we were going to be finished this session here by the end of the week." Now, I don't know whether my constituent has a pipeline to the Premier's office or the Government House Leader and some information that maybe all of us don't have, but I just wanted to say that if in fact the Legislature should adjourn at the end of this week or in the next short order, it might be useful to just resolve or review what's happened with Bill 19 in terms of the timing of it to bring us to this point.

*10:00*

The opposition, of course, never has any control over when Bills are introduced. Although I asked the Premier on February 23 when he was going to move on implementing freedom of information, nothing happened, nothing happened. It was finally on March 21, 1995, when Bill 19 was first introduced. Once again the government, not the opposition, dictates when it comes up for second reading. That was on April 12. Before second reading finished, all of the nine amendments that we were proposing were provided to the government, while we were still in second reading.

I'll just quickly review the elements of Bill 19 that the opposition supports and encourages passage of: 2(1)(a), 2(1)(b), 2(1)(c), 2(1)(d), section 3, section 5(a)(iv), section 5(b), section 6, section 9, section 12(c), section 13(a), I think it is, section 16, section 18.

[Mr. Tannas in the Chair]

Now, I think the amendment must be distributed, and I'm going to assume all members have it. This addresses a comment that had been made by the Member for Calgary-Shaw last time. The argument had been that we'd be creating problems by specifying "police commission" without spelling out a whole number of things and that by the use of the specific reference to police commissions, we'd be narrowing the generality of the broader clause. In Latin I think it's the ejusdem generis rule that the Member for Calgary-Shaw was concerned with. What this amendment does is address this concern. It once again spells out the fact that police commissions are included but done in a way to meet that objection raised by the Member for Calgary-Shaw and also by the senior analyst for the Department of Justice, who I had occasion to meet and talk to about this amendment.

So those are my comments with respect to the second amendment. I don't know if others wish to speak to it as well. Thank you.

THE CHAIRMAN: The hon. Member for Fort McMurray.

MR. GERMAIN: Thank you very much, Mr. Chairman. We on this side of the Legislative Assembly listen and care, and I think on the opposite side the members listen and care as well. We have heard already tonight a very well-presented argument that if you opened up with a separate, categorized list, the police commission, other boards and tribunals left out might lead to the argument that they were not intended to be in.

So what we have attempted to do in coming back with this noncontroversial amendment, Mr. Chairman, is leave the numbering and the paragraphs of the freedom of information Act identical. We have not changed the spirit or intent of the provision that the hon. minister says will allow police commissions to be included. He says that it's found in that section. So all we have done is added a small trailer to that clause that says that it includes a police commission. That's the bottom line. I want to say to the Members of the Legislative Assembly that if you had any doubts about the last amendment, if you felt the last amendment left you with some holes, if you felt the last amendment left you with some uncertainty, there can be none now in this amendment.

Why do I say that? I say that first of all because we do not change the numbering or the intent of the Act. I say that because the government, the hon. minister, the hon. members for Calgary-Shaw, Calgary-Montrose, Medicine Hat, all of those hon. Members in this Legislative Assembly have stood up and said that police commissions are in; they're in that group and category of bodies and organizations for whom the release of information will begin flowing five years hence. They're in.

So all we are saying now to the hon. minister is: "Look. There is clearly some ambiguity. We're not blowing smoke here. For every successful argument you can make that says that the police commission is included in the general definition, there is likewise an argument that will be made that says it's excluded." So all we're saying now is, "Grab this amendment, and let's do ourselves all a big favour." Let's not wait six or seven years hence for a member of the court to rule that police commissions are not contemplated by this section. Let's make it clear that they are contemplated and that their information will be releasable. It is important to send that message now so that police commissions can begin preparing for this particular . . .

Get a picture of this, folks. Get a picture of this right here in the Legislature. The hon. Provincial Treasurer has come over and conceded defeat and will now join the Liberal Party. Mr. Speaker, let the record show that he came over here and grabbed my hand, not the other way around.

THE CHAIRMAN: Hon. members are reminded that in the House it is not permitted to show and demonstrate exhibits.

MR. GERMAIN: Oh, of course. Of course. I hadn't identified or ever interpreted that an exhibit would actually have blood flowing through it, but some hon. members may indeed say that . . .

MR. CHADI: How do you know there's blood flowing through him?

MR. GERMAIN: They may ask that very question as well of a man who collects the taxes from some 650,000 taxpayers in the province of Alberta. Anyway, Mr. Chairman, a bit of levity to brighten up the evening.

I urge all members to vote for this amendment, that is as housekeeping as one possibly can be. Now, in fairness to the hon. minister, if he wants to regroup and get professional opinion on the impact of this amendment, perhaps he could indicate that in his oral comments, and we would be glad to proceed and move on with other amendments leaving this one on the table, if possible. I don't know if that's possible, to adjourn an amendment, but if that's what the minister wants to do, then I think we would be happy to do that. This is a win/win, Mr. Minister, and deep down inside you know it, you sense it, you believe it to be true. The hon. member from Calgary who spoke last knows it to be true, the hon. Member for Calgary-Shaw knows it to be true, and the Minister of Federal and Intergovernmental Affairs knows it to be true as well.

So I urge all members to support this amendment.

THE CHAIRMAN: The hon. Minister of Public Works, Supply and Services.

MR. FISCHER: Thank you, Mr. Chairman. I appreciate you bringing this amendment back in a different place. Yes, I would like us to be able to take a look at it. I don't have any of my people here to help advise with that, so I think it would be wise if we could go on to some of the rest of them, and we'll take a good look at it and bring it back the next time it comes up.

THE CHAIRMAN: The hon. Member for Calgary-Buffalo wishes to speak.

MR. DICKSON: Yes. Mr. Chairman, I want to give the hon. minister the opportunity he's requested, and I wonder if it would be in order for me to move adjournment of debate on that amendment which is now being distributed and then go on and deal with another amendment. I would like to make that motion: to adjourn debate on this specific amendment.

THE CHAIRMAN: Hon. member, you can make the motion to adjourn debate on the amendment and therefore on the Bill, and we'll go on to something else. That's quite acceptable, presuming that the committee agrees to that adjournment. But you can't adjourn debate on the amendment and then bring forward something else.

MR. DICKSON: Since we vote amendment by amendment, surely each one is a separate vote in itself and surely we're able to, with respect, adjourn debate on a given amendment and then move on to the next amendment. Otherwise there'd be little point in voting on sections separately and amendments separately. The vote isn't on the whole Bill at this point; it's only on the amendment. If in fact you rule that I can't do that, then what I'd seek to do would be to seek the unanimous consent, to accommodate the minister, to withdraw that amendment, and we'll move on to the next one.

*10:10*

MR. GERMAIN: On the basis that it's a procedural problem.

MR. DICKSON: Absolutely. That's in effect a conditional withdrawal on the basis that we simply do it to accommodate the hon. minister.

THE CHAIRMAN: Certainly that would be within the rules of the committee, that you, the mover of the amendment, would seek unanimous consent to withdraw the amendment. What you do with it later on is of course your business. We can't put that conditional. Just withdraw the amendment, and then we can go on to A3 as if A2 did not exist, because it had been withdrawn, and if in the future it's re-moved – two words – then we're okay.

So, Calgary-Buffalo, go ahead.

MR. DICKSON: Well, I'm going to seek unanimous consent, then, to be able to withdraw this amendment – are we dealing with A2, Mr. Chairman? – to withdraw A2. Then we'll proceed to deal with the next one.

THE CHAIRMAN: The hon. Member for Calgary-Buffalo is requesting to meet the minister's requirement for more time on A2, requesting unanimous consent of the committee to remove . . .

MR. HENRY: Point of order, just for clarification.

THE CHAIRMAN: Yes. All right, Edmonton-Centre.

**Point of Order**
**Amendments**

MR. HENRY: Thank you, Mr. Chairman. Just for clarification from the Chair, agreeing to withdraw this motion does not preclude the amendment from being moved at a later date in committee?

Thank you.

THE CHAIRMAN: No. That's what I was saying. What happens to it afterwards can't be conditional. He's withdrawing it, and he can do what he wants. He may bring it back and he may not. He may amend it and bring it back, whatever.

**Debate Continued**

THE CHAIRMAN: So the amendment that we know as A2 would be withdrawn. Can Calgary-Buffalo get unanimous consent of the Assembly to do so? All in favour, please say aye.

HON. MEMBERS: Aye.

THE CHAIRMAN: Opposed, please say no. You have unanimous consent. We'll now note A2 as being withdrawn.

Calgary-Buffalo is recognized. Do you wish to continue debate, Calgary-Buffalo?

MR. DICKSON: Thanks very much, Mr. Chairman. Just to advise the Chair, I had already provided the Chair with A3, the next amendment, but I think the minister will find himself in exactly the same position because this is a variation still dealing with police commissions. I assume that similarly the minister would like time to consider that, so what we'll do is not proceed with A3 but move on to A4. I don't think A3 has been distributed yet, Mr. Chairman? It's still at the table?

THE CHAIRMAN: We have one here that's actually characterized as being from the hon. Member for Fort McMurray. [interjection] On section 2(1). No, no. I mean, that's the one that I have.

The hon. Member for Fort McMurray.

MR. GERMAIN: On the motion that bears my name, then, that is a fallback position if the minister does not adopt the previous one. As a result, there'd be no point debating that now, so I will withdraw that amendment at this time.

THE CHAIRMAN: It's okay. It has not been introduced. All the Chair was trying to do was say what we have available. He was asking whether or not it's been passed out, if we have it here, but we obviously don't have it here.

Calgary-Buffalo, if you want to proceed and move an amendment, we'll call it A3 and go with it.

MR. DICKSON: This is the wonderful thing, Mr. Chairman, about dealing with amendments to an amendment Act. I just want to make sure I've not jumped the gun here.

The next amendment I'll ask to be distributed – I'll just quickly sign it as we're doing it – is a deletion in clause (a)(i) in section 5 of Bill 19. This amendment has been approved by Parliamentary Counsel.

Mr. Chairman, I propose to wait a few moments while that's being distributed.

THE CHAIRMAN: The Chair would observe that we have the amendment in question, which we would call A3, dealing with deleting clause (a)(i) of section 5. We'll just wait for a few moments before inviting Calgary-Buffalo to begin again.

Hon. Member for Calgary-Buffalo, I believe enough time has been given to permit the pages to distribute the amendment known as A3.

MR. DICKSON: Fine. Thanks very much. What we've got here is a bit of an unusual situation. We have a provision – this in effect deals with records in the control of the Ethics Commissioner. This is an amendment necessitated really because the government's plan is to have one person be both the Ethics Commissioner and the Information Commissioner.

I refer members to section 4, but just before doing that, maybe I'll read the amendment so it's in the record, Mr. Chairman. I'm moving that Bill 19 be amended in section 5 by deleting clause (a)(i). Just to set it up, in section 4 of the FOIPP Act the marginal note says, "Records to which this Act applies," which actually misdescribes it, because what section 4 is all about is describing records that are not part of the freedom of information Act. If one looks at 4(1)(c), it says that the Act does not apply to

> a record that is created by or is in the custody or under the control of an officer of the Legislature and relates to the exercise of that officer's functions under an Act of Alberta.

Now, one would say that clearly what the Ethics Commissioner does is under the Conflicts of Interest Act. So I could see no reason for extending this, as the government proposes to do in section 5(a)(i), "to the disclosure statements of deputy ministers and other senior officers." I've since been advised that what's been happening is that without any statutory sanction the Ethics Commissioner has started to give advice to a series of people in the civil service. In fact, when one looks at the Ethics Commissioner's annual report, 1994-95, he confirms that that's exactly what he's doing. I don't want to see the Ethics Commissioner not be able to provide that valuable service, but I think what has to happen – we can't have legislative officers simply deciding to go off in this direction or that direction. I would think that what should happen is that the Conflicts of Interest Act should be amended to specifically mandate the Ethics Commissioner to be able to give advice to other people in the civil service. That authority doesn't exist now, and I guess this amendment forces the issue or attempts to force the issue.

*10:20*

I would think that the easy way to deal with it is simply – if the government were prepared to undertake that they will amend the Conflicts of Interest Act to sanction that activity, to allow the Ethics Commissioner to start giving advice to a whole range of other people, then I'd be happy to withdraw this amendment. It's there because right now we have the Ethics Commissioner doing things he has no authority to do. Whether those are worthwhile things or not, the point is that he's operating outside the statutory terms of reference. The Conflicts of Interest Act doesn't give the Ethics Commissioner some sort of residuary plenary jurisdiction. So I think this subject should be addressed by the government, and I say that if the government were to do so, then we'd be in a position that we wouldn't have to proceed with this amendment. But I think, failing that, we've got a conflict between the two, Mr. Chairman.

Those are the comments I wanted to make specifically on this amendment. With that I would move that we adjourn debate on the amendment and on Bill 19.

THE CHAIRMAN: The hon. Member for Calgary-Buffalo has moved that we adjourn debate on Bill 19. All those in favour, please say aye.

HON. MEMBERS: Aye.

THE CHAIRMAN: Opposed, please say no. Carried.

We'll go to the next Bill.

## Bill 34
## Electric Utilities Act

THE CHAIRMAN: We're now on Bill 34, and we'll call on the Member for Calgary-North Hill to begin with comments, amendments, questions, et cetera.

MR. MAGNUS: Thank you, Mr. Chairman. This Bill, as everyone knows, is probably the Bill that has been looked at more closely than any other Bill in this Legislature at this point in time, unless of course we want to talk about the Member for Calgary-Buffalo and Bill 19. We've certainly perused that very, very closely.

It is the result of extensive consultation between everybody in the province associated with the delivery of electric generation, transmission, and distribution. We had a steering committee that has basically every major power company in this province involved in it. We have a mayors' committee involving mayors from a total of nine major areas, representing in excess of about 80 percent of the population of this province, as well as a number of others, 21 to be exact, as diverse as the Bow River irrigation district, the Calgary Olympic Development Association, city of Camrose, county of Vulcan, and I can go on, Mr. Chairman.

As I say, I think everybody understands this Bill, and without keeping this House too long tonight, I would just like to thank the minister for allowing me to bring this Bill forward as a sponsor. I'd like to thank the opposition members very, very much for their scrutiny of this Bill and their thoughtfulness in the questions that were asked in second reading.

Without any further ado, Mr. Chairman, I'd like to move amendments to Bill 34. I believe that the Table has them. They're being distributed as we speak.

Mr. Chairman, you wanted me to halt for a moment?

THE CHAIRMAN: Yes, thank you, Calgary-North Hill. Just to let you know, this is amendment A1 to Bill 34, and it carries the necessary initials.

The hon. Member for Calgary-North Hill.

Has everyone got it?

MR. MAGNUS: Thank you. I'll wait for a moment, Mr. Chairman.

THE CHAIRMAN: It appears that everybody has it, hon. member.

MR. MAGNUS: Thank you, Mr. Chairman. With that in mind, then, I do move the amendments to Bill 34. I missed the number.

THE CHAIRMAN: It's A1.

MR. MAGNUS: Amendment A1. Section 45 is the meat and potatoes of this amendment, and of course I think everybody in the House is aware of that and doesn't need much of an explanation on it.

I see the Member for Edmonton-Centre would like an explanation, Mr. Chairman. I'm quite sure he's very aware of what's in this Bill.

Point A and point C are simply corrections of wording errors, and there's not anything substantive in them. With that I'll sit down and allow the debate to continue.

THE CHAIRMAN: We're on the amendment.

Hon. Member for Edmonton-Whitemud.

DR. PERCY: Thank you, Mr. Chairman. I'm rising to speak to the amendments. Certainly we're very pleased to see these amendments, but I'd like to speak first of all as to how these amendments arose. I think the initial section 45 that dealt with the open and fair playing field was the element of the Bill that we all could have lived with without the intervening fury over the last three weeks. What we have now with these amendments is an effort to move us partway back to what had been in that initial draft. I would like to point out that although certainly the president of Edmonton Power supports these amendments and the mayor supports them – certainly the mayor of Medicine Hat can live with these amendments as well – the issue that has to be borne in mind is that we now have a precedent. The precedent is that when the public sector and the private sector run head-on into one another, the issue is: is the playing field level?

We're going to pass these amendments, and we're going to make sure that low-cost generation comes on line first and ensure that it is a level playing field that prevails, but the precedent set out in here applies with equal force to the Treasury Branches. It applies with equal force to Bovar. You can't in fact segment this, because it is a principle that we're dealing with. I don't see why the power companies should in a sense be treated differently than credit unions in this province. The Canadian Western Bank, for example, is a western Canadian financial institution that has to compete head-on.

So I'm dealing with the principles embodied in this amendment, and we support the amendment. We think it goes a significant way toward addressing and redressing the concerns of Edmonton Power and the city of Medicine Hat, but I would just like to be clearly on record that we're dealing here with a principle that is going to be embodied in this Bill which can be appealed to on any

number of other occasions when you have this type of head-to-head competition. The issue then relates to: are there tax advantages? That's part of what the test is going to be. Are there advantages in terms of financial risk? Because a local government will have a lower borrowing rate than a private firm, because the local municipality has the tax base to deal with. These are legitimate concerns to raise by private-sector companies that have to run head-on with a municipally owned entity.

We support the amendments. We certainly think that the amendments reflect the concern that many groups had about being blindsided. As we say, the initial draft was acceptable, I think, to all the stakeholders. Then there was this period of three to four weeks. This moves us back to where we ought to have been. It sets out a rule and allows, then, Edmonton Power and Medicine Hat to make a bid for bringing this incremental or new capacity onto the system.

The one concern we do have – and I've raised this in questions to the hon. member – dealt with the independent assessment. It's still pretty ambiguous as to what the independent assessment is. I mean, we're accepting this on good faith, and I think the stakeholders out there are accepting it on good faith that we'll truly be arm's length and that there will be experts involved in this. This is why initially in comments I had suggested: why not try and tighten it up and say the AEUB or some other group?

*10:30*

So this is one area of concern that we have, the nature of the independent assessment, because it is easy to skew these types of assessments just by who you appoint, their experience, their knowledge of the electrical industry. But I would think, given the vigour with which stakeholders had approached – particularly Edmonton Power, Medicine Hat, and also local governments in smaller communities who saw themselves being frozen out of ever being able to sell additional capacity onto the grid – there will be sufficient pressure to ensure that this independent assessment is in fact a fair assessment and is arm's length.

With those comments to the amendments I will take my place.

THE CHAIRMAN: The hon. Member for Fort McMurray.

MR. GERMAIN: Thank you very much, Mr. Chairman. Some players in the power system have indicated that the government's attempts to ameliorate recent disputes and controversies that have arisen have been well received and much appreciated. So my comments are directly to the sponsor of this particular Bill, Bill 34, not because I have any amendments to section 45 tonight, but because I would strongly urge the member to take a listen to the comments that I want to make. I don't claim to be a specialist in legal drafting, but I want to make some comments that are completely friendly in nature that I'd like you to think about. Perhaps you might find some wisdom in running this section of *Hansard* past your legal advisers on the drafting of the Bill to deal with the two points I'm going to raise.

First of all, the new section 45 tries to track wherever it could the old section 45, but it seems to me that the special provisions that relate to Medicine Hat – that is, 45(3) – would appear now to be superfluous in the new amendment if in fact all power companies that are municipally owned can produce electricity for their own needs, as large as those needs ever get. That's the effect of 45(2) and 45(5). If that be the case, the inclusion of a special section relating specifically to Medicine Hat in 45(3) may lead to an argument in the future that they are excluded from the provisions of subsection (6); that is, that Medicine Hat is out of the loop to ever come forward with a proposal to match electricity on a free-market basis. You might want to check with your legal advisers and see whether by referring to Medicine Hat specifically and identifying them specifically in 45(3), you have in fact excluded them from the operation of 45(6) and therefore left now Medicine Hat in the same situation that Edmonton Power was in prior to the amendment.

The second issue I wanted to bring to the attention of the sponsor of this Bill is the wording of 45(6). I would have thought that the power contemplated to be generated with the minister's approval in that section excludes that power which is permissible under 45(1), (2), or (5). As a result, I say to the sponsor that he might have wanted to ask his legal advisers whether it would be appropriate in subsection (6) for him to put after the words "generating unit" in the third line these words: in excess of those generating units contemplated in 45(2) or 45(5). In other words, subsection (6), the level playing field subsection, relates to externalized, third-party vended power. It does not relate to the power that by virtue of the Act they have the authority to produce. I think that is the intention of what the amendment is. I wonder and I rhetorically ask that member who sponsored this Bill whether in fact that interpretation flows. He may in fact say after further advisement that it does, and if so, I'm happy for him.

I also wanted to conclude my comments, Mr. Chairman, on this particular Bill. Again I do not suggest any amendments, but I want to urge the member – and there are still many opportunities for him to come back with new and refined legal documentation. He might want to take a very hard look at section 4 of the Bill. This is the no lawsuit section. I want to suggest that is too wide a prohibition on the right of access to the courts. What I think the minister wanted to ensure and what the member brought forward in his sponsored Bill was that nobody would sue the government by virtue of rate changes simply because of the politics of the Act. It did not contemplate or exclude any other particular loss or damage that might be envisaged, and the member may want to think about that a little bit.

Finally, I would ask the member who sponsored the Bill to bring forward and reconsider the possibility whether it would be inappropriate to allow the oil sands plants in the municipality of Wood Buffalo, the area adjacent to Fort McMurray where I reside, the right to produce power on a more structured basis rather than on a ministerial discretion basis, because each of those particular plants are toying with and have in progress power expansion potential. It would be inappropriate, I think, for those large industrial players to be subject to the discretionary whim from time to time of a minister or a government.

Those, Mr. Chairman, are my comments on this particular amendment, and I conclude my remarks.

THE CHAIRMAN: The hon. Member for Medicine Hat.

MR. RENNER: Thank you, Mr. Chairman. I will keep my comments brief. I hadn't actually intended to speak on the amendment. However, I do think it's necessary that I clarify some of the remarks that were just made by the Member for Fort McMurray with reference to Medicine Hat, because I think it's very important that every member understand and that Albertans understand the very nature of the utility in Medicine Hat that is clearly identified in this section of the Bill.

The member correctly indicated that Medicine Hat is alone in having a special section within this Bill. I spent a good deal of time over the past weekend, and in fact over the past few weeks,

discussing with the city of Medicine Hat, with the mayor of Medicine Hat, and with the legal advisers in the city of Medicine Hat to ensure that the historical significance of Medicine Hat operating its own utility is preserved in this Bill. The member indicated that Medicine Hat was being dealt with differently in section 3, and there's a very logical and proper reason for Medicine Hat being dealt with separately. The reason for that is, Mr. Chairman, that Medicine Hat has operated for many, many years in a fairly isolated situation. Unlike Edmonton Power, Medicine Hat has historically only generated sufficient power to serve its own citizens, to serve its own demand base within the distribution area of Medicine Hat.

Part 2 of section 45 is the grandfather clause that allows not only Medicine Hat but any other municipality that is currently generating power to continue to do so. That's very clear. What section 3 does is recognize that Medicine Hat has operated as a stand-alone entity for many years and gives Medicine Hat that ability to continue to operate as a stand-alone entity, generating power for its own distribution system. I think there are some very key words in that section, and those words, hon. member, you'll note have actually been added from the first draft. The last few lines now read that the municipality will be able to

> hold an interest in a generating unit if the generating capacity of that unit and all other generating units in which that municipality or subsidiary has an interest does not exceed the capacity . . . [needed to reliably meet the requirements of] consumers of electricity in the service area of the electric distribution system owned by that municipality,

referring specifically to Medicine Hat.

*10:40*

What that means is that Medicine Hat does not have to meet the same requirements that other municipalities have to meet because of its historic significance, the fact that Medicine Hat has traditionally serviced its own distribution area. This section of 45 grandfathers that ability for Medicine Hat to continue to operate. If Medicine Hat decides that it wants to get into the broader base, if Medicine Hat wants to compete on the additional power requirements for the rest of Alberta, then Medicine Hat clearly will have to meet the level playing field set out in section 6. As long as Medicine Hat maintains the system as they've had it in the past, whereby they service only their own distribution system, they do not have to meet those level playing field requirements. They will be able to continue to serve their own customers as they always have. This allows them the ability to upgrade and retrofit old generation capacity, provided that they are able to consume that capacity within their own distribution system. If they wish to go beyond that distribution system, then, of course, they will be subject to the requirements in section 6 of the Bill.

There is another thing that's very important that members should note that has been added to this amendment, and that's in part 1 of the amendment where it very clearly says that no municipalities "shall hold, directly or indirectly, an interest in a generating unit except in accordance with" any or all of the provisions in this section, very clearly indicating that there is a test and if the municipality can meet any or all of the sections, then they pass that test. In the case of Medicine Hat, the key area for serving their existing distributions is part 3, and that is the area that refers specifically to Medicine Hat.

I think that all hon. members need to be aware that this Bill recognizes the special significance of Medicine Hat and acknowledges Medicine Hat's ability to continue to operate their electric distribution system to serve their own needs, as they have in the past. That's the reason section 3 needs to be in this Bill, and Medicine Hat, through their MLA, worked very hard to ensure that that was appreciated not only by the minister but by all members of this Assembly.

Just before I conclude, Mr. Chairman, I would like to thank the minister and her staff for assisting not only me but the council in Medicine Hat in working with us over the past few days. It's been a difficult few days. The intent of section 45 never was in question. There was some clarification needed, particularly with reference to section 3, indicating that any or all of the provisions would apply. I think that was some very key wording that was added to this, and it certainly gives me, as the MLA representing Medicine Hat, as well as the council in Medicine Hat, some solace and comfort in the fact that Medicine Hat is indeed being recognized as a special case in the province of Alberta.

With that I conclude my comments, and I encourage all members to support this amendment.

THE CHAIRMAN: The hon. Member for Edmonton-Centre.

MR. HENRY: Thank you very much, Mr. Chairman. I, too, would like to rise to speak to the amendments proposed to Bill 34. The previous speaker from Medicine Hat talked about the last little bit being somewhat – I think I'm paraphrasing – a trying time, certainly a challenging time. We went through a process where I believe most people in Alberta recognize that the process governed by EEMA had to be replaced, and we had to negotiate a new way of dealing with power generation and power distribution in our province. Certainly the citizens that I represent in Edmonton appreciated that fact and, therefore, entered into negotiations in good faith with the other power producers of our province with the government, represented by the Minister of Energy, as a neutral third party to try to bring those players together to reach a consensus that would work for all of the utilities, both publicly owned and private, and the consumers of this province. So you can imagine, my astonishment when we actually saw Bill 34, and we saw something other than what we understood was agreed to by the three players three weeks earlier.

Mr. Chairman, I'm not sure we will ever find the full answers to the questions of who got to whom, when and what was said, and who nudged which person in which lounge or which office in this province that created that major, major change that essentially, if it had gone through, if this amendment today does not go through, would have been grossly unfair and indeed in some people's perceptions would have robbed the citizens, the taxpayers of Edmonton in two ways.

The citizens of Edmonton entered and participated in the EEMA structure, and particularly with building the Genesee, not because it was solely for the benefit of Edmonton taxpayers and Edmonton power users but because the government of the day – incidentally, the Conservative government of the day – told the citizens of Edmonton that they will and they must participate. It was also an independent body appointed by the government of the day that told the citizens of Edmonton that they had to go ahead and build Genesee and expand the Genesee plants. This was not something that was decided by the citizens of Edmonton; it was decided by the provincial government. At the last minute to have a situation where a Bill is tabled that would, number one, no longer allow that publicly owned utility to essentially complete the expansions of Genesee that they entered into in good faith because they were told by the government that they had to enter into them, and the government regulatory body told Edmonton Power and the citizens

of Edmonton that they shall build – not that they may but that they shall build – the Genesee plant, to have this Bill come forward in the form that it did that essentially said, "You're not going to be able to expand in the next two phases of Genesee," was shocking, to say the least.

In addition, because of the fact that Edmonton Power owns significant coal reserves in conjunction with a private-sector partner, Fording Coal, if we don't pass this particular amendment, what we will see is that the value of Edmonton Power to the Edmonton taxpayers, if indeed they wanted to sell it at some point, would be dramatically less if they were not able to continue to expand. This amendment will go a long way in correcting what could have been a major injustice to the taxpayers of Edmonton.

I'd like to just point out a couple of things, through you, Mr. Chairman, because there aren't many members on the government side who have experience in Edmonton and know the city of Edmonton and its population. I'm listening to the hon. Member for Whitecourt-Ste. Anne, but if you listen to the members, they would have you believe that Edmonton is totally out of sync with what's going on in the rest of our country and our world, that Edmonton is somehow red, that Edmonton somehow believes that we should nationalize everything, and that we should have a socialist state. Well, the citizens of Edmonton very recently made the decision through their elected council to privatize a publicly owned telephone company. That was a difficult decision, but I think time will show that it was an appropriate decision and a decision in the best interests of Edmontonians. That's all Edmontonians are asking for here, the ability to make decisions that are in the best interests of Edmontonians when it comes to their own power company, both in terms of expanding that power company and choosing when. I have no doubt in my mind that that day will come when Edmonton citizens will choose to perhaps not continue to own their own power company but decide that either some partnership with the private sector or perhaps private ownership may be in the best interests of Edmonton taxpayers and Edmonton consumers.

*10:50*

Mr. Chairman, I would like to go on record to thank those individuals who came to the city of Edmonton's defence and the defence of the taxpayers of the city of Edmonton in pushing this government to come forward with this amendment. I would like especially to thank and to commend my good friend the mayor of Edmonton and all of the city councillors who came together unanimously to stand up for their city, came together very quickly and decided on a course of action in conjunction with the utility that they owned and in conjunction with that board of directors. I'm sure all of us can appreciate that there are individuals on that municipal council and the board of directors of the power company who come from different political stripes, who come from different ideological backgrounds, but they all agreed that this was an injustice to the citizens and taxpayers of the city of Edmonton, and I commend them for that.

Mr. Chairman, I would also like to commend former mayors of this city: the Member for Edmonton-Glengarry for providing leadership on this issue, and the current alderman for Ward 6, Mr. Terry Cavanagh, who also spoke out very strongly on this issue.

As well, I would like to thank my leader, the Leader of the Official Opposition, the Member for Edmonton-McClung, for providing leadership in my caucus in saying what the issue was. What the issue is and was, Mr. Chairman, is not just standing up for your own region or trying to get the advantage for your region over another region. What the issue was was fairness and ensuring that when a government is involved in regulation, the government acts in the interests of all citizens and does what is right and fair, not what is in the best interests of Edmonton or Calgary or Medicine Hat or any other region of our province.

Mr. Chairman, in closing, I'd also like to extend appreciation to all the citizens of Edmonton. I have never had an issue since I have been elected that has created so much response from the citizens of Edmonton to me. I'd like to thank the residents of my riding as well as from around the city for contacting me and for providing support to their municipal council and their elected officials.

Finally, I'd like to offer thanks to the member who sponsored these amendments, the Member for Calgary-North Hill. While recognizing that we will have our differences, ideological and otherwise, I'm glad to see that he and his caucus have recognized that the right thing to do in this Legislature is what's fair for all Albertans.

Thank you very much.

THE CHAIRMAN: Okay.

The hon. Member for Whitecourt-Ste. Anne.

MR. TRYNCHY: Thank you, Mr. Chairman. I wasn't going to speak, but I was challenged by the Member for Edmonton-Centre when he referred to the Member for Whitecourt-Ste. Anne either not being on side or being on side in promoting the amendment to Bill 34.

MR. HENRY: I never said anything. I was trying to get your attention.

MR. TRYNCHY: I listened with great interest to the credit he was taking. He was passing the credit on to himself and his leader and everybody else around.

MR. HENRY: A point of order, Mr. Speaker.

THE CHAIRMAN: The hon. Member for Edmonton-Centre is rising on a point of order, which is . . .

**Point of Order**
**Factual Accuracy**

MR. HENRY: The point of order is just a clarification of fact. Very clearly, I did not take any credit for this amendment. I offered credit to a variety of other individuals, including the government caucus. Thank you.

THE CHAIRMAN: I guess there isn't a point of order, but there's a point.

Whitecourt-Ste. Anne.

MR. TRYNCHY: I won't speak to the point of order. I just heard the hon. member saying that our caucus was supportive, he was supportive, the mayor was supportive, his leader was supportive: everybody was supportive.

**Debate Continued**

MR. TRYNCHY: I want to say, Mr. Chairman, that the reason this amendment is here is because the government caucus as a team supported this amendment because we believe, as I believe, that every part of Alberta is equal and should have the same treatment. I compare this amendment to, say, a ball team. When

you invite a bunch of ballplayers to spring training and set out to start the game, you invite all players in. They play by the same rules. They play the game. Those that can't cut the mustard are then let go. What we did in this case was invite Edmonton to be part of the team. Should they not meet the qualifications of that team and can't stand up to the pressures of that team, they'll be asked to leave, whether it's in October, November, or whatever. But to take credit for this amendment by anybody else but the government caucus, firstly, and all those that helped is not the way to go.

I want to thank the members on the government side for looking at this amendment, supporting it. I say to Edmonton and all municipalities: play by the rules, and you'll have no trouble staying on the team. If you don't play by the rules and meet the demands of the team, you won't be on the team.

With that, Mr. Chairman, let's have the question.

DR. NICOL: Just final comments on this. I think this amendment that we're addressing this evening on Bill 34 brings in line a lot of the issues that were of concern to a lot of the municipalities across the province. We've heard a lot of references this evening to the issue that specifically addressed Edmonton and Medicine Hat, but there was some concern, I can express, in the area also reflected by the administration in Lethbridge, who were concerned about what their future would be in terms of the ability to re-enter the electric generation capacity they had at one time and gave up as part of the EEMA program. They saw a lot of conflict in what was being proposed and what has now been rectified by this amendment in the sense that under the Municipal Government Act and the new directions that are being signaled to municipalities, they should be taking more of an initiative in getting involved in their own decisions and creating their own futures and their own environments, yet this original version of the Bill seemed to indicate that it was okay to do a lot of things except generate electricity or participate in the electric power grid network.

This amendment that we now have seems to have removed a lot of those concerns that they were expressing. I think that this basically brings in line now most of the groups that are involved in this. It basically gives us a position now that even with some of the other concerns that still exist about the direction the proposed replacements for EEMA will bring about, this is the kind of thing now that we have all the stakeholders on side and we should be supporting.

Thank you.

[Motion on amendment A1 carried]

DR. PERCY: I rise to speak to the Bill itself.

THE CHAIRMAN: The hon. Member for Edmonton-Whitemud on the Bill itself?

DR. PERCY: Yes. I couldn't help but hear the words of the hon. Member for Whitecourt-Ste. Anne about inviting a member in and then inviting them out. It appears that all of the stakeholders were in favour of that agreement. Then the rules were changed, and it is not an issue of throwing somebody out who's not up to snuff. The mayor, the president of Edmonton Power have said that they're willing to play on a level playing field, excluding the tax advantages, excluding all of the advantages. That has not been the issue. In fact, these amendments that have been brought in will ensure that that is the case. So I think the statements made by the hon. member were misleading, and I will stand by that statement.

With regards to the Bill itself I would say that I think the move set out in this Bill – to move away from EEMA, to allow the incremental capacity to come on site, to be priced appropriately, and to ensure that it is the low-cost producer of that capacity that comes on line – is something that all members of this House should support.

*11:00*

One concern I do have with the Bill itself concerns the issue of refurbishing plants. It appears, when you read the legislation, that if a plant generator is refurbished then brought back in, it can be brought in as new capacity into the grid. At least that's one interpretation we've had. So we could easily see ourselves moving to a regime of rapidly rising energy prices as these plants are refurbished and brought on line. There's some ambiguity there as to what refurbishing and upgrading these plants implies in terms of access to the grid, but ultimately the most important thing from the perspective of all Albertans: the price of that capacity.

I think this does two things. It both grandfathers, which has to be the case, given the assets that have been tied up, and certainly from the perspective of the utilities the grandfathering is fundamentally important, but it also is forward looking in allowing new capacity to come in and be market driven. What the amendments have done and the what the Bill will do if the arbitration process or the mediation process is fair, is always ensure that the least-cost generating capacity comes on line, which is what I think all members of this House would want to see.

With those comments, I'll close.

THE CHAIRMAN: The hon. Member for Grande Prairie-Wapiti.

MR. JACQUES: Thank you, Mr. Chairman. Just a few brief comments, and I offer these comments as a northerner, similar to my colleague for Fort McMurray. I also offer them as the chair of the Northern Alberta Development Council, which is an organization that works on behalf of all northern Albertans.

This subject is one that the Northern Alberta Development Council has spent a lot of time on in terms of tracking the subject, particularly going back to prior to my involvement. This goes back to the early 1990s, when the subject was first coming up again in terms of EEMA. I think we as northerners appreciate the divisionist that was occurring within this province, particularly as we headed into the last election in 1993. I'm pleased to say that the Northern Alberta Development Council did have a member in the form of Frank Lovsin, who was a businessman out of the community of Peace River, sitting on the steering committee who kept us fully apprised as that whole process was going through.

I appreciate that it was an extremely delicate process. The varied interests that were at that table were significant. Certainly in terms of north and south and even central Alberta, there were obviously varied differences of opinion to start with, but to the credit of the minister, who said and I think rightly so that we had to make changes, that it was time for the parties to come to the table, to set aside their biases as best they could and to proceed and try to develop an agreement that would be beneficial to all Albertans, I'm pleased to say that, in my opinion, we have seen that in this Bill. I'm also pleased to see the amendment that was introduced and passed, because I think it did respond to a very valid concern that was being raised.

The whole process has been a lengthy one, has been a frustrating one, but I think the fruits of the labour are before us today. Bill 34 is on behalf of all Albertans and particularly in terms of northern Albertans. I want to assure that our support is there and

that it will serve all Albertans to the betterment as we proceed through the decades.

Thank you, Mr. Chairman.

THE CHAIRMAN: Okay. The hon. Member for Edmonton-Centre.

SOME HON. MEMBERS: Sit down.

MR. HENRY: Thank you very much, Mr. Chairman. A couple of comments that would be very appropriate, given the heckling I've just received. I wanted to just briefly point out to all hon. members in this House that this Bill as it is now amended and will go forward – and I agree with the comments made by the Member for Grande Prairie-Wapiti in terms of the need to move forward on this. But never before in this particular session have we seen the value of an opposition in the parliamentary process. [interjections] Members on the other side can scoff, but the record will show that the initial draft approved by the government and brought forward as a government measure was unfair to municipally owned power outlets, Mr. Chairman. The government caucus must accept responsibility for that.

Again, I'm giving credit to the government caucus for having brought forward government amendments to the Bill, but while some members of the government caucus may at times feel that it would be much more efficient if we could run this Legislature like a ball team, where the coach could say you're in or you're out and you play by our rules or if you can't cut it, you're out, very clearly history will show that there is value in having Her Majesty's Loyal Opposition sit here in the Legislature. As much as it may be an irritant to some members of the government from time to time, in this particular instance, if there had not been an opposition who was able to bring the government's attention to the fact that there was an injustice potentially being carried out here and was able to represent the views of the citizens of particular parts of the province, whether it be Medicine Hat, southern Alberta, or Edmonton, and say that we needed to take another look at this piece of legislation and have the government caucus go back and reconsider the injustice it was doing – if Her Majesty's Loyal Opposition had not been there, very clearly an injustice would have been done in our province.

So in responding generally to the comments from the other side and more specifically to the comments from the Member for Whitecourt-Ste. Anne, I do want to say that the record is very clear that the initial Bill that was tabled by the government would have forced an injustice on some of the citizens of our province and I daresay an injustice on all the citizens of our province. It was because we had an opposition party in this Legislature who was able to bring focus to this issue and be able to point out to the government and push the government to go back that we have a better Bill today.

Thank you very much.

[The clauses of Bill 34 as amended agreed to]

[Title and preamble agreed to]

THE CHAIRMAN: Shall the Bill be reported? Are you agreed?

HON. MEMBERS: Agreed.

THE CHAIRMAN: Opposed? Carried.

## Bill 35
## Electric Energy Marketing Repeal Act

[The clauses of Bill 35 agreed to]

[Title and preamble agreed to]

THE CHAIRMAN: Shall the Bill be reported? Are you agreed?

HON. MEMBERS: Agreed.

THE CHAIRMAN: Opposed? Carried.

## Bill 36
## Agreement on Internal Trade Statutes Amendment Act, 1995

[The clauses of Bill 36 agreed to]

[Title and preamble agreed to]

THE CHAIRMAN: Shall the Bill be reported? Are you agreed?

HON. MEMBERS: Agreed.

THE CHAIRMAN: Opposed? Carried.

*11:10*

## Bill 39
## Treasury Branches Statutes Amendment Act, 1995

THE CHAIRMAN: We have under consideration in Committee of the Whole Bill 39, Treasury Branches Statutes Amendment Act, 1995.

MR. GERMAIN: Ah . . .

THE CHAIRMAN: Well, let it be recorded that the hon. Member for Fort McMurray sat down after a brief speech.

The hon. Member for Edmonton-Whitemud.

DR. PERCY: Thank you, Mr. Chairman. Bill 39 is a Bill that the opposition supports in principle and did in second reading, because it deals with some of the issues that the Flynn report and Mazankowski report had assessed as being worthy of change with the Treasury Branches. But the Bill only focuses on one portion of the elements of the Flynn report. It deals with the issue of governance, and governance is important. One of the reasons we had advocated for some time the creation of both an audit committee and an independent board of directors was, believe it or not, Mr. Chairman, to do a good deed for the hon. Provincial Treasurer, to buffer, because you need the Treasury Branches to be arm's length.

If you go through and you read through the Auditor General's report on Gainers, it's very clear from that report that there was interference in the Treasury Branches in terms of some of the loans that were made. They certainly were not prudent commercial loans. They were made for political reasons to backstop a failing enterprise when the commercial banking system would not touch it with a 10-foot pole.

There have been other instances that have involved restructuring initiatives of certain types of guarantees that have been converted into equity, and one wonders whether or not these would have occurred had not the Treasury Branches been de facto closely and directly accountable to government.

So these changes in governance are important. However, there are two or three issues with regards to governance that we would like to address. I have before me some amendments in that regard that I will now distribute. The top four copies are signed. The amendments have been approved, signed, and they're going to the Chairman. I'll just briefly give you what the punch line is. The punch line is that Bill 39 be amended and that added after section 1 is:

> 1.1 The purposes of this Act are to establish the framework for fair and open competition within the financial institutions' sector in the Province of Alberta.

This legislation deals with the regulation of the Treasury Branches. I think Albertans clearly feel that the Treasury Branches are an integral part of the provincial economy. When you talk to both those who have borrowed from the Treasury Branches and those that in a sense assess the financial markets in the province, two or three issues come up with regards to the Treasury Branches, one of which is that they have tended to be countercyclical in their lending practices. When eastern banks have pulled out of the province and raised their risk requirements and made people jump through hoops in Toronto to provide liquidity in the province, the Treasury Branches have been there. I think that's pretty clear, that they have been our buffer against central Canadian based financial institutions whose view of the economy is perhaps driven more by what is happening in one particular province than what would be happening within the province of Alberta, for example.

So the Treasury Branches have performed a useful function. They also provide an array of financial services in the rural sector that otherwise would not be there. We on this side of the House view the Treasury Branches as being important. However, they ought to be run as any other entity. They should achieve certain benchmarks in performance, and the way in which they compete in the market should be on a fair and open competition.

I would just note, then – I think the amendment has been distributed – that this amendment is somewhat reminiscent of the debate we've just had about public utilities and a level playing field and that institutions ought not to benefit from tax advantages. Clearly, the Treasury Branches have considerable advantages in that they have the provincial government to backstop them. So we're not saying to privatize, not us; perhaps others, but not the Liberal opposition. What we're saying is to make them more efficient, more accountable, and at the same time ensure that other financial institutions in the province – credit unions, the Canadian Western Bank – all play on a level playing field.

What this does, in a sense, is embody the notion that the playing field should be level. This amendment, then, is constructive. It says: let's provide a framework for financial services in this province that is fair to the private sector and fair to the Treasury Branches, because make no mistake: the Treasury Branches are in fact a government agency. They're government. Just as Edmonton Power is municipally owned, Treasury Branches are government owned. So the same issues prevail.

I would think, with regards to this amendment, that given the rhetoric we've heard about competition between Edmonton Power and the private-sector utilities and the need for a level playing field, the private sector should not be disadvantaged by tax advantages open to the public sector. This amendment goes some considerable length to bringing some consistency to government policy, at the same time providing a framework for the Treasury Branches to thrive and be productive in this province. Again, on this side of the House we support the Treasury Branches.

With those comments I will take my place.

[Motion on amendment A1 lost]

MR. DAY: I move that the committee rise and report.

[Motion carried]

[Mr. Clegg in the Chair]

THE ACTING SPEAKER: Order. It's a little late in the night not to have order.

The hon. Member for Highwood.

*11:20*

MR. TANNAS: Thank you, Mr. Speaker. The Committee of the Whole has had under consideration certain Bills. The committee reports the following: Bills 31, 35, and 36. The committee reports the following Bills with some amendments: Bill Pr. 10, Bill 16, and Bill 34. The committee reports progress on the following: Bill 19 and Bill 39. I wish to table copies of all amendments considered by the Committee of the Whole on this date for the official records of the Assembly.

THE ACTING SPEAKER: All those in favour of the report by the Member for Highwood?

HON. MEMBERS: Agreed.

THE ACTING SPEAKER: Opposed, if any? Carried.

[At 11:22 p.m. the Assembly adjourned to Wednesday at 1:30 p.m.]