Legislative Assembly of Alberta

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head: Government Bills and Orders

head: Committee of the Whole

[Mr. Clegg in the Chair]

THE DEPUTY CHAIRMAN: We'd have the committee come to order. All take a seat, please.

Bill 39
Environmental Protection and Enhancement Amendment Act, 1996

THE DEPUTY CHAIRMAN: We were working on some amendments by the hon. Member for Sherwood Park. We already had A1 as an amendment, so it's A2.

MR. GERMAIN: Mr. Chairman, you'll recall that when we adjourned at 5:30 this afternoon, I was on my feet speaking to this very important amendment. I was urging all of the Members of the Legislative Assembly to support and adopt this amendment. Of course right at 5:30 I wanted to assist the Leg. in calling for adjournment, but hon. members wanted to stay on past 5:30. Then I was amazed when the Chairman by virtue of Standing Orders had to adjourn at 5:30, thereby cutting out my opportunity to finish my comments on this particular amendment, allowing me, however, the opportunity to reconsider all of my thoughts for tonight's opening debate.

What we have here, Mr. Chairman, is an amendment of inclusion, an amendment that you would think the government would overwhelmingly embrace, would commend the hon. Member for Sherwood Park for bringing forward. One of the criticisms of environmental protection legislation in the province of Alberta is that there is an ever restrictive definition of those people who are affected by environmental decisions who have the right to speak up for the safety of their province, for the long-range good of their province, for what they perceive are important issues in terms of environmental protection of their province.

Now, voting in favour of this amendment will make it clear that anybody who has a legitimate concern may at the right time by following the right procedures and utilizing the appropriate methodologies be able to express their views and have their views heard. This amendment does not offend in any way or impinge on the government's mandate to govern this province, but it gives interested groups an opportunity to come forward and be heard on something that is as serious and as important as the environment.

Now, I know, Mr. Chairman, that there are other members of both sides of the House who want to speak to the importance of this amendment. I can only commend the excellent words of the hon. Member for Sherwood Park when he introduced this amendment last week. I urge all of the Assembly to vote for this first amendment put forward by the hon. Member for Sherwood Park.

THE DEPUTY CHAIRMAN: The hon. Member for Sherwood Park.

MR. COLLINGWOOD: Thank you, Mr. Chairman. Like my colleague for Fort McMurray I hope that other members join in debate on this extremely important amendment and indeed all of the important amendments to Bill 39, the Environmental Protection and Enhancement Amendment Act, 1996.

Mr. Chairman, it is indeed an amendment of inclusion which is making an effort to involve Albertans in important environmental decision-making in the province of Alberta. When this amendment speaks directly to the issue of inclusion of Albertans, what it does do is recognize that there are many Albertans who have a tremendous amount to contribute to environmental decision-making in the province of Alberta.

Members on both sides of the House have often said in this Chamber and outside of this Chamber, in their constituencies, and at functions they attend, that no one party, no one part of this Legislative Assembly has all the right answers. When we ask tribunals, whether it's the Environmental Appeal Board or it's the Natural Resources Conservation Board, to make the best decision possible on behalf of all Albertans, it is important that those tribunals have the opportunity to hear from as many Albertans as possible who have information and knowledge that they can offer, that they can impart to those tribunals and in that way contribute to environmental decision-making in the province of Alberta.

It says, Mr. Chairman, that the government doesn't have all the right answers. It says that Albertans have the ability to participate. It says that the tribunals have the ability to control their own process because the minister, I think, is concerned that if we open this gate just a little too wide that certain Albertans will attempt to disrupt . . .

THE DEPUTY CHAIRMAN: Hon. Member for Peace River, I hate to interrupt, but you . . .

MRS. FORSYTH: Well, don't then.

THE DEPUTY CHAIRMAN: Well, I'm going to do it, because he crossed right between the speaker and the Chair, which is a cardinal sin.

The hon. Member for Sherwood Park.

MR. COLLINGWOOD: Thank you, Mr. Chairman. [interjections] We're in a good mood tonight, Mr. Chairman.

In speaking to the first amendment, what it says is that Albertans have a tremendous amount to contribute to environmental decision-making. It says that administrative tribunals who hear from Albertans, who hear from applicants, who hear from intervenors can control their own process. I am not convinced that the minister is convinced that those administrative tribunals can control their own processes, and I believe that they can. I believe that as a matter of process one can still conduct a reasonable hearing by allowing as many Albertans as possible under the umbrella, under the perspective of those individuals who have a legitimate concern.

This amendment says that the whole aspect of activities regulation in the province of Alberta is not something that just simply affects the government on behalf of the people of Alberta and a particular industry or particular activity that is, for example, seeking an approval. Every time one of those matters comes forward, whether it is mandated through the Natural Resources Conservation Board or whether it is an approval that is subject to review by the Environmental Appeal Board, in every circumstance it is appropriate, and it is legitimate for Albertans who have a legitimate concern to come forward and express their views on that particular point.

We have recently seen, Mr. Chairman, in the province of Alberta a narrowing of the definition of "directly affected." We have had the court consider the specific provisions of the Environ-

mental Protection and Enhancement Act and have simply said that what the Legislature intended is that a very, very narrowly defined group of Albertans have an opportunity to participate. Directly affected would of course, as we know, have limited application for Albertans who are interested, for example, in a pulp mill development in northern Alberta or a dam project in southern Alberta. There are many individuals who have lots to say and who have lots to contribute in terms of those specific applications, and they ought to be able to do that directly through that tribunal rather than attempting to do it politically through their Member of the Legislative Assembly or through the minister.

That's what this amendment speaks to, Mr. Chairman. It is here . . .

MS LEIBOVICI: Point of order.

THE DEPUTY CHAIRMAN: The hon. Member for Edmonton-Meadowlark on a point of order.

Point of Order
Decorum

MS LEIBOVICI: Thank you. *Beauchesne* 336 and also, I believe, 332. There are at least four government members who are standing in the Assembly while the hon. Member for Sherwood Park is trying to talk to Bill 39, as well as the noise level. I'm sitting right beside the hon. member, and I'm having a difficult time hearing his words of wisdom. I can well imagine that the government members can't hear at all. Quite obviously their conversations are so loud that it's not allowing the members on this side of the House to listen to this very important Bill. I would think that the government members are more than interested in Bill 39, the Environmental Protection and Enhancement Amendment Act, 1996, and it's quite a shame that they don't have the courtesy or the willingness to listen to the comments.

Thank you.

8:10

THE DEPUTY CHAIRMAN: The hon. Member for Edmonton-Meadowlark certainly has got a point of order. There were about four or five members standing, and I've been trying to keep some order in the House. I like to be lenient, but it becomes ridiculous when everybody's standing and talking. We might not like what any member is saying, but it's perfectly legal for everybody to have their say in this House, and we are going to try and do that. If we have to recess for a while to cool people down, we'll do that too.

The hon. Member for Sherwood Park.

MR. COLLINGWOOD: Thank you, Mr. Chairman. I appreciate that ruling. In fact, I was having trouble hearing myself speak, and that doesn't happen very often. [interjections] I'm not sure if the Minister of Agriculture, Food and Rural Development can hear me, but he said that it's a sign of old age if you can't hear. I'm not sure whether he's hearing me or not, but I think he can probably hear me now.

Debate Continued

MR. COLLINGWOOD: Mr. Chairman, I will conclude my comments by reminding members again that the concept of involving Albertans who have a legitimate concern in an activity that could have an environmental impact was indeed proposed by the Minister of Justice prior to the time when he became Minister of Environmental Protection. In his task force proposal for the Environmental Protection and Enhancement Act the recommendation that came forward from that task force through a public consultation process was that the wording contained in the Act says that those who have a legitimate concern have the right of status in front of an administrative tribunal, whether it's the Environmental Appeal Board or the Natural Resources Conservation Board, and that those individuals have a right to be heard in the process.

It was this government who turned a blind eye to that recommendation from the task force and who said: no, we don't want Albertans involved in environmental decision-making in the province of Alberta, and we are going to restrict that application to those Albertans who are directly affected, not those Albertans who have a legitimate concern. It would be my submission to you, Mr. Chairman, that that decision flies in the face of a government that says that they stand for openness and accountability.

The opportunity exists here and now, hon. members, for the government to live up to its commitment of openness and accountability and to adopt the recommendation from that task force. Include amendment A2 in the Environmental Protection and Enhancement Amendment Act, 1996, give the opportunity to Albertans who have a legitimate concern to participate in environmental protection, and indeed accept the recommendation from the Member for Banff-Cochrane, who is currently the Minister of Justice.

I'll conclude, Mr. Chairman, by saying that this is indeed an amendment of inclusion here for the people of the province of Alberta so that they can legitimately participate in debate and discussion and decision-making about activities that will have an environmental impact.

With that, Mr. Chairman, I'd invite any other members of the Assembly to participate and join in the debate on amendment A2, changing the definition of "directly affected." Thank you.

THE DEPUTY CHAIRMAN: The hon. Member for Leduc.

MR. KIRKLAND: Thanks, Mr. Chairman. I would stand in support of the amendment. I would support it for the term that was used by the members for Fort McMurray and also Sherwood Park. It's an amendment of inclusion.

When we deal with environmental issues and the long-term impact, it is not always evident or clear what they will be. There are those that express a legitimate concern, and we can think of many examples of that. If you think of the hazardous waste plant at Swan Hills, you'll recall that the natives up there had expressed a legitimate concern. It could be argued that it wasn't direct because it's long term and one would not be able to determine exactly when the animals would be affected by the effluent of the hazardous waste plant at Swan Hills. So they had only one opportunity to intervene and one opportunity to advance that legitimate concern, and it was in the early processes. If we were to leave this Bill 39, the Environmental Protection and Enhancement Amendment Act, 1996, unchanged, I would suggest, Mr. Chairman, that they would not have had that opportunity.

You can think of many other examples. I can think of the extensive activity up in the northeast corner of this province where there was steam injection to remove oil from many of the wells up there. As we have come to learn, that has been very disruptive to the water supply, to many of the residents in that particular area. There's an ongoing controversy, of course, about

whether it is the contributing factor to the dropping level of Cold Lake. Those individuals learning from their experience, Mr. Chairman, should have had an opportunity to advance their concerns before it became evident that they were directly affected. They had a legitimate concern. If you look at the history of steam injection and look at the history of the seismic operations that go on in this province, we know full well that in fact it has a tendency to impact on water supply.

So those two examples, Mr. Chairman, would illustrate why I think it's important to support this amendment, and it would also bode well to ensure, as the hon. Member for Sherwood Park has indicated, that those that have that legitimate concern, such as the residents up in the northeast corner or the natives that hunt and trap in the vicinity of Swan Hills, have that right of status so they can be heard, so they can advance their concerns. Certainly it's not a status that would be detrimental to the province.

We know, Mr. Chairman, that often we move at a tremendously fast pace when it comes to development. There is a need on occasion to slow down any sort of corporation or any size of company long enough to ensure that the long-term impact to all Albertans is not going to be detrimental, and I would suggest amendment A2 as submitted by the hon. Member for Sherwood Park would do exactly that. It's just called creating thinking time, and thinking time is important when you're dealing with the long-term implications of development and the long-term implications to the environment in Alberta.

From your own area you would know of the great forest harvest that goes on up in that particular area, and again if you look at the native population in northern Alberta, they have a legitimate concern. They have happening before them perhaps the elimination of their very existence, those that rely on wild meat and trapping for their subsistence, Mr. Chairman. So this amendment, an amendment of inclusion, where right of status would be given to groups or individuals that have a legitimate concern I think is a sound amendment.

We have enough history. More often than not environmental concerns of 20 years ago, as we know, didn't appear to be a concern when the initial undertaking was initiated. It turns out not to be the case. We would all be familiar with the Love Canal on the Niagara peninsula. Certainly many years ago it was thought that by burying those toxic wastes it would not cause difficulty. It came back, of course, to haunt those particular residents, and when we look at examples like that, we today should give every Albertan the opportunity to voice a concern. The environment and the impact on it, when it's detrimental, costs a tremendous amount of dollars to recover, and it also acts very detrimentally when we look at attracting the tourism industry to this province, which is one of our large contributing sectors to the economy.

So I would stand in support of the amendment. As I say, and as the hon. Member for Fort McMurray and the hon. Member for Sherwood Park indicated, it is an amendment of inclusion. It gives right of status to those that have a legitimate concern. Sometimes we may dismiss those that say they have a legitimate concern, but history has presented us many cases that seemed very innocuous on initial glance but later turned out to be very, very damaging to the environment.

With those comments, Mr. Chairman, I will close by indicating I think it's a sound amendment and I'm pleased to support it.

[Motion on amendment A2 lost]

THE DEPUTY CHAIRMAN: The hon. Member for Sherwood Park.

8:20

MR. COLLINGWOOD: Thank you, Mr. Chairman. We'll move to A3, which is amendment 2 on my sheet of amendments. This particular amendment is in relation to the changes being proposed by the Minister of Environmental Protection as they relate to conservation easements in the province of Alberta.

Now, Mr. Chairman, members will recall that a very short time ago I introduced a private member's Bill to legislate conservation easements in the province of Alberta. The debate at that point in time was a great idea, but its time hasn't come yet, and I take it from the fact that it's now before the Assembly in the form of a government amendment that the reason it wasn't time is because it wasn't sponsored by a minister of the Crown. It was sponsored by a private member in the opposition benches. It's virtually the same idea that I had proposed, so I will accept that it was a good idea then and I will accept that it's a good idea now.

Mr. Chairman, when the government introduced its Special Places 2000 program, which included economic development as the cornerstone for conserving Alberta's special places, many Albertans were inquiring about how they could conserve land that was private land. It of course didn't really fit the context for the conservation of private land under the Special Places 2000 process, although a number of Albertans wanted to nominate private landholdings under Special Places 2000. So the government's response years after it was appropriate to do so – it now comes forward with more comprehensive conservation easement legislation.

As I say, Mr. Chairman, the concepts that were included in my private member's Bill are included in the government amendments save and except for one important component. The Bill that I brought forward to the Legislative Assembly did not give the minister the right to interfere with private landowners. The amendment that is being put forward by the minister, of course, gives the minister the right to interfere with private landowners and their private landholdings.

The essence of section 22.1(7) is that where there is an agreement between a grantor and a grantee, the party who owns the private land and the party who agrees to maintain and conserve that land in its natural state, those parties can modify or terminate the agreement made as amongst and between gentlemen or gentlemen and organizations as to who will maintain and conserve the land, but not surprisingly the amendment goes on to say that the minister can by order terminate an agreement between private parties. So the minister, whether or not the minister is the grantor or the grantee, can interfere in private agreements if the minister considers that it is in the public interest to terminate the conservation easement.

My only question, Mr. Chairman, is that for Albertans who are interested in conserving land that they may have held for generations in its natural state, if they look at this particular section proposed by the minister giving the minister the right to interfere in and terminate an agreement amongst individuals, what Albertan in their right mind would enter into a conservation easement under this legislation? I mean, you put the land at risk if you decide that you want to protect land in its natural state under the provisions of the Environmental Protection and Enhancement Act if that particular section becomes law.

I'd invite the minister to enter into debate and answer for all Albertans why he needs to reserve unto himself the right to interfere with private contracts made between individuals or individuals and organizations. For what reason could the Minister

of Environmental Protection want to decide what will happen in terms of conservation on private land in the province of Alberta? Does he need to retain that right in case a developer comes along who wants to build an industrial development, a golf course, a subdivision notwithstanding the wishes of the owner of the property or subsequent owners through devolution of that property, where there is an agreement to conserve the land? Is the minister reserving this power unto himself in case a developer needs access to that land and the conservation easement is simply getting in the way of that particular development regardless of what the landowner wanted with respect to his own land? Now, the minister on the one hand says: we want to encourage Albertans who hold private landholdings to conserve their land in its natural state. On the other hand, the minister is saying: but when you do, it's up to me to decide whether or not the conservation easement stays or the conservation easement goes.

Now, the minister can correct me, Mr. Chairman, but I think that as it currently stands under the Environmental Protection and Enhancement Act under section 22, if the minister – and I think it is only the minister who can be the grantee so that the minister has some rights as a party to the agreement to attempt to modify or terminate that conservation easement because they're a party to the contract. But here in the amendment we're getting now, the minister says: I'm going to interfere in your agreement whether or not I'm a grantor or a grantee. It's astounding how the government can say that they're interested in private property rights of individuals and then on the other hand say: we're going to interfere in your private land dealings, and we are going to decide whether or not you can make those agreements relative to your land. Nobody, Mr. Chairman – nobody – would want to put their land at risk under this kind of legal structure where they could inevitably lose out on the conservation easement because of this amendment.

There are other ways, Mr. Chairman, of doing this through restrictive covenants that you can register at land titles now, and my advice to any Albertan would be: stay away from the minister's amendment under conservation easements. The rest of this amendment that the minister is proposing under conservation easements is pretty good legislation, but the whole of it is rendered completely useless because the minister reserves unto himself the right to interfere. My advice to Albertans is: stay away from this minister and this government who want to interfere in your personal land rights.

Now, to that end, Mr. Chairman, I'm proposing an amendment, which I will move at this point in time, that refers to two specific sections in section 4, in the first instance in the proposed section 22.1. Just for members' recollection these are all part of the package of amendments that was distributed last week. We began this evening with amendment A2. We are now on A3, which is identified as 2 on the sheet of amendments for Bill 39.

I now move specifically and only amendment A3. There is a proposal to strike out subsection (7) of section 22.1, which is the odious section that leaves unto the minister the right to interfere with what people want to do amongst themselves in entering into an agreement or an arrangement, and it is replaced by a statement that says, "An agreement granting a conservation easement may be modified or terminated by agreement between the grantor and the grantee." That is only right and proper where the parties to the conservation easement agreement in the first place have the right to collectively come to an agreement as to whether or not that conservation easement is to be modified or whether the conservation easement is to be terminated. As I recall, there is provision in the amendments put forward by the minister that you can set a time period for the conservation easement so that you know when it begins and when it ends, or it can be open ended and the parties can then agree at some later date about how they want to modify it or if they want to terminate it.

Now, Mr. Chairman, with the proposed amendment, which is an incredibly reasonable amendment that takes away the minister's right to interfere, there then has to be a consequential amendment in section 22.2(4), because the minister not only reserves unto himself the right to interfere with the public, but he also has a right to register his unilateral decree of a termination of a conservation easement with the registrar of land titles.

8:30

If I'm going to propose, Mr. Chairman – and I am – that the minister does not have the right to interfere with an agreement between private individuals, then the consequential amendment is that the minister can't be party to the ability to register a document at land titles giving notice of that modification or termination. That amendment is under section 22.2(4), by striking out the words "(or the Minister in the case of a modification or termination under section 22.1(7)(b))." So that is the amendment that I am proposing in two parts: in amendment A3(a), to strike out (7) in section 22.1; and in section 22.2(4) by striking out those words that relate to the registration of the modification or termination under the land titles office.

Mr. Chairman, again I cannot for the life of me understand why the minister has to reserve unto himself the power to interfere with something that individual Albertans want to do for themselves in relation to conserving land in its natural state. I can only surmise that the minister needs it to accommodate industrial development or recreational development where – and again I assume that the minister has to be looking at something like expropriation. Otherwise, why would it be necessary for the minister to interfere and terminate a conservation easement agreement between a landowner and a conservation society who will agree to maintain that land in its natural state? Why would the minister come forward and promote conservation of private land and then take it away by his right to terminate the agreement at any time, without any notice, without any reasons given whatsoever? That is what he is doing in this particular amendment to the conservation easement. It makes absolutely no sense whatsoever. The minister has full opportunity to enter into debate and tell us why that is, to indicate to me and other hon. members why he needs to have the right to interfere and why Albertans should in any way, shape, or form trust this new legislation.

The minister is coming forward once again, as members of the government often do, and saying: "Trust me. I'm from the government, and you can trust me." If I'm a private landowner wanting to conserve land, that's the last thing I'd do, because it is far too open-ended. There are no assurances. There are no opportunities for either the grantor or the grantee to have input into whether or not the conservation easement is modified or terminated. All the minister has to do is make some statement that his decision is in the public interest. What does that mean? More development? Is that what "in the public interest" means? Less conservation and more development is in the public interest? Why else would you modify or terminate a conservation easement? Because you don't want to conserve land anymore. That's the only reason you would do it. Is the minister intending to expropriate land and then he will own the land, the government will own the land and place it under the Special Places 2000 initiative? Not likely. So it has to mean that the minister needs

to have the ability to promote development at a cost to promoting conservation. Why the Minister of Environmental Protection is the one who is promoting development rather than conservation is another question that leaves one scratching their head.

The amendments for the most part are good amendments. The inclusion of the minister's intrusion rights make them bad amendments. The way to cure the amendments is to strike out subsection (7), unless the minister can convince the House otherwise, and replace it with a clause that says the grantor and the grantee can, whenever they so choose, get together and modify or terminate the conservation easement and take away the minister's right to do that or to register a termination or a modification under the Land Titles Act.

Mr. Chairman, those are my comments on this particular amendment. Again, for the life of me I can't understand why the minister saw fit in conservation easement legislation to put this provision in. No other conservation easement legislation in Canada has this kind of intrusive aspect to it. No other proposed conservation easement legislation has this kind of ministerial intrusion into it. I don't think anybody who's ever looked at conservation easement legislation has ever seen the likes of this amendment put forward by this minister and this government, who are pro development and con conservation and who come forward and pretend that they want conservation easements to be promoted in the province of Alberta. It's an incredible amendment.

I'm looking for other members of the House to enter into debate on this rather unique and rather startling proposal by the Minister of Environmental Protection, and I certainly will be encouraging all members of the House to speak and to vote in favour of amendment A3 on this particular Bill.

THE DEPUTY CHAIRMAN: The hon. Minister of Environmental Protection.

MR. LUND: Thank you, Mr. Chairman. I thought that I'd best clear up some misconceptions the hon. member was just espousing and claiming to the House. As we went around and talked to people about the conservation easements and what they should look like and how they should be handled, we had a lot of people that were really concerned about the process of designating land under this program. There were a lot of landowners who had great concern that their neighbours could in fact put an easement on a piece of property and have a major impact on their land, and that is a legitimate concern. We didn't agree with making it a long process. We feel that an individual should have the right, if he can make a deal with a list of government agencies or groups that would agree to manage the land as the individual saw fit, to do that.

I heard the hon. member I don't know how many times say that the government is going to come into an agreement between the grantor and the grantee. Well, Mr. Chairman, the hon. member seems to forget that down the road the person that granted this easement is not going to be around. They're not going to be here to be part of the agreement. If you leave it so that once the easement is on, there's absolutely no way that it can be removed, absolutely none, then in fact people that live adjacent to that property have a legitimate concern. There are a whole host of effects that could develop that are very detrimental to the adjacent landowners. If the hon. member would read what the Act says, the minister can, if it's in the public interest, remove or alter or in some way modify the easement agreement.

Another thing that I heard on a number of occasions when we were around talking to people about these easements was the possibility of having them short term, that every 20 years – I even heard one person saying 10 years – they would be up for review. Well, once again we don't totally agree with that process, because if an individual is setting aside some land for conservation easements, we believe that there should be real hard and fast conditions before these would ever be removed. But somewhere, sometime, someone has to have the ability to do that, to remove them, if it's proven that it's in the public interest to do so. Quite simply, that is why the minister will have that ability.

Certainly I would urge all members to consider this as we get to the voting, because if you're going to put them aside in perpetuity, we're going to have a lot of very, very upset landowners in the province of Alberta who live adjacent to these that would be put aside in perpetuity.

8:40

THE DEPUTY CHAIRMAN: The hon. Member for Sherwood Park.

MR. COLLINGWOOD: Thank you, Mr. Chairman, and my appreciation to the Minister of Environmental Protection for participating in the debate and responding to some of the comments that I made.

The minister started by speaking about the grantor and saying that the grantor isn't going to be around forever. So it isn't the government coming between the grantor and the grantee, because the grantor at some point in time isn't going to be around and the government is going to be around. I would refer the minister to his definition of grantor, which means:

> the person who grants a conservation easement, and includes a successor, assignee, executor, administrator, receiver, receiver-manager, liquidator and trustee.

The minister seems to be talking in terms of the individual person who is the grantor, and his own Bill and his own definition talk about the successor under the granting of the conservation easement. So how can the minister stand in his place and say that the government isn't coming between the grantor and the grantee when in fact that is exactly what the government is doing, grantor being the successor or the assignee or someone who takes property under devolution through an estate or whatever? That person is the grantor and steps into the shoes of the grantor.

The minister says that it's not the government coming between the grantor and the grantee relative to a piece of land; it's the government coming between the grantor and the grantee because another landowner has a complaint. So the minister says that his decision would be based on the public interest to terminate the agreement, and what he really means by his comments is "I'm going to champion the cause of one private landowner in Alberta over another private landowner in Alberta." Can you imagine the precedent that the Minister of Environmental Protection is talking about setting here with this legislation? The government is now going to champion the rights of one landowner over and above the rights of another landowner. The government is now going to choose sides amongst Albertans who decide that one wants to do something with their land, and another Albertan wants to do something with their land. The government is going to champion the cause of one landowner over another landowner.

Is that the role of government, Mr. Chairman, for the government to sit back and say: "Well, whoever comes to us first and whoever gets us, you know, behind closed doors in my office first. Whoever will come to me and lobby and have a meeting and a chat with me, we'll just meet behind closed doors. Nobody

will ever have to know what we talked about or how much you're going to contribute to my campaign or any of those things, but I'll champion your cause over somebody else. I'll simply walk in and interfere in an agreement that was made by a private landowner about the future of his land"? That's even more incredible than the position that I took when I first stood and spoke to this particular amendment that the minister is putting forward in Bill 39 in my attempt to cure this particular amendment by taking away the minister's right to interfere.

What the minister has just done is stood in his place and explained his motivation. There are Albertans out there who aren't going to be very happy with their neighbours who enter into conservation easements. Well, there are going to be other processes where disputes amongst those kinds of parties can be resolved in a number of places, but it is not and never ought to be at the door of the minister, who is there for the benefit and the protection on an equal basis of all Albertans, including all private landowners in the province of Alberta.

For the minister to stand in his place and say that he will become an advocate of one Albertan over another when it comes to the use of their land sets an unbelievably dangerous precedent for us here. The minister makes no apology for that. That's why, Mr. Chairman, it becomes even more important and more critical that this amendment that I'm proposing as A3 pass and that the minister not be entitled to this temptation to act as an advocate for or to be lobbied by individual landowners in the province of Alberta that will interfere directly with a decision that another landowner has made about his or her private land holdings. It is a phenomenal admission by the Minister of Environmental Protection. It concerns me greatly. I encourage all members to support my amendment.

THE DEPUTY CHAIRMAN: Hon. Member for Fort McMurray.

MR. GERMAIN: Thank you very much, Mr. Chairman. In speaking in support of this very excellent amendment, I want to take a moment, if I might, to draw a word picture in the Legislative Assembly this evening, to ask you if you could see somebody in this situation. A happily married couple farm for many years beside a beautiful lake. The husband dies, and the widow wants to decide what to do with her land, so she separates it from her family, she separates it from selling it for money, and she creates a retreat area, a bird sanctuary beside a beautiful lake somewhere in Alberta. That woman then 10 years later dies. Now, in that scenario let us suppose that the adjacent landowner also has a beautiful piece of lake property, but what he envisages there is a 50-lot, high-priced lakefront project sold to various tourists and individuals who want to have a second cottage along the lake. But the economy of scale is such that he cannot do the subdivision because he needs more land.

Enter the minister of environment stage left. The minister of environment says: well, this is very easy. In 1996 while Albertans snoozed and when the Alberta Liberal opposition was fighting desperately long into the night on May 21 to raise an awareness, what the minister of environment said, his answer to a very excellent amendment, was: well, the people who make the easement grant may die. So that's the end of his issue. Their wishes die with them, if this minister of this environment gets away with his approach to the business of the government in this Legislative Assembly.

It would seem to me that if the minister was concerned about canceling these types of easements, he would make it absolutely clear that any reversionary right would go back to the heirs and the next of kin of the individual whose easement has been taken away. In fact, the minister's own draftsmen thought about that because they built into the wide definition of who is the grantor and who is the grantee all of those successors that you normally have through the evolution of estates or the devise through corporate form.

8:50

So what we have here is the smoking out of a clear and deliberate intention that this government is prepared to sacrifice conservation easements if it is expedient to do so. Now, the hon. minister says: well, we wouldn't do that. That reminds me of that age-old adage: we're here from the government; we're here to help. I don't understand how anybody would be motivated in the province of Alberta to create one of these conservation easements with this type of stricture to it. Yet it seems to me, with respect, Mr. Chairman, that the hon. Minister of Environmental Protection should be encouraging this type of creation, should be going out and promoting this type of creation of wetlands, creation of grassland natural habitat, creation of preserved cairns recognizing some historic spot, creating even a quiet picnic area where people in love on a warm summer day can come and discuss their future together: all of those worthwhile issues and all of that worthwhile agenda.

Now, I see, Mr. Chairman, that you express some concern about my word picture of young lovers coming there on a summer afternoon to discuss the future. I don't know why you would find that humorous, because I can't think of anything else other than discussions of their future that would bring people into a secluded, peaceful wilderness area alongside a beautiful lake to enjoy a conservation easement.

That word picture will not come to pass in the province of Alberta, Mr. Chairman, and the reason is that we have a minister of environment in this particular province now that wants to maintain and retain and regain absolute, positive control. We see it throughout this entire Bill 39: absolute, positive control. This is one more example, this section (7). I'm informed by the Premier that before Bills come here, they're actually reviewed by somebody. How could that be when we have in this particular legislation a statement that "an agreement granting a conservation easement may be modified or terminated . . . by order of the Minister"? That seems to me to be hardly the approach to encourage people to set up conservation easements.

Now, Mr. Chairman, the scenario that I pictured, complete with the young lovers walking in the summertime to the easement area and the beauty of the area, can all come to pass in this province, and there's an easy formula and an easy opportunity for it to come to pass. All we have to do is say yes to the amendment of the hon. Member for Sherwood Park. Now, this is not an amendment that is difficult to comprehend or understand. This is not an amendment that requires extensive legal review. The government has had these amendments for some considerable time. Indeed at the absolute, outside, shortest period of time, they've had them at least since last Wednesday or Thursday.

What the hon. Member for Sherwood Park's amendment does is strike out this nonsense, with respect, Mr. Chairman, of the minister having ultimate control, of the minister having ultimate, unbridled, unfettered, unreviewable, unappealable control. It creates a more reasoned, balanced conservation easement that says that the parties – and that is the parties described very widely by using the words "grantor" and "grantee," which includes their successors, their estates, their corporate directors if it's a

corporate party. They will be able to agree that there is to be a termination or modification but not otherwise. So I urge all Members of this Legislative Assembly to support it both vocally here in the Legislature and outside.

You know, there's a study group from Grande Prairie that phones me every so often, and they tell me that the minister of environment is not fulfilling their needs. They tell me that their own members are not fighting for environmental issues. This is a study group from Grande Prairie that phones me, Mr. Chairman. Now, why do they phone me all the way in Fort McMurray? Not because they like me, not because they think I'm even a kindred soul, but because they are desperate to in some fashion communicate to this government that Bills such as 39 constitute an unbridled, unfettered, uncontrolled, unreviewable-by-the-courts power vested in the minister of environment. No individual should have that much uncontrolled, unreviewable power.

I urge this Legislative Assembly tonight to take this power away from this minister, at least on this particular section, and fairly allow conservation easements to be permitted, uncontrollable by the minister so that he cannot cancel a conservation easement and he cannot by that process alone discourage people from making these worthwhile grants to better and improve the province of Alberta and its green lands and its quiet lands and its forest lands and its sanctuaries for people who are looking for peaceful sanctuary.

So those, Mr. Chairman, are my comments on this particular amendment. I know that there are others to speak who want to be heard on this particular amendment which will, if it is approved, encourage conservation easements in this province rather than the minister of environment's paradoxical approach, which discourages those very items that he seeks to create.

THE DEPUTY CHAIRMAN: The hon. Member for Leduc.

MR. KIRKLAND: Thanks, Mr. Chairman. I will take the advice of the hon. Member for Fort McMurray and say yes to this particular amendment. This amendment comes at a very interesting time. I have one gentleman out in my constituency or close to it – it's actually in the hon. Member from Drayton Valley-Calmar's constituency – who has approached me and asked how he goes about creating a conservation easement. In sitting down to talk with Mr. Gumby, I asked him why he would want to do that first and foremost. I said with my understanding of the way government is working today, certainly they would look at that as an asset and an opportunity probably to unload it. His intentions of creating in this particular case a park or a wetland for the benefit of the area residents there, I would suggest, would be lost, and I see even today with this amendment coming forth, that a gentleman who very generously wants to offer to the province of Alberta two quarter sections of land has no opportunity at all, as I read the existing Act, to ensure that it would stay there.

Now, the hon. minister indicated that it really was to be proven to be in the public interest to override the agreement, but that's not the way the clause reads, Mr. Chairman. It says, "if the minister considers that it is in the public interest." Now, if we were attempting to ensure it was in the public interest, we would set in this Bill some sort of hearing process to ensure it had a fair hearing to determine whether it was in the public interest.

Certainly if something like that was there, some process or procedure whereby if residents or the minister wanted to have a conservation easement revert to the province so they could do with it what they wanted, if there was a public process, if in fact there was a hearing, I could draw more comfort from that, but I don't see that in this particular Bill. I don't see any clause that indicates there must be a hearing. I don't see any clause that would give a grantor an opportunity to ensure the property remained as he had requested. I see no compelling clause to even consult by the minister.

So I am somewhat saddened that we think so little of the environment in this province that the minister would have to retain that ultimate hammer and not give Alberta residents the opportunity to ensure in fact what they have asked of the government in the way of giving them gratis a piece of property to enhance the province but would unilaterally simply override that person's wishes without even a consultation process. So I see this as being a very heavy-handed approach, Mr. Chairman, and I would suggest that it would not, as the hon. Member for Sherwood Park indicated, encourage anyone to leave property to a conservation easement in the hands or the care of the provincial government, because it obviously has the potential to disappear in one day.

More often than not these sorts of gifts are gifts of passion and compassion and love for a specific area. Probably very few in this Assembly know, Mr. Chairman, that Leduc has some very unusual and unique landscape in it: a coulee system that was the outflow of the inland sea so many thousands of years ago. Included in that particular gully system there is some very unusual wildlife and some very unusual hoodoo formations and just very unique environment there. Now, many of those farmers that actually live along that coulee consider that to be a special little place, and they care for it and certainly would with due consideration and good process, I suspect, offer something like that to the province of Alberta as a conservation easement. In light of the fact that the minister could simply override their wishes – and in some cases they will still be with us, not as the minister had indicated. They are not all going to pass along before he can in fact override – and the Bill doesn't say that – that particular grant to the province of Alberta.

9:00

If in fact there is no sort of guarantee or no public hearing or no opportunity to have a minister's order challenged, then I would suspect it certainly will be very discouraging for anybody in that coulee system to offer a conservation easement, Mr. Chairman. I certainly would stand in support of it. We see, as the hon. Member for Fort McMurray indicated, that this Bill is riddled with the minister's heavy-handed powers throughout. That is just simply not acceptable.

[Mr. Tannas in the Chair]

The environment is a very sensitive issue to all Albertans today. It's an issue that is very sensitive throughout the entire world. We in Canada scream and holler about those in South America burning down their rain forests, yet when we look in our backyard, we are replicating many of those very activities. So I would suggest it's very timely to give the people of Alberta a good solid environmental Bill that will encourage them to promote the environment, encourage them to care for the environment, and encourage them certainly to consider such options as a conservation easement. They may be the last true environmentalists left in Alberta, with the mind-set of the minister today, Mr. Chairman. I think that when we look at this, we have to give them the ultimate opportunity of ensuring that their little piece of land, that is so unique or so unusual that they would want to grant it or gift it to the provincial government, has to for some time remain in that state.

Now, I'm sure everyone in this Chamber realizes that there are times when an environmental easement perhaps may work to the detriment of the public good. Certainly I could see where the minister would and should have the right to intervene at that point, but only after due process and due diligence should that happen. None of that due process or diligence is required here. This is simply the thoughts of the minister. Quite frankly, I don't think that's good enough for Albertans. I don't think that we're into dictatorship whereby one individual should have the right to override others and take others where in fact they don't care to be.

From my own experience in the Leduc constituency, in a very recent undertaking and a very recent discussion I had with one of those constituents who was looking at this exact thing, a conservation easement, I would have to report back to him that it would not capture for him the long-term intention he had for the property that he intended to purchase and grant or gift to this province. I think that's truly unfortunate. The minister simply by a stroke of a pen can eliminate what he actually offered in the form of a gift to Albertans, and I think that's truly unfortunate.

If this Bill somewhere in it, Mr. Chairman, had a process whereby the grantor could question or challenge the minister when in fact he wanted to terminate the agreement, then I would be more inclined to support it. It doesn't, and as a consequence I would support the amendment that will ensure that in fact the minister does not have the opportunity simply to wipe out an agreement between a grantor and a grantee and, I would suggest, thereby eliminating in a lot of cases the very reason that Albertans would grant or gift a property to the province of Alberta.

MR. COLLINGWOOD: Mr. Chairman, just one more comment. The minister in entering debate this evening said that there were a number of Albertans out there who said that they were concerned that if private land became held under a conservation easement, other landowners beside that particular landowner may have a concern with that. What would happen then? How could that issue be resolved? So the minister has reserved unto himself the right to interfere on behalf of a landowner who doesn't want the conservation easement there anymore.

I offer the minister a different scenario. Let's assume that one landowner on one side of the conservation easement doesn't want that conservation easement there anymore, and he comes to the minister and says, "Mr. Minister, let me take you out for dinner, and let me convince you to exercise your unilateral and unfettered power and cancel the agreement that my neighbour made with a grantee." Now, on the other side of the landowner is another landowner, and he says: "I don't want that conservation easement to be removed. I want that conservation easement there because it enhances my land." Now you have a landowner on the other side coming to the minister and saying: "Mr. Minister, don't remove that conservation easement. It enhances all of the land in the area regardless of what the neighbour on the other side says about the removal of the conservation easement." That kind of scenario is probably more likely, so the minister is not simply going to act in isolation or in a vacuum. He is going to be lobbied by both sides to the issue, those who would want a conservation easement to remain and those who would want a conservation easement to go.

There's nothing in this amendment put forward by the minister that gives anybody any indication that there's notice that the minister intends to exercise his discretion. How will a neighbouring landowner know that a conservation easement is going to be terminated by the minister unless they go and check the land titles record? So the minister is simply going to accept and invite abuse of these matters as between private individuals. He is inviting abuse by saying, well, if you don't like the conservation easement that's beside you out there, just come and have a chat with me and take me out for dinner, and I'll see what I can do about it.

For the life of me, Mr. Chairman, I can't understand why this government would allow a minister to be put in the position of having to pick sides between Albertans. Who would he advocate for? Would he advocate for the landowner who wants the conservation easement terminated, or would he advocate for the landowner on the other side who wants the conservation easement to stay because it enhances his or her property on the other side? That is a more plausible scenario, and I can't understand why the minister would be put in that position, to have to make those kinds of decisions to advocate for one Albertan over another Albertan, and why the minister would invite abuse with this kind of provision put in.

Mr. Chairman, those are my comments, and as you can appreciate, this particular power that the minister keeps for himself is of major concern to myself and my colleagues.

[Motion on amendment A3 lost]

MR. COLLINGWOOD: Mr. Chairman, on the sheet before you we do not have to move amendment 3. I would advise the Chair that amendment 3, which you would have called A4, was dealt with in the government amendment A1, both dealing with section 7 of Bill 39 amending the provisions of section 36(2). I will not be moving amendment 3 on my sheet. I will be moving amendment 4, which for purposes of your records would be amendment A4.

Mr. Chairman, this particular amendment speaks to section 8 of Bill 39, and this particular section amends what is currently section 64 in the Environmental Protection and Enhancement Act. Now, the section, as it is currently worded, is being I guess expanded somewhat in terms of when someone has to come back to the minister for an amendment to their approval for an activity. That currently exists in section 64. The amendment repeals the whole of section 64 and replaces it with what we find in section 8 of Bill 39. What we're talking about here is that a person cannot, with respect to an activity, change that activity unless there's an amendment to the approval where the director authorizes that change.

9:10

Now, the area that is of concern to me is subsection (3) of the proposed section 64 in that there are several provisions where subsection (1) will not apply. In other words, the approval holder does not have to come back to the director for an amendment to the approval in the circumstances that are set out in (3). Now, for all of those aspects that are there, some of them we can agree with and some of them we can't, but it would be my guess, Mr. Chairman, that the reason this is coming forward in this form is that this is part and parcel of the minister's wholesale deregulation of the Department of Environmental Protection to do what he calls the streamlining of the processes that business must go through in their operations.

Now, I have no trouble with subsection (b): "changes that do not result in the release of a substance into the environment." My colleague from Calgary-Mountain View and I perhaps disagree to some extent in that I can think that there may an activity that could result in an adverse effect to the environment that is not

necessarily a release. There are a number of activities, Mr. Chairman, that are listed on the schedule of activities in the Environmental Protection and Enhancement Act that do not all relate to the release of a substance into the environment. You can go through the list of what is an activity that requires an approval. In fact, in section 5 there is a whole series of descriptions relating to reclamation.

Let's assume that you are reclaiming a waterworks system. Let's assume that what you may have in terms of a situation that could cause an adverse effect on the environment is the shutting off of water. Where the normal circumstance is water flowing, the abnormal circumstance is water not flowing. That would not be a release into the environment, but it would certainly be an adverse effect on the environment if the flow of water was the norm.

We have the kind of circumstance that is potentially caught in subsection (c) but, then again, maybe not: "short-term testing or temporary modifications to machinery, equipment or processes that do not cause an adverse effect." Well, let me assume for a moment that when the Minister of Environmental Protection allows the Kananaskis River to stop flowing because of some work at a dam project upstream, that causes an adverse effect to the habitat and to the fish populations in the Kananaskis River. That's not a release of a substance, but it is an adverse effect. Rather than nit-picking our way through subsections (a), (b), (c), (d), and (e) of subsection (3), and while it's fine to leave all of those in there, my suggestion in the form of amendment A4 is to add a new section that simply says that subsection (1) does not apply to "changes that do not, in the opinion of the Director, cause an adverse effect on the environment."

The benefit of this particular amendment is that the director does not then have to scour all of the subsections to determine whether or not that change that's being proposed by the applicant falls into one of those particular categories. In other words, the test for the director is that if it causes an adverse effect on the environment, in his opinion, then it requires an amendment to the approval. We don't have to go through all of the various tests. We don't have to determine whether or not it's a minor change to a reclamation plan or a change in the type of equipment and so on. Fine; those are all okay, but let's make the test whether or not there is an adverse effect on the environment. Let's not try to dance around the edges of that particular issue by talking about

> (a) adjustments, repairs . . . maintenance made in the normal course of operations,
>
> (b) changes that do not result in the release . . . into the environment,

those kinds of things where both the applicant and the director then have to determine whether or not subsection (1) is outside or inside of what they're doing.

Through direction and leadership of the Minister of Environmental Protection, if the change is going to have an adverse effect, whether there's a release into the environment or not, that is enough for the director to say that an amendment to the approval is required. If in fact, Mr. Chairman, the position of the government is that environmental protection comes first, even with the minister's wholesale deregulation of the environment, then give the director the ability to determine whether or not a change to an approved activity causes an adverse effect on the environment. If it does, the minister or the director then has the ability to say, "You require an amendment to your approval."

That is the simplest, the most commonsense approach to the changes that the government is proposing to section 64 in section 8, repealing section 64 of the Act and adding a new section 64. If we put that into subsection (3), we solve all of our problems. We don't have to look at whether or not there's a release of a substance. We simply say that the test is an adverse effect on the environment, and from there we move on.

So again, Mr. Chairman, if the government says that environmental protection is its first priority under the Environmental Protection and Enhancement Act, I don't see how the amendment could cause the government or the sponsor of the Bill any difficulty. It gives the government some reasonable latitude and flexibility here to determine whether or not there is an adverse effect on the environment, and the director can respond accordingly, as the director should in his position, acting for and on behalf of the Minister of Environmental Protection.

Mr. Chairman, those are my submissions and my comments relative to amendment A4. Again, I think that it's a natural progression in terms of subsection (3). I don't see why the government would have any difficulty with it. It just makes it that much better a particular section by putting the environment first.

Thank you.

MR. GERMAIN: Mr. Chairman, in the last very important amendment I spoke of the minister's unbridled power. This amendment strikes at a more fundamental question. This amendment strikes at whether we should have an environmental department at all. If we are going to have an environmental department, we should put teeth in it. The public should come to expect that people will not be able to offend the rules of, if I could use the phrase, natural environmental justice and get away with it. And if they have an undertaking going on in this province, they will, if they want to amend or modify it, seek and obtain proper approval.

Now, that's what the face value of the section appears to say, but what in reality this section does is create extensive and very wide-reaching loopholes that allow the process to be circumvented. Some of the loopholes raise some very interesting questions. They raise questions about whether or not the undertaking that is sought to be amended or varied is really an insignificant minor adjustment for which no environmental approval will take place or whether it is highly significant.

The hon. Member for Sherwood Park takes the position that some of these amendments are highly significant, but in fairness he's going to come forward with an amendment that should stickhandle around the government's objectives in this Bill and also provide some additional enhanced environmental protection. The amendment proposed by the hon. member simply indicates that if there is an adverse effect on the environment, if the director is directing himself reasonably and properly as a proper director in this section would, that director cannot, then, exempt the operation from obtaining the appropriate environmental approvals.

If you look at this section, if people were to come into this Legislative Assembly and be turned around – you know, like a child's game where they blindfold somebody and turn them around – and then they were given this amendment and asked, "Who put this amendment forward, the minister of the environment or the opposition critic of the environment?" nine out of 10 people would say that the minister of the environment put this amendment forward, because this is a protective amendment that protects the province of Alberta and its environmental fibre, its environmental scope of activity. What we have here is an amendment that will serve to ensure that the director knows that if there is an adverse environmental effect on the environment,

you cannot use the exclusions that are found in this particular section of the Bill.

9:20

I want to leave the Members of the Legislative Assembly with that thought process, Mr. Chairman, because we have here a situation where a good amendment should be endorsed by both sides of this Legislative Assembly and not voted down in a kind of robotlike, routine way just because it comes from this side of the Legislative Assembly. There is no downside to the minister of the environment adopting this particular amendment. If the minister of the environment in fact intends to vote against this amendment, he should stand up and tell the House clearly and cogently why he is voting against this amendment. The minister of the environment I know is reading the amendment now in relation to the section of the Act, so I will draw his attention again to the section of the Act found on pages 8 and 9, in which there are certain subsections relating to the changes of approval and getting the authorization for it. What we have here – and I know the hon. minister is busily reading the Act and the amendment now and looking carefully at the wording of the Act and carefully at the particulars of the amendment and looking to see if there are any pictures that help explain the particular amendment. I see him studying, and he's now fallen on the words. He's now ready to read the words, "(b.1) changes that do not, in the opinion of the Director, cause an adverse effect on the environment."

So what I would strongly urge the hon. minister to do if he intends to vote against this particular amendment, which serves to protect the people of Alberta and their environment, is that he should then stand right up and say why he is not going to vote in favour of this particular amendment. With the opportunity that he now has, Mr. Chairman, to explain why this good amendment does not have his approval and his support, I will take my place and allow him to answer, because I know he's been preparing very vigorously, reading the appropriate literature in preparation for his comments on this amendment.

[Motion on amendment A4 lost]

THE CHAIRMAN: The hon. Member for Sherwood Park.

MR. COLLINGWOOD: Thank you, Mr. Chairman. We move to section 22 of Bill 39. This particular amendment members will want to follow carefully. It comes back to the procedures that the minister is proposing for the Environmental Appeal Board and is part of what I suppose one could call the choke-chain provisions for the Environmental Appeal Board.

Now, as it currently stands under the legislation, Mr. Chairman, section 86 of the Act allows for the conduct of a hearing of an appeal. So when a matter comes before the Environmental Appeal Board, the obligations of the Environmental Appeal Board are to "convene a panel" within the time prescribed, appoint the chairperson, "set a date for the hearing of the appeal, and conduct the hearing of the appeal." One of the aspects of the section as it currently stands is subsection (3), and that says "the Board may, with the consent of the parties to an appeal, make its decision . . . without conducting a hearing of the appeal." So as it currently stands, the processes of the Environmental Appeal Board allow for the board to make its decision based on submissions that do not come to it by virtue of an actual hearing in front of the Environmental Appeal Board. That's actually fair enough the way the legislation stands right now. If the parties to the matter agree that a hearing is not necessary, that the board or the panel can make its decision based on, for example, written submissions, and the board has the consent of those parties, then the board should carry on and do that in a manner that's expeditious and is saving both of the parties in terms of time and in terms of cost.

What the minister is now proposing is that all of that be chucked out the window. The minister now wants to put in a new section that says that "on receipt of a notice of objection the Board shall conduct a hearing of the appeal." Interesting that the section says the board "shall" conduct a hearing of the appeal. But what's interesting, Mr. Chairman, is that the minister then goes on and he says:

> In conducting a hearing of an appeal under this Part the Board is not bound to hold an oral hearing but may instead, and subject to the principles of natural justice, make its decision on the basis of written submissions.

As the Act currently stands right now, the parties can control the process to some extent. The board can say to the members or to the parties to the appeal, "Can we proceed without a hearing?" The parties say, "We can proceed without a hearing," and so the board says, "Then let's move on." Now he's turned the tables around so that the minister is saying, "Well, board, you shouldn't be conducting oral hearings; you should simply base your decision on written submissions."

Now, what's interesting about this, Mr. Chairman, is that when you think about the current structure of the Environmental Appeal Board – and I referred to this last week – for any decision that is a substantive decision of the Environmental Appeal Board but not the procedural decisions, not the decisions about who has standing in front of the tribunal, who is directly affected, or is the matter frivolous. Those kinds of decisions are decisions that the board makes. But any decision of substance is not a decision of the board; it is a recommendation of the board to the minister. The minister then has the ability to confirm the recommendation of the Environmental Appeal Board, change the recommendation of the Environmental Appeal Board, or simply go completely in the opposite direction from the Environmental Appeal Board and, without any reasons whatsoever, reject the recommendation coming out of that tribunal's hearing.

What we now have in section 86 as the minister is proposing it now, Mr. Chairman, is that he is once again inviting the Environmental Appeal Board to stifle public involvement through its process. The minister will in all likelihood squeeze the chain a little tighter in terms of the budget for the operation of the Environmental Appeal Board. If the budget isn't there for the conduct of a hearing, then I guess the board won't have much choice. They'll have to simply take written submissions, and the parties will have to say: "Well, I'm not sure that that is actually within the parameters, the principles, of natural justice. We would like the opportunity for cross-examination, but the Minister of Environmental Protection really doesn't want public input in a full, open, and public hearing process." So the board will have to simply look at submissions behind closed doors.

It will be interesting, Mr. Chairman, to see, once the minister pushes through this particular amendment – notwithstanding that I will encourage all of my colleagues to support the amendment that I'm about to move, which will be amendment A5 – how participants in the environmental appeal process are going to interpret the new section 86 and the old section 87(6) which, curiously, the minister is not amending. Section 87(6) says that

> the Board shall, consistent with the principles of natural justice, give the opportunity to make representations on the matter before the Board to any persons who the Board considers should be allowed to make representations.

Will that be interpreted in the confines and in the context of the

new section 86, or will there be some confusion as to whether or not in fact an oral hearing is required as opposed to optional and whether or not the parties to that appeal have the ability to test witnesses, to enter into cross-examination as well as examination in chief so that there can be a full and open and fair hearing process into the matter that comes before the Environmental Appeal Board by way of appeal?

9:30

What this amendment does, Mr. Chairman, is basically say: "Look. Let's recognize that the Environmental Appeal Board is really not much more than a facade in the first place. All we have in the Environmental Appeal Board is this sort of perception, this vision, this illusory forum that says that we're interested in and concerned about environmental issues. We're concerned about the public's involvement, so we're going to give you this Environmental Appeal Board." But it's such an incredible, toothless tiger. All it can do is make recommendations to the minister, who will then choose whatever decision he wants anyway, regardless of what the recommendation is that comes from the Environmental Appeal Board to the government.

So now we have a situation where the minister wants to make this particular change and stifle the Environmental Appeal Board even further. They now want the Environmental Appeal Board to simply sit at their desk in their offices and wait for the mail or the courier to arrive, and they want to be able to call that the open and public fair hearing process that complies and satisfies "the principles of natural justice." I think the minister's going to have a pretty hard time with this one, myself, when a board determines on its own, without any representation from the parties to the hearing, that they can move forward on hearing the matter on the basis of written submissions rather than on the basis of an oral hearing.

So what I propose is that we strike out section 86. If we do that in Bill 39, then section 86 as it currently stands in the legislation will be the status quo and will remain in place as it currently stands. If we take away section 86 and the stifling of the Environmental Appeal Board through this section, the section as it currently stands will remain so that when a notice of objection is received by the board, their obligations under the regulations are to

(a) convene a panel of Board members . . . appoint . . . [the] chair . . .
(b) set a date for the hearing . . . and
(c) conduct the hearing of the appeal.

If the parties consent that the matter can be dealt with by written submission rather than oral hearing, then indeed the board can decide that will be the process they will undertake for purposes of that particular hearing. But the change being proposed in section 86 completely ignores all of the parties to the appeal and allows the Environmental Appeal Board to make that decision on their own.

I think this is a step backwards, quite honestly. When we talk about the government's new-found position in the wholesale deregulation of environmental protection, when we look at all of the evidence of how the minister is attempting to squeeze out and push away the public and their involvement in environmental decision-making processes, this is one more piece of evidence that goes toward that submission, certainly to myself, that it's the government's intent to push aside the people of Alberta, that they don't want them involved in environmental decision-making in the province of Alberta. This is one of those amendments that speaks volumes about that new intent of the government.

My proposal, therefore, Mr. Chairman, is to eliminate section 22, strike out the proposed section 86, stick with section 86 as it currently stands in the Act, give the parties an opportunity to have some input in the decision-making of whether the matter is heard through oral or written submissions, and let's stay with what we've got because what we've got works, and what we've got says from the government's perspective who appoints the Environmental Appeal Board, "Yes, your involvement and your input has some merit and some aspect of positive contribution to the environmental decision-making process in the province of Alberta."

So, Mr. Chairman, with those comments, if I haven't yet for your purposes moved amendment A5, I do so now, and I will look forward to other members joining in debate on this particular amendment to stay with one of the strengths of the Environmental Appeal Board and not make this particular attempt at weakening the Environmental Appeal Board.

Thank you.

THE CHAIRMAN: The hon. Member for Fort McMurray.

MR. GERMAIN: Thank you very much, Mr. Chairman. I want to also commend the hon. Member for Sherwood Park for his persistence in coming forward with amendment after amendment, receiving negative result after negative result. I well know that feeling here in the Legislative Assembly, but I think that it is commendable that he struggles on not for himself, not for his family perhaps, but for the greater and total family of the province of Alberta, for the desire to protect this province against environmental concerns and against those people who would perhaps take advantage of loose environmental protection laws in the province of Alberta.

Now, this particular amendment, Mr. Chairman, is an amendment in its simplicity. It simply re-emphasizes the old adage: if it ain't broke, don't fix it. That's what the hon. Member for Sherwood Park is saying: if it ain't broke, don't fix it. We have a workable system of appeals and a workable system by which a board approval can be obtained, as contemplated in the old section 86 of this Act. There could be no rationalization for the new section 86 unless it is clearly intended that there will be even less public scrutiny of matters that involve environmental concern in the province of Alberta.

This particular amendment does away, theoretically, with the requirement to have a hearing. It does away with the requirement that there be a 90-day notice period, if there is going to be a hearing or not, and it does away with basically the necessity to obtain the consent of all of the applicable parties. Now, if you look at the old section 86(3), the board only "with the consent of all of the parties" could "advance the date set for the hearing" or could give a ruling "without conducting [the actual] hearing of the appeal" – only "with the consent of all of the parties."

[Mr. Herard in the Chair]

In the new amendment, Mr. Chairman, this particular section has been watered down to the point where now the board can simply decide if they're going to have a hearing. They can decide how quick it's going to be. They can decide if there are going to be any notices. They can make all of those procedural decisions, and in doing those procedural decisions, they can completely ignore the rights of interest groups. They can completely ignore individual groups that are set up to protect the environment, that

provide a sober second thought on environmental issues.

All of this begs the question: why? Why would the Minister of Environmental Protection, whose job is to protect the environment, come forward with this type of regulatory reform? Why would he weaken and further erode the public perception of board hearings under this particular legislation, where people often have an opportunity to come before the board and express their point of view about wilderness areas in this province, about development of their farmlands right next door to them, about the bridging and closing and damming of little roads and creeks and streams for the purpose of winter roads, issues as to how long oil exploration will take place in caribou birthing areas of the environment, and all of those important issues that Albertans feel moved and concerned about to come forward and speak their mind at boards set up to hear those comments? This minister of the environment has simply taken those built-in protections and has eroded them further.

9:40

If there was any constructive criticism about the old section 86(1), it's that it was not proactive enough, Mr. Chairman, in ensuring that environmental groups and citizens concerned about the environment could have an opportunity to speak their piece. Now, when those same groups see this section, they will find themselves asking why we in the province of Alberta even have a department of the environment. If this minister is not interested in it, he should write a letter to the Premier indicating that he is not interested in protecting the environment and tender his resignation, and let's get any one of the good quality members of the Legislative Assembly, some of them chafing for a chance to be in cabinet and earn those high cabinet salaries, many of them, not some of them, chafing for that opportunity. They could come forward with legislation that would truly both protect the environment and appear to protect the environment. I do not, Mr. Chairman, for the life of me, understand why a minister of the environment would come forward and erode one of the few avenues of public hearing and public appearance that they have in the whole environmental scheme of regulatory control.

Now, this section is, with respect to those who hold a contrary view, an embarrassment.

> In conducting a hearing of an appeal under this Part the Board is not bound to hold an oral hearing but may instead, and subject to the principles of natural justice, make its decision on the basis of written submissions.

Of course, that is a very, very subjective test, not an objective test. I want to ask the minister who it was in Alberta that was pressing for this type of change. Which organization, which group, which developer did not even want to take the time to show up at a public hearing and be asked questions about the scope of the development, be subjected to cross-examination about the scope of the development, and any of the other avenues to elicit information that might exist?

I would urge all members of the Assembly to support the hon. Member for Sherwood Park in his quest to improve this Bill by voting in favour of this particular amendment and striking out section 22 of the proposed amendments so that the old section 22 will continue to apply in this province. This will not cause the sky to fall, Mr. Chairman. It will simply restore, although perhaps weak in the eyes of some people, at the least the balance and the opportunity of having a public hearing.

Those are my submissions on this particular section of the Bill. I know there are others that are ready to speak, Mr. Chairman, so I will take my place.

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

MR. DICKSON: Mr. Chairman, thanks very much. I'm pleased to join debate in support of the amendment. As other speakers have suggested in the past, if there's some particular mischief that the government hopes to remedy with section 22, it would be useful if they would share that with us. Many of the difficulties have already been highlighted, but one of things that strikes me is that in section 86(2) there's no requirement for

> an oral hearing but may instead, and subject to the principles of natural justice, make its decision on the basis of written submissions.

Now, what do the legislative draftsmen mean when they talk about "principles of natural justice?" We have in this province a statute rarely used, even more rarely cited, called the Administrative Procedures Act. This statute which appears at chapter A-2, was created a number of years ago, decades ago, to try and give some definition to process that could be followed by the dozens and dozens of regulatory tribunals we have in the province of Alberta.

Now, one would think that if there were some compelling reason to move away from past practice, the old section 86(1) and (2) in Bill 39, there would have been some careful consideration going to import the elements of the Administrative Procedures Act. That is not the case, and in fact the election has been made, for some reasons which have not been disclosed in the Assembly to date, to eschew or avoid the very clear and codified practice in the Administrative Procedures Act and instead opt for something called the principles of natural justice. Well, I don't think a government that is committed to plain language should be contemplating putting in something that is as problematic as the phrase "natural justice." Here we go again. Apparently the government expects that Albertans are going to have a copy of Jones' and De Villars' textbook on administrative law and are somehow going to be able to access that, go through and understand what natural justice is understood to mean by the courts in Alberta in 1996 or in successive years. What the government purports to do with 86(2) is import a huge amount of uncertainty, and that makes little sense. That's one of the problems with it.

The other problem that comes to mind: the argument's been raised before that by going away from a requirement of an oral hearing save and except for those cases where all parties consent, what you're doing is potentially depriving the appellant of some of the remedies that would be available, for example, under the Administrative Procedures Act. Under that Act not only is the requirement in section 3 that notice be given but section 4 of the Administrative Procedures Act would have been a better way of ensuring that the authority would give reasonable opportunity to a party to furnish relative evidence, would inform the party of certain facts, would "give the party an adequate opportunity to make representations by way of argument to the authority," would through the operation of section 5 allow a party to contradict or explain facts, to be able to cross-examine the person making statements that constitute the facts or allegations. The right of cross-examination is a key element in the Administrative Procedures Act. It's certainly not anywhere to be found in Bill 39. That's one of the reasons why I think this amendment is so critically important.

Mr. Chairman, there are other provisions in the Administrative Procedures Act that I think would provide us with much better protection, and anybody who has a particular interest in the working of the Environmental Appeal Board I expect would be

much happier with those rights and procedures set out in the Administrative Procedures Act. Clearly, there's a very major problem with section 22. What's the mischief that would warrant this extraordinary kind of deprivation of Albertans of certainly fairly fundamental rights? We don't know what that is, and it seems to me our job in the Legislature would be to oppose efforts to hurt the property rights of Albertans, to hurt basic rights of Albertans, in the absence of clear, compelling, cogent reasons. We don't know what those reasons are, so it seems to me that is reason to support this particular amendment and will require this kind of change.

I'd just reinforce the point that's been made by previous speakers that because the decision of the Environmental Appeal Board is final and binding because of the privative clause that effectively restricts any further acts, any further recourse to the courts, it is all the more important that we invest with the procedure in front of the appeal board at the first instance the full code and the full range of remedies, of rights, of procedures. That can only happen, I suggest, by supporting this amendment, repealing section 22 as it currently stands on page 14 of Bill 39. Then I'd even go further and suggest that once that's been done, we look very carefully at perhaps building in some of the processes set out in the Administrative Procedures Act. There are some remedies there that I think could be used to good effect.

9:50

Those are the comments I wanted to make. I just say again that I think this is a very constructive, positive, and helpful amendment. It's an amendment that I think would warm the heart of every property owner and every Albertan concerned with fair treatment and the appearance of justice as well as the actual justice being meted out by the Environmental Appeal Board.

So, those are the comments I wanted to make, Mr. Chairman. Thanks very much.

MR. KIRKLAND: Just a few brief comments, Mr. Chairman, if I might. It's very difficult to follow this tag team of lawyers ahead of me, but I'll have a go at it anyway.

I'd stand in support of the motion. The motion really says that proposed clauses 86(1), (2), and (3) be struck. Now, when I look at 86(1), (2), and (3) under the new, as I will call it, and the old, what this amendment is proposing is that the new be set aside and that we should embrace the old. When I look at the old clause 86, I find it far more thorough. Certainly it has a tendency to be clearer in its definition of process, and it certainly does not thwart Albertans' attempts to ensure that the environmental concern they would like to address has a good appeal. When I say that, I compare very clearly clause 86(1) under the new, proposed and 86(1) under the old. The new says: "On receipt of a notice of objection the Board shall conduct a hearing of the appeal." Now, there is no identification of a time constraint within which that appeal must be held, so in fact if the board wanted to be mischievous, they hold it 15 years from now.

The old says:

> Subject to this section, on receipt of a notice of objection the Board shall, within the period of time prescribed in the regulations,
> (a) convene a panel of Board members to hear the appeal and appoint a person to chair the panel,
> (b) set a date for the hearing of the appeal, and
> (c) conduct the hearing of the appeal.

Now, that very clearly sets out some time constraints, and I think that's very critical, and it's very important. Just to state that an appeal shall be heard without any sort of limitations or restrictions as to when, in my view and with the mind-set of this sitting government, Mr. Chairman, could clearly be as I indicated: the appeal could be set 15 years down the road. So the problem is never addressed in that particular sense.

When I look at – and I'll refer to it again as 86(3) new – clause (3) and compare it to the old clause (3), the new says:

> The Board, may, with the consent of the parties to an appeal make its decision under section 90 or its report to the Minister without conducting a hearing of the appeal.

Now, I think that's certainly, Mr. Chairman, not nearly as thorough as the old.

> The Board may, with the consent of all of the parties to an appeal,
> (a) advance the date set for the hearing of the appeal, or
> (b) make its decision under section 90 or its report to the Minister without conducting a hearing of the appeal.

Mr. Chairman, when we weigh those two clauses on a very basic comparison, in my mind the old 22, as I referred to it, clearly is the better process. It is a better defined process. It ensures Albertans will have due process to have an appeal hearing if it's launched. The new that's being proposed in my view erodes that very, very important process where in fact a party may in fact appeal.

I know, Mr. Chairman, when we look at the rest of this particular Bill where the minister wants to accumulate the ultimate power-making at his desk and erode the Act in entirety, that 86 new as proposed certainly fits into that regime or that philosophy. However, when we look at the environment and we look at individuals within this province that clearly should have a process in which to appeal a government decision in regards to the environment or a decision that's made that will impact upon the environment, that should be clearly defined, and that process should be clearly laid down. The new clause 86(1) quite frankly is a very nebulous clause. It will not give Albertans the opportunity to ensure that an appeal is heard. It is worded, as I read it, to ensure that an appeal can be set aside or could be set at such a distant time frame that it will have no impact.

So, Mr. Chairman, I would certainly stand in support of the hon. Member for Sherwood Park's amendment A5. I would ask all members to give it due consideration.

MR. VAN BINSBERGEN: Mr. Chairman, I would just like to share the joyous news that the by-election in Redwater, which was termed crucial by the Premier, has been won by the Liberal candidate, by 200 votes.

Thank you.

[Motion on amendment A5 lost]

THE ACTING CHAIRMAN: The hon. Member for Sherwood Park.

MR. WOLOSHYN: Sit down, Bruce. We're tired of it.

MR. COLLINGWOOD: Thank you, Mr. Chairman. The Member from Stony Plain has just indicated to me he'd like to enter into debate on some of these amendments, and I'm going to encourage him to do so. Rather than asking me not to speak, he's moved me now to speak even further.

So, Mr. Chairman, we move now to amendment 6, which you will call A6. This speaks to an amendment to section 23 of Bill 39. Now, this is the amendment put forward by the minister that

I call the frivolous and vexatious amendment, or perhaps more appropriately the paranoid amendment. As it currently stands under the Environmental Protection and Enhancement Act, the Environmental Appeal Board can dismiss a notice of objection if they feel that the notice of objection has come to it is a "frivolous or vexatious" complaint to the Environmental Appeal Board. On that basis they can dismiss the appeal.

Now, I challenge any member of this Assembly to give me a circumstance where something could be frivolous or vexatious and still have merit. What the minister and I guess the government in its paranoid state about environmental protection and what that means to Albertans is attempting to do is now to add a new section. So we're now going to have the Environmental Appeal Board saying: we will dismiss the application if it's frivolous, which means it's without merit, or if it's vexatious, which means it's without merit, or if it's without merit. Well, this is setting an incredibly dangerous precedent. The minister cannot have it all ways. It is frivolous or vexatious, and on that ground and that basis the application or the notice of objection is denied. What in the world could the minister or the government be thinking when they wanted to add the words "or without merit"? Those are without merit. That's exactly what it means: it's without merit.

So does the minister now want to impose upon the Environmental Appeal Board some other standard, some other approach so that it may not be frivolous, it may not be vexatious, but the board gets to dismiss it anyway and give nobody the right to have the matter heard because the board is saying that it's without merit. Anything that is not frivolous and is not vexatious deserves a hearing on the merits of the objection before it. It has to be on the merits. There is no other exclusion. Anything else that is not frivolous and not vexatious deserves a hearing on the merits of the complaint put forward to the Environmental Appeal Board.

This whole amendment is frivolous and vexatious because the whole amendment is without merit. The section as it currently stands is just fine, thank you very much. If you can get over your paranoia, the protection that the Act currently offers to the Environmental Appeal Board to control its own process is just fine. They can determine whether it's frivolous. They can determine if it's vexatious. If they do so conclude that it's frivolous or vexatious, they are in fact concluding that it is without merit. It is as simple as that.

10:00

Mr. Chairman, I don't want to get into using unparliamentary language, but this is a pretty stupid amendment. That is the way I think this particular amendment can be summed up. I'm certainly not prepared to sit back and let a stupid amendment like this go through. So I'm proposing an amendment. I'm proposing amendment A6, and that is that you just simply get rid of it and let the Environmental Appeal Board continue with its jurisdiction to decide whether something is frivolous or vexatious. If they do, that means it's without merit. We don't need this stupid amendment in Bill 39.

Thank you.

MR. GERMAIN: You know, the phrase "without merit" is always in the eyes of the beholder or the ears of the listener. It is in my respectful estimation, Mr. Chairman, wrong for the government to put further roadblocks on those people who have taken the time, taken the concern and have filed or raised an objection.

DR. WEST: It's not a transportation issue.

MR. GERMAIN: Now I can see that the minister of transportation, all invigorated here after the quality of the debate he's listened to tonight, is tensing up, is getting ready. He's been buoyed by the by-election results in Redwater, and he's getting ready to enter this debate on the Bill that supposedly is to protect the environment. The Environmental Protection and Enhancement Amendment Act, 1996, is the title of the Bill, hon. minister.

That's the title of the Bill. You know, you really have to go back and look at this title often to remind yourself that that's what it is. So far today in this particular Bill we have pointed out all of the glaring situations where the protection of the environment has taken a backseat to political expediency: shortcut hearings, reduced the number of opportunities for people to object to environmental concerns . . .

DR. WEST: I thought you were talking about roadblocks.

MR. GERMAIN: I'll come back to roadblocks, hon. minister.

. . . reduced the opportunities that people have to come forward and express their environmental concerns. When you make it difficult for somebody to come forward and express an environmental concern, when you make it harder for them to get to a hearing, when you make it harder for them to participate, you are in effect putting up roadblocks in the traditional English definition of that word "roadblock."

The hon. Member for Sherwood Park has to be commended here at 10 o'clock at night for standing up and fighting for the environment. One of the things that they tell you when you enter first-year law school, Mr. Chairman, is they tell you to never, ever, ever – never, ever, ever, never, never, never, ever, ever – prejudge an issue. Listen very carefully till you have all of the facts. Consider everything carefully. Keep an open mind. Then, after you think you've made a decision, pause, reflect, give it some sober second thought, and think about it again. That's what they teach you in basic first-day – first-day, not first-year – law school. So the hon. Member for Sherwood Park, who attended first-day law school, remembers that, and he knows that you do not prejudge an objection up front by determining that it is without merit. If you were to determine that, then you would in essence have prejudged that objection.

Now, we all have a sense of what frivolous or vexatious is: it's utter nonsense. To vest the board with some discretion to bounce objections that are based on frivolous or vexatious grounds makes some sense. There's a parallel in fact for that in the courts. But to bounce an objection because it is without merit presupposes a level of subjective assessment on that particular objection that may not in fact be borne out with the passage of time, Mr. Chairman. So why would we want to add a further roadblock to who can or can't make objections to these particular hearings? Without merit can in its most dilute form be construed as meaning not likely to succeed. Why would we ever want to set up an environmental protection Bill where people who oppose and object could simply be denied their opportunity to appear, to be heard, to speak on the issue simply because it is not likely that they will succeed? The words "without merit" are capable of that wide a definition, and it is wrong to take somebody's opportunity away before they have even had a chance to be heard.

So I urge all members of this particular Assembly to vote in favour of this amendment and to put back some balance. To myself – and there may be others that speak on the significance of the words "without merit" – to have a prejudgment where an objection can be ruled out of order and the people not even have

a chance to present their case because it is said to be without merit is tantamount to saying: we won't let you speak because we think you might lose. That is simply wrong, and I urge all members to vote for this amendment and correct the minister's obvious error in this.

As for the hon. member who sponsored this Bill reminding us of the title, you will forgive us if we forget the title of this Bill. The title of the Bill is supposed to be the Environmental Protection and Enhancement Amendment Act, 1996, but there is nothing in here to protect the environment in the traditional way that society has deemed that it's necessary to be protected.

That concludes my comments, because I know that there are other members of this Assembly who are at the edge of their seats waiting to jump up and address this Assembly on this issue.

MR. DICKSON: Mr. Chairman, it's funny. Just moments ago I was looking at the title of the Bill and thinking that the notion of protection and enhancement is exactly the point that ought to be made. If there were a section of Bill 39 that worked counter to protection, counter to enhancement, this clearly would be the section, section 85(5)(a)(i).

To give the benefit of the doubt to the sponsor of the Bill, Calgary-Mountain View, it may be that somewhere there's a court decision, some case where there's been a problem in the past where something that was neither frivolous nor vexatious was causing a bit of a problem. If that's the case, then I'd encourage the Member for Calgary-Mountain View to tell us what that is. On the face of it what we see if this amendment does not carry is that we expand the power of the board to deny people a hearing.

A few moments ago we talked about an amendment to strike out a provision that would substitute natural justice for a guarantee of a hearing. Now, we see the ideal and perfect companion to it, an enlarged capacity on the part of the board to dismiss notices of objection not because they're frivolous or vexatious but because they're found to be without merit, perhaps arbitrarily, perhaps without adequate foundation. It's an extraordinary amendment, not one that I would expect any member in the Assembly could accept in the absence of some compelling reason. I've asked for this before with respect to some of the other amendments that we've seen: what possible reason could there be for expanding this shortcut, this ability for the board to dismiss complaints summarily, which is exactly what happens without a hearing? It's a denial of a hearing. This is a denial of fundamental justice. I think that's a compelling reason why the amendment ought to be accepted, and I'd encourage all members to do exactly that, Mr. Chairman.

[Motion on amendment A6 lost]

THE ACTING CHAIRMAN: The hon. Member for Sherwood Park.

MR. COLLINGWOOD: Mr. Chairman, thank you. I'll press on fighting for the environment late into the night in the Legislative Assembly of Alberta on May 21, 1996.

MR. DUNFORD: Big deal.

MR. COLLINGWOOD: The Member for Lethbridge-West says: oh, big deal, hon. member, big deal. That's what the Member for Lethbridge-West thinks of making an attempt to improve legislation on environmental protection. We're looking forward to having the Member for Lethbridge-West wake up and join the debate and tell us what he thinks about protecting the environment in the province of Alberta.

Now, Mr. Chairman, for members opposite on this side of the House who are bothering to pay attention to the amendments that I'm moving, amendment A7 deals with the specific provision of section 26 of Bill 39. In my discussions with Parliamentary Counsel the first amendment that was brought forward on Bill 39, being government amendment A1, dealt specifically and directly with section 92.2. As a result of that debate and the government's amendment, which really did nothing to change the intent of the privative clause, section 92.2, it is not in order for me to move a further amendment relating to section 92.2. I am therefore unable to do so with respect to number 7, so I will not be in a position this evening to move number 7 on my sheet.

Before I move to the next amendment, we might at this particular juncture . . .

10:10

MR. GERMAIN: Have a two-minute silence.

MR. COLLINGWOOD: Well, the hon. Member for Fort McMurray suggests we might want to give a two-minute silence to environmental protection in the province of Alberta, but I hesitate to do so, Mr. Chairman, because members opposite will all shout "Question" at the same time, not wanting to enter into debate. Rather than stopping for the two minutes that my friend from Fort McMurray suggests, I'll continue on.

What we see is an interesting pattern that has developed throughout this whole series of amendments with respect to the Environmental Appeal Board. The first thing is that we have a board now that does not have to hold an oral hearing; it will simply take written submissions. We now have a board that will deny applicants an opportunity to be heard on the basis that they might not win; in other words, their case is without merit. We now have in sections 92.1 and 92.2 that the decision of the board can be changed at any time, and it can be changed on the basis of written submissions only. Nobody's even had a chance for an oral submission. The board will make a decision, and then all of a sudden they can change their decision. Not only can they change their decision, but the decision of the board and the decision of the minister is final and binding.

MR. GERMAIN: That can't be the law.

MR. COLLINGWOOD: What my friend from Fort McMurray says to me is: that just can't possibly be the law in the province of Alberta.

The minister is surely with Bill 39 breaking absolutely new territory in how constrictive and how restrictive one can be in one's approach to administrative tribunals and how they can operate in the province of Alberta and still suggest in the legislation that they are following the principles and the rules of natural justice. I mean, that's just like adding insult to injury, Mr. Chairman, when we have the privative clause of privative clauses. This one is the classic. They don't get any better than this. We'll have to commend the legislative draftsperson of section 92.2, because you don't get a privative clause that's any tighter than that to exclude Albertans from becoming involved in decision-making processes.

That's where we find ourselves with the Environmental Appeal Board. The chain's been yanked tight, the board has been

choked, and the public has been choked off with the amendments that have now been carried by this caring and sharing government that says, supposedly, that it's open and accountable.

I will move on, then, to move my next amendment, which is number 8, which is a proposal to amend section 28 of Bill 39 with a proposed amendment to section 93.1. Now, Mr. Chairman, let me give you some background on this particular section. Not only does the Minister of Environmental Protection reserve unto himself the right to have his decision final and binding with absolutely no right of appeal to any court on any decision that he makes with respect to the Environmental Appeal Board, not only does he freeze out and squeeze out the public of Alberta, who cannot gain access to the courts for fairness and for justice, but he then uses the court for his own purposes. So while the public of Alberta cannot access the courts, this particular section says that

> a decision of the Board under section 90 and a decision of the Minister under section 92 may be filed with the clerk of the Court of Queen's Bench and, on filing, are enforceable as if they were judgments of the Court.

So the minister is now taking his final and binding decision, which is based on absolutely nothing because he can overturn a recommendation from the Environmental Appeal Board with no reasons given whatsoever. The minister then simply picks a decision out of the air and goes to court and has it enforced as if it were a judgment of the Court of Queen's Bench. A judgment of the Court of Queen's Bench has attached to it a whole process of fairness in an open court, with a hearing that is open to the public of Alberta. So the minister essentially laughs at the whole judicial process, ending up with an order or a decision of the court registered at the Court of Queen's Bench, and simply says: I'll make my decision with no input, with no fairness, with no natural justice, with no reasons, and I'll march that decision down to the courthouse, and we'll all pretend it has the same trappings of fairness and justice and due process. Incredible. That's what the Minister of Environmental Protection is doing in section 93.1 of the proposed Act. He's so frightened by the changes that he's making in Bill 39 that he needs to hide behind the skirts of the Court of Queen's Bench for his own protection. That's essentially what section 93.1 does.

So I'm proposing an amendment, Mr. Chairman. I'm moving that we amend section 28 and that we take out the words "a decision of the Board under section 90 and a decision of the Minister under section 92." So when we strike those words, it will say, "An order of the board under section 88 or 89," and it will then move on to "may be filed with the clerk of the Court of Queen's Bench and, on filing, are enforceable as if they were judgments of the Court." If you refer to sections 88 or 89, it is reasonable that those orders of the Environmental Appeal Board are enforceable as judgments of the Court of Queen's Bench of Alberta. But the rest of it, "a decision of the Board under section 90", which is really just a recommendation to the minister, "and a decision of the Minister under section 92", which can be made with absolutely no substantive weighing of positions – he simply chooses out of thin air what his decision will be. There's simply no way that the minister should once again give himself extra powers and say, "Even though I have manipulated and changed the due process for the Environmental Appeal Board, I'm going to reserve unto myself the right to be protected by the Court of Queen's Bench."

I fundamentally disagree with the minister's approach, and I'm moving that we strike that out so that the only decisions of the Environmental Appeal Board that can be filed with the clerk of the Court of Queen's Bench are those decisions under section 88 or 89 and not the decision of the board under section 90 and not the decision of the minister under section 92. We have to continue trying to hang on to whatever tiny threads there are of due process in protecting the environment in the province of Alberta under this particular minister. While the threads are getting very thin and very bare, we still have to make every effort and every attempt that we can to hang on to those thin threads of due process and of justice in attempting to protect Alberta's environment.

So with that, Mr. Chairman, those are my comments with respect to the amendment I'm moving now, which I believe you will refer to as A7. Thank you.

MR. GERMAIN: You know, Mr. Chairman, it's astounding that we're here tonight debating this particular legislation. What this minister has done is basically appoint himself a judge of the Court of Queen's Bench. That's what he's done. It is orders of the Court of Queen's Bench that get enforced like orders of the Court of Queen's Bench. Because of respect for administrative tribunals in the province of Alberta it is often also the case that an administrative tribunal properly assembled, properly and fairly constitutionally appointed, that properly hears evidence and observes the rules of natural justice will have an opportunity to use the enforcement mechanism of the Court of Queen's Bench to bring about assistance for their particular orders.

10:20

Now, the hon. member from Calgary that sponsored this Bill, with the greatest of respect for the citizens of the city of Calgary, who are concerned about their Eastern Slopes of the Canadian Rockies, are concerned about the rangeland, are concerned about the rolling prairie lands that lead into the mountains, who are sensitive to the issues of the environment – this is a terrible day for environmental protection in the province of Alberta. Today, Mr. Chairman, for the first time we have a minister now going to elevate his ministerial orders into the form of Court of Queen's Bench judgments. That is simply wrong. If the minister wants to pass an order in council that constitutes a law-making process, he can use the Legislative Assembly.

You know, a while back I heard the hon. Minister of Labour wax on at great length about what he could do and what we could do to basically stay out of the realm of the courts. That was his thesis. He was paying compliments to a decision of the Alberta Court of Appeal saying that we have to stay out of the realm of the courts. What the minister of environment has done here for himself today is: he's appointed himself a judge of the Court of Queen's Bench. He's appointed himself, if this Bill becomes a law, as a judicial figure. His orders affect your rights or my rights or any of the rights of the hon. Member for Cypress-Medicine Hat, who farms. The minister of environment might order that he cannot farm more than a certain number of head per acre, and that order is going to be enforced like a court order. No right of appeal, no hearing: no nothing.

Where are we going with this particular piece of legislation? We have to wake up before we get into the situation where all of a sudden the people who come forward with bona fide, legitimate concerns and grievances about the environment, many of them farmers, many of them in the agricultural business, many of them in the oil field business, and, yes, the environmental groups, the Greenpeace groups, any of the other interested parties, are going to hit the wall with this Bill. They're going to go running to look for the protection in here, and what are they going to find? They're going to find exactly as the hon. Member for Sherwood

Park describes it. They're going to find a Bill that is hostile to their right of appeal. They're going to find a Bill that is hostile to their audience, to getting an audience. They're going to find that if they are overruled, if their objection is not permitted, they have nowhere to appeal to. This is not an environmental protection Bill. This is a slam dunk, wham, bang, thank you ma'am Bill that takes away people's legitimate right of grievance in this province.

DR. WEST: What's the point?

MR. GERMAIN: The hon. minister says, "What's the point"? He says that it is okay, I think, in inference that we take away their legitimate right of appeal. I hope the hon. minister invites me to his chamber of commerce in his riding, and I'll explain what the point is. [interjection]

I heard the hon. Minister of Health invite me down there too, and I'll be delighted to go because I know that down in her riding people are concerned about the environment. When we point out now that if your objection is deemed to be without merit, you're out . . .

DR. WEST: You've got to be clearer in your debate.

THE ACTING CHAIRMAN: Through the Chair, please.

MR. GERMAIN: Now, the hon. member says clear up my debate. I'm trying to clear up my debate. I'm trying to make it very clear how important this section is. If the hon. minister doesn't believe that it's important, he can stand up and tell us why he's sitting there as part of a row of cabinet ministers that is watching environmental protection slip slide away. [interjection]

The hon. minister of advanced education wants to get into the debate now at 10:30. Where were you earlier, Mr. Minister, when the Department of Environmental Protection was running roughshod over the rights of ordinary Albertans? Where were you? You have farmers in your constituency. You have people who farm on the land. Why aren't you standing up tonight and speaking for those people? Stand up and speak for the farmers. This is an important Bill to them. [interjections]

The hon. Member for Lethbridge-West reminds me of an anecdote. A while back I was feeling a little blue, Mr. Chairman. I'm on the amendment to the Bill because it touches on environmental protection. I remember being here late one night bringing forward amendment after amendment and getting them knocked down, shot down, tail feathers sizzling as the idea went sizzling into the ground, nose first into the ground like a ballistic missile gone awry, right into the ground. I remember that I was feeling blue, Mr. Chairman. Then, many months after, the phone rang, totally unsolicited. I heard somebody tell me: "You know, I'm a Conservative supporter, but you were right about those amendments. They were wrong about those amendments, and they should have been fighting for me." This happened to be an individual from rural Alberta, from the agricultural field. "You're an urban MLA," this person went on with shock, concern in his voice, "and you were there fighting for the rights of farmers, and the farmers who are elected to sit there and fight for the rights of farmers were laughing and ridiculing you, and we heard that out in rural Alberta." You know, Mr. Chairman, on the Bill, that fact refreshed me, and it gave me the increased vigour to come back here again and again and again and stand up and fight for the rights of farmers in the province of Alberta, even though those Members of the Legislative Assembly that are elected from rural Alberta . . .

THE ACTING CHAIRMAN: Order please. Could we get back on to amendment A7, which is item 8, please? Thank you.

MR. GERMAIN: Yes, well, I thought I was on amendment A7, but just to refresh the members of the Assembly, this is an important amendment is the point I was making before some of the hon. members started ridiculing the amendment, started insulting the amendment. This is a very important amendment, Mr. Chairman.

It speaks out in the province of Alberta that people will have a fair opportunity to be heard, a fair opportunity to have their materials put into play, and they will not be caught by a minister who makes his own decisions. That's exactly what this particular amendment does. This allows the minister on a one-on-one, party-to-party basis to involve himself in the litigation of environmental protection, make an order, and file that order as an order of the Court of Queen's Bench. That is simply wrong, and I urge all of the members of the Assembly to vote against this particular amendment.

I ask all of the members of the Assembly how they would feel if their constituent who had an environmental concern and who had their notice of objection ruled to be without merit came to them. Then they couldn't go appeal anywhere. Then the minister of environment made an order that affected them or their farmland or their land or their project greatly, and they couldn't appeal anywhere. They would feel lost, forlorn, and adrift in this province that is supposed to protect people's rights to have their day in court and their day before an Environmental Protection tribunal if they have a legitimate concern.

I would urge all members of this particular Assembly to vote against this particular amendment. Thank you, Mr. Chairman.

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

MR. DICKSON: Thanks very much, Mr. Chairman. A number of times in this Assembly we've heard wonderful speeches from government members talking about property rights and why property rights ought to be in the Constitution, afforded some kind of constitutional protection. Now we're confronted with not some abstract kind of principle, not some kind of motherhood statement, but a very concrete amendment, a very concrete change that we can do something about. We have an opportunity now on this amendment to indicate that we respect the property rights of Albertans. We respect fairness. We respect due process. We're opposed to arbitrariness. We're opposed to unfairness. We can send that kind of a message by accepting this amendment.

I look at the amendment and then I look at 92.2, probably the most comprehensive, the most sweeping, the most all-encompassing privative clause that I think anybody could draft. Now, maybe there's some creative draftsman that could add another clause or two, another couple of adjectives, but when I look at that section 92.2 and the impact it has and when we look at 93.1 – that's the section being amended by the amendment currently on the floor – I'm struck by how far in this Assembly we've moved from fundamental justice, to what enormous extent we've lost sight of respecting the rights of our fellow Albertans, respecting the rights of property owners.

10:30

There's an enormous problem that's manifest with section 93.1. Section 93.2 is a very modest, measured effort to try and remedy that. The amendment that's put forward, amendment A8 . . .

AN HON. MEMBER: Amendment A7, number 8.

MR. DICKSON: Amendment A7, number 8, is an amendment which I think every member in this Assembly could enthusiastically support, and I encourage them to do that, Mr. Chairman.

Thank you.

[Motion on amendment A7 lost]

MR. COLLINGWOOD: All right, Mr. Chairman. Then let's try this with the members of the Assembly. The section 93.1 that is proposed by the minister gives him the right to elevate himself to the position of a Court of Queen's Bench justice in the province of Alberta. He will go about his business making arbitrary and unilateral decisions that are based on absolutely no input whatsoever, and then he will file that document and hold it up high as if that document were the result of fair due process, which of course it will not be. If the minister wants to retain the ability to file that document with the Court of Queen's Bench and to wrap himself around the skirts of the Court of Queen's Bench and to hide from the people of the province of Alberta and to flex his muscles with a court order saying, "Look; I look just like a justice of the Court of Queen's Bench," then let's try this and see what sort of courage the government and the minister have.

The amendment that I'm proposing, which will be your amendment A8, Mr. Chairman, is saying that if we have a minister who wants to pretend to be all-powerful and look like a Justice of the Court of Queen's Bench under 93.1, then he can't have the benefit of the privative clause. So if he is going to file that order with the Court of Queen's Bench and drape it in that authority, then he can't say at the same time, "My decision is final and binding," because an order of the court or a judgment of the court is appealable. So the minister simply can't have it both ways. If the minister wants to pretend that his order is an order of the Court of Queen's Bench, then his order is subject to appeal and it is subject to review. If the minister doesn't want to file his order in the Court of Queen's Bench, then we will be left with the odious situation where the minister's decision will be final and binding, where no Albertan will have the right to question in any shape or form that kind of amendment. Now, as bad as that is, that would be the end result.

This is what I'm proposing to the minister. If you have the audacity . . .

DR. WEST: That's a big word.

MR. COLLINGWOOD: For the Minister of Transportation and Utilities, I haven't explained what the word is, but I'll just put it in context for him.

If the Minister of Environmental Protection has the audacity to file one of his ministerial orders in the Court of Queen's Bench and have it clothed in the same authority as a judgment or order of the Court of Queen's Bench, then, sorry, Mr. Minister, you cannot have the privative clause. That decision immediately becomes appealable, and there is immediately the opportunity for judicial review. You cannot have a final and binding clause on top of your decision to clothe yourself in the robes of a Court of Queen's Bench justice.

So I propose in amendment A8, which I now move, a new section: 93.2. If there is "an order or decision of the Board or a decision of the Minister is filed with the Clerk" under 93.1, then section 92.2, that privative clause, the mother of all privative clauses, "does not apply from the date of filing of the order or decision." My challenge to the minister is this: Mr. Minister, if you want to file one of your orders in court, then from that day forward the privative clause does not apply to your decision.

Let's see what kind of courage the government of Alberta or the Minister of Environmental Protection has to say, "That's fair enough." Or will in fact the government, Mr. Chairman, say: "No, no, we must have our cake, and we must eat it too. We can't just have a little power to wield over the people of Alberta; we need a lot of power to wield over the province of Alberta: we need to have the minister pretend that he is a justice of the Court of Queen's Bench; we need to pretend that the minister is the head of an administrative tribunal; we need to know that the minister's decision is all powerful, all encompassing, unilateral, without due process, without fairness, without input, without submissions, without public consultation, without a fair process. We need to have it all because we can't contemplate a circumstance where the people of Alberta actually get to participate in environmental decision-making in the province of Alberta. So we will go through the Environmental Protection and Enhancement Act line by line, clause by clause to eliminate in every single way, shape, or form any opportunity for the people of Alberta to be involved in environmental decision-making in the province of Alberta."

So my challenge to the minister is this: take one, but don't take both. Or are you, Mr. Minister, and are you, government of Alberta, so voracious in your appetite to eliminate the people of Alberta from the public process and due process of environmental decision-making that you have to have it all, one after the other after the other after the other until when we get to the end of this particular section, there is literally nothing left at all for the people of Alberta: there is no due process remaining; there is no fairness remaining. It is simply the minister with complete, uncontrolled, and unfettered discretion and power over the environment and the people of the province of Alberta.

MR. DICKSON: George Orwell would love it.

MR. COLLINGWOOD: "George Orwell would love it," says my colleague from Calgary-Buffalo. This is where it's all happening. We should be inviting some science fiction writers to come in and see not fiction but fact, what is happening to the people of Alberta this evening as the government passes Bill 39 through the Legislative Assembly of Alberta. It is a frightening proposition, what the government is doing on Bill 39. I suspect, Mr. Chairman, that it is only one of many Bills to come through this Legislative Assembly under this particular government as they conduct their wholesale deregulation of the province of Alberta, leaving unfettered, uncontrolled power unto themselves with no due process remaining.

So, Mr. Chairman, on this particular amendment let's see what sort of courage the minister and the government have. If you want to file your document with the court, then you can forget about the privative clause, and Albertans will have the right to appeal, as they would for any judgment or order of the Court of Queen's Bench, which is what the minister wants from his decision. He wants it to be a decision of the Court of Queen's Bench. Therefore, he wants that decision in a position where it can be appealed. So put it in the position, and stop lording this over the people of Alberta.

Those are my submissions. Thank you.

10:40

MR. GERMAIN: Once again, Mr. Chairman, it's indeed my privilege, my honour, and in fact I view it as my duty to stand up

tonight and support the hon. Member for Sherwood Park, who is ringing the alarm bells. It's like the *Titanic* drifting towards the iceberg and there's one hon. member ringing the bells, and people are snoozing and ignoring it as the ship drifts further and further towards environmental disaster.

This Bill sends a message to the province of Alberta that people who have environmental concerns need not apply. They might as well turn on their televisions sets and catch a football or a basketball game on American television because it will have the same impact on environmental protection in this province.

First, of course, the hon. Member for Sherwood Park set the stage nicely when he pointed out to all Members of the Legislative Assembly that even the minister of transportation does not yet purport to make himself a Court of Queen's Bench judge in disguise. Yet this hon. minister of the environment gets the Member for Calgary-Mountain View, a private member from Calgary, a city that is concerned about environmental protection, and sends that member out with this piece of legislation as a sacrificial lamb, ultimately, when people start waking up and realizing that the environmental protection in this province has been much diluted by this particular Bill.

So the hon. minister wants to become a Court of Queen's Bench judge in disguise, but he also wants to become another type of judge in disguise. He wants to become in disguise the entire panel of the Alberta Court of Appeal, because there will be no appeal. The only judge in the province of Alberta not approved by the judicial council and not subject to any appeal whatsoever will be the hon. minister of the environment, based on the natural interpretation and reasoning that flows from this particular Bill.

MR. DICKSON: Finally an elected judge.

MR. GERMAIN: The hon. Member for Calgary-Buffalo says, "Finally an elected judge." Maybe it is indeed a secret plot to set the first stage for the elected judiciary by having the ministers now appoint themselves as Court of Queen's Bench judges effectively by saying that their rulings can be registered as a judgment of the Court of Queen's Bench with one subtle difference, and that is that there is no right of appeal.

Please, hon. members, do not allow this to happen. Do not allow the hon. Member for Calgary-Mountain View to get the first elected judge in the province of Alberta inadvertently through environmental protection legislation. Just think about how you would feel if it were your family farm that was affected by an environmental ruling, a minister's order, and you couldn't do anything about it. Could you go to your MLA? No. Could you go to the courts? No. Could you go to the Court of Appeal? Certainly not. You have no recourse whatsoever, none, unless you can perhaps persuade the board to review or reconsider the matter, but there's no criteria for the review or reconsideration, so you have no remedy whatsoever. This is a frightening proposition that we're into tonight, Mr. Chairman.

[Mr. Tannas in the Chair]

So now we have to consider the effect of this hon. member's amendment. He says: when you file your order, your appeal time starts running. There's nothing wrong with that. If the minister thinks that he can accomplish his objectives by the use of the board or by the use of the persuasiveness of his order or some other mechanical method – encouragement, political lobbying, persuading, negotiations – then there is no appeal, based on the government's legislation. But this amendment says that if the order is registered as an order of the Court of Queen's Bench, it will be subject to an appeal because the privative clause – privative, remember, being a clause that keeps things private to the tribunal that makes the decision and not subject to review – will not apply.

So why don't we, in a resounding show of support today for the separation of the judicial functions and the administration functions as represented by the government, vote for this amendment and instill some balance in environmental protection in the province of Alberta?

MR. DICKSON: Mr. Chairman, this is going to be a real short speech because I'm just going to incorporate by reference everything I'd said in respect to the last amendment, but I wanted to make this observation. As I was listening to my colleague from Fort McMurray, it struck me that the mover of this motion is indeed the Member for Calgary-Mountain View, the same member who has talked through private Bill initiatives about electing judges, and it may be that this is exactly what it's about, that in fact what we want to do is take as much power away from those people, men and women who have been appointed to the bench at whatever level of the court, and give it, not really to the minister because that's not what happens in the process of this government, to the deputy minister because that's the individual that wields power in Alberta in 1996.

I think it's a very positive amendment. I support it. I encourage all members to support it, because we have to recognize that administrations and bureaucracies and governments make mistakes. We have an elaborate system that we've had over a long number of years that's accumulated to provide those kinds of safeguards and protection. This amendment goes some distance to try and restore some of that balance, a balance that the Bill itself starts to dilute and reduce in a number of different ways.

So those are all the reasons I support the amendment, Mr. Chairman. Thanks very much.

[Motion on amendment A8 lost]

MR. COLLINGWOOD: Mr. Chairman, I will move to item 10 on the sheet which will be amendment A9, and it refers to section 33 of Bill 39, and I will move amendment A9 stand alone again. This particular section talks about a new addition to section 124 of the Environmental Protection and Enhancement Amendment Act, that allows the director to either amend or to cancel a reclamation certificate. What section (b.1) is intending to do is to give the director the ability to cancel "a reclamation certificate where no reclamation inquiry was conducted prior to the issuance of the certificate." By that, it is the certificate of reclamation. It is conjunctive: "and the Director is of the opinion that further work may be necessary to conserve and reclaim the specified land to which the certificate relates." So when those tests are met, the director has the opportunity and the ability to cancel a reclamation certificate.

What's striking about that particular section, Mr. Chairman, is that essentially what it's saying is that the director will have the power to "cancel a reclamation certificate where no reclamation inquiry was conducted prior to the issuance of the certificate." Now, the current regulation 115/93, section 7, deals with the issue of a reclamation inquiry. What it says is that a reclamation inquiry must be conducted in respect of specified land when a complete application for a reclamation certificate has been

received by the director and when a reclamation certificate has been issued by section 127(1) of the Act. So if it is a section that relates now to canceling a reclamation certificate where no reclamation inquiry was conducted, the question is: how could a reclamation certificate be issued if there was no reclamation inquiry? The regulations require that a reclamation inquiry be conducted for the issuance of a reclamation certificate. So it seems to me that this particular section flies in the face of the current regulation as it exists under regulation 115/93 at section 7.

10:50

Now, section 33 is important in that we also have section 35 of Bill 39, which I am going to move an amendment to in a moment, but in section 35 the minister is now moving to add new regulatory-making powers for the Lieutenant Governor in Council under section 132, which is the section allowing the Lieutenant Governor in Council to make regulations. So now the Lieutenant Governor in Council is going to have the ability to provide for the issuing of different classes of reclamation certificates. Well, if you look at section 33 in conjunction with section 35, what it's essentially telling you is that the Lieutenant Governor in Council is now going to have different classes of reclamation certificates, some of which require a reclamation inquiry and some that don't require a reclamation inquiry. What else could you possibly conclude from the intent of section 33 and the intent of section 35?

Mr. Chairman, I'm not in a position to support section 33 of Bill 39, nor am I in a position to support section 35, because I do not think those two amendments that the minister is proposing are in the best interests of environmental protection. I think they are certainly in the best interests of the individual or company who is reclaiming the land, but I don't think that amendment is in the best interests of the environment or environmental protection, particularly if the Lieutenant Governor in Council is now going to create different classes of reclamation certificates, conceivably when you look at regulation 115/93 opening the door for having a class of reclamation certification for which no reclamation inquiry is required.

Now, how in the world are you going to determine whether or not land has been reclaimed properly if you do not have a reclamation inquiry? Or is the position of the government that they don't really care whether or not the land is reclaimed properly? If they do move in the direction of creating that different class which will not have a reclamation inquiry associated with it, then there will have to be some merit to the suggestion that the government is more concerned with streamlining, more concerned with deregulation, and far less concerned with whether or not the environment is being protected and whether or not land that requires reclamation is being reclaimed properly and appropriately.

Mr. Chairman, I think that because section 33 and section 35 are so closely connected, both of those particular provisions in Bill 39 once again weakening environmental protection in the province of Alberta, I am prepared to move amendment A9, number 10, and A10, number 11, together. So my motion will be to move number 10 and number 11, your A9 and A10, together as an amendment. My proposal would be that we strike out section 33, that we do not put ourselves in a position where a reclamation certificate can be issued without a reclamation inquiry and we do not put ourselves in a position where the Lieutenant Governor in Council by order in council can create separate classes of reclamation certificates.

To my way of thinking, Mr. Chairman, reclamation is reclamation. It is a process for the recovery of land that has been abused in some form or another, and it has to be reclaimed and restored to its proper health and value, and I do not want this government getting into a position where they can potentially create different classes of reclamation certificates where there may not be, for example, a reclamation inquiry. The other aspects of why different classes of reclamation certificates would be created – I cannot conceive of other scenarios, why you would need a different class of reclamation certificate. The wording of section 33 in contrast with the wording of regulation 115/93 at section 7 leads one to raise the concern that in fact this is what the government intends to do: there won't be a reclamation inquiry.

So I'm not prepared to sit back and let that happen without an attempt to amend that. I move that we strike section 33, and I move that we strike section 35. Mr. Chairman, I will move those amendments collectively and deal with the issue of reclamation certificates and not allow this change to occur.

Thank you. Those are my comments with respect to those amendments.

THE CHAIRMAN: Before recognizing the hon. Member for Fort McMurray or anyone else, just so everybody is certain of what has been moved, items 10 and 11 will be known as amendment A9.

Fort McMurray.

MR. GERMAIN: Thank you very much, Mr. Chairman. Then speaking to amendment A9, which deals with some further amendment and further review of the minister's proposal as it relates to changes to the process of reclamation certificates in the province of Alberta, I try to put myself in the picture of how this would work and who would be affected by this. I must say that it is very difficult for anybody to analyze the mechanics of how it could happen in the province of Alberta that a reclamation certificate would be issued without a hearing and then later canceled by the director.

Now, this would tell me that since most of the reclamation in the province of Alberta is done by the oil industry, I would suggest, perhaps to a lesser extent some of the construction industry and perhaps some infrastructure agricultural industry – it seems to me that nobody would ever want to embark on any reclamation that cost hard-earned cash, which reclamation does of course, without having a hearing. If you don't have a hearing, you are subject to having your certificate canceled, and you might be back at square one after you've expended $500,000, $600,000, $700,000 on a reclamation project. You could end up having it all go for naught and still have the legal obligation and burden to do reclamation and maybe even have to tear out the reclamation idea and the concept of reclamation that you had put in place and start again from scratch so that you are now out the money you've already expended and then you are going to be out the money that it cost to do the reclamation. So my concern with this particular section is again that it does not properly protect the people that require protection under the environmental protection Act.

Now, many of my comments earlier this evening related to people who might protest certain developments, might protest certain works of engagement in the province of Alberta, but this particular amendment goes directly to the issue of paying for reclamation and what type of reclamation would be necessary. So what the minister has done here is set up a roadblock to orderly reclamation because individuals are going to be reluctant to do

reclamation work on a reclamation certificate that has not had an inquiry, because to start on that work, they may be obliged to repeat it.

So again enter stage left the hon. Member for Sherwood Park, who is continuing to fight for balance in the Environmental Protection and Enhancement Amendment Act. He comes forward with two amendments basically that say: let's strike these two amendments out and go back to the status quo. There was no outcry. As one travels the province of Alberta, people don't stop you at the roadside and say: oh, the Environmental Protection and Enhancement Act is defective because there's something wrong with section 124(1) of the Act and later there's something wrong with section 132 of the Act. So this was a mischief that didn't exist, but what now exists, which the hon. Member for Calgary-Mountain View proposes, is the creation of a mischief. It means that you will have certificates of reclamation that are not created equally, and you will have a particular . . .

DR. WEST: It was drafted by lawyers.

MR. GERMAIN: Now, the hon. minister of transportation says by way of defence, "It was drafted by lawyers."

DR. WEST: Yes, and your colleagues did that.

MR. GERMAIN: Yes, and he says that my colleagues – I presume he was referring to lawyers – did that.

THE CHAIRMAN: Hon. members, could we stick with the amendments that we have before us instead of the personality things? Hon. minister, could you enter in debate at whatever time you're able to when one of the hon. members sits down?

11:00

MR. GERMAIN: Well, I'm going to sit down particularly quickly because I know that the minister wants to get up and debate this point now, but I can only say that the lawyers do the bidding of their masters. This particular Bill, this section that we're discussing in the amendment, was obviously drafted by lawyers, just as the amendment was obviously drafted by a lawyer. So if the minister has a choice in this particular amendment of preferring the lawyers who drafted the Bill initially or the lawyers who drafted the amendment, he should perhaps consider throwing one to the lawyers who drafted the amendment and vote for this amendment.

[Mr. Clegg in the Chair]

[Motion on amendment A9 lost]

THE DEPUTY CHAIRMAN: The hon. Member for Sherwood Park.

MR. COLLINGWOOD: Thank you, Mr. Chairman. I see that members to my right, Cypress-Medicine Hat and Red Deer-South, were looking for a standing vote on this particular amendment. It's actually nice to see them awake. They jumped to their feet. I didn't realize they could move that quickly with the input that they've put into the debate this evening.

Mr. Chairman, I will move on to the next amendment, which deals with section 44 of the Environmental Protection and Enhancement Act. This is one of the sections that deals with the new approach that the Minister of Environmental Protection is taking to the wholesale deregulation of waste management in the province of Alberta and the process he's going to put into place that relates to landfills.

Now, Mr. Chairman, I recently dealt with an issue in this House of the minister behind closed doors changing regulations that deal with a change in the rules that allow a hazardous waste landfill now to be situated on a wetland in the province of Alberta. That used to be a forbidden concept under the waste control regulation in the province of Alberta, but given that we have the Laidlaw hazardous waste landfill at Ryley sitting on a wetland, I guess the minister felt compelled to change the law so that he could accommodate Laidlaw and not have to deal with that contentious issue anymore about whether it was or it was not on a wetland. If you change the rule to say that it's okay to be on a wetland, then why would you have a controversy as to whether it is or it is not?

We now have a situation in section 44 of the Act, with the minister's wholesale deregulation and change in waste management regulations and legislation, where not only is he going to allow a hazardous waste landfill to be situated and sited beside a creek, beside a stream, sitting on a wetland in a bog area, but he is now going to allow hazardous waste disposal to occur in the province of Alberta simply based on registration. Now, of course, in the past it was always through approval because the storage, treatment, disposal of hazardous waste was always an activity under the schedule of activities for which an approval was required.

Now, what does the minister see as the difference between his approval process, as we've had it for the last two and a half years with the promulgation of the Environmental Protection and Enhancement Act on September 1, 1993, and now the minister's new, wholesale deregulation of his department with just registration? When an application for an approval is given, depending on what your activity is, you may have to do an environmental impact assessment. You certainly have to give notice to the people of Alberta of your application for an activity. You then have to receive notices of objection under the Environmental Protection and Enhancement Act, and you can then move forward through the Environmental Appeal Board to have your notice of objection heard.

Now, we've just seen the amendments go through relative to the Environmental Appeal Board. If an industry giant has brought forward an application and you're just a lowly Albertan who wants to object because of the air quality in your particular area, your chances of winning are very slim. The board will say: "Well, it's without merit, so we're not going to bother hearing your case. You're just a normal Albertan, and you're going up against an industry giant." Nonetheless, in the approval process you have the opportunity to get notice of the application, and you may have some opportunity, depending on the constrictive and restrictive nature of the directly affected rule, to submit a notice of objection. That's what happens on approval.

Now, the minister is now going to introduce a new concept called registration. So what do you do on registration? Well, if you just have to register rather than getting an approval, you simply inform the minister that you intend to carry on a certain business and you request a registration. I'm going to assume that in the procedure you will be given a registration number. The minister will tell you that you are then registered, and he will ask you to comply. He'll ask you very nicely. He'll ask you to comply with the standards, rules, procedures, and guidelines from something that hasn't been written yet about how to conduct

yourself in the guidelines and in the standards and procedures.

When you apply for a registration, the public has no right of entitlement to notice that you're going to do that. There is nothing to compel the applicant to give notice to the people of Alberta that you intend to carry on that particular activity. If there's no notice, then there's no right to object, because all of those are contained in section 69 of the Act. So you've now been excluded from an entitlement of notice, and you have now been excluded from an entitlement to file a notice of objection. That's what happens on registration.

What kind of activities are going to be registrations? Well, at this point, Mr. Chairman, we don't know because the minister is again going to reserve unto himself decisions about what will be done by registration and what will be done by approval through order in council. We won't see the draft regulations as we did with the Environmental Protection and Enhancement Act. We won't see the draft regulations. We won't know what the minister is going to put under the registration stream and we don't know what the minister is going to put under the approval stream, so of course we can't enter into that debate because we simply don't have that information.

We look at section 44, which is going to add a new section to the Environmental Protection and Enhancement Act at section 182.1. This law will say:

> No person shall dispose of hazardous waste except in accordance with an approval or registration or as otherwise provided for under this Act.

Well, what that says, Mr. Chairman, is that the minister is going to reserve unto himself whether the disposal of hazardous waste in the province of Alberta can simply be done by registration. There is no mandatory provision for the minister to require an approval to the construction or operation of a hazardous waste landfill in the province of Alberta. By including the words "or registration," the minister is sending a message loud and clear. He is saying that he will reserve unto himself the unilateral, unfettered, and uncontrolled decision-making power to decide whether or not the disposal of hazardous waste in the province of Alberta can be done by registration and registration only.

Now, let's think about that for a minute. If the minister decides that he has the choice of whether or not it is by approval or whether it's by registration and, in the minister's desire to, in a wholesale fashion, deregulate the Department of Environmental Protection, the minister wants to streamline that and go with registration only, that means that a hazardous waste landfill could be constructed and operated in any community in Alberta without notice to the residents of that community. That's exactly what that means. Will those residents have any opportunity for input into the operation or construction of a hazardous waste landfill in their community? Absolutely none. Absolutely no opportunity for input whatsoever. To any call that the minister received from a concerned resident who has a hazardous waste landfill in their backyard, the minister will say: "Don't worry. Trust us. They'll have to follow some codes and some guidelines to make sure that they operate properly."

11:10

Now, it sounds farfetched when you think about the kind of hazardous waste facilities that we've got in the province of Alberta, but the scenario has to be taken seriously because the minister has left in that section the words "or registration or as otherwise provided for under this Act." Absolutely not, Mr. Chairman, when we're talking about hazardous waste disposal. There is one route and there is one route only that must be taken in terms of the proper, environmentally appropriate disposal of hazardous waste in the province of Alberta, and that is through the approval process that currently exists in the province of Alberta under the Environmental Protection and Enhancement Act. We have always done it that way. Hazardous waste landfill operation has always been done by way of approval.

It's only now that that particular approach is even in question. With the repeal of the waste control regulation under Bill 27, which takes away the landfill operation regulation from public health, under amendments to the Public Health Act in Bill 27, and now sort of transports it over into Bill 39, the minister says that Environmental Protection is going to take over the whole operation of landfill waste facility management in the province of Alberta. The minister's new rules that he's coming out with when the waste control regulation is repealed has this new concept of registration. Most of the landfills in the province of Alberta will no longer have to receive an approval. They will simply have to receive a registration, and the residents will have no notice. There will be no requirement for notice to the residents of the operation of that particular landfill.

To allow the minister to carry on with his new proposed section 182.1, with his new concept of registration – by allowing the minister to leave in that section, the potential to allow for the disposal of hazardous waste by registration or otherwise that is not through the approval process is simply an unacceptable position for the government to take, and it is not a supportable position.

It would strike me as truly amazing, Mr. Chairman, if members of the government sat back and said: "No, it's okay by us. We don't have a problem in any way, shape, or form with having hazardous waste landfills in the province of Alberta operate simply through a registration process where you write to the minister and tell him that you're going to operate a hazardous waste facility." The minister writes back and says: "Thanks very much. Make sure you comply with the guidelines." Okay. I mean, members opposite are sitting there saying: "Okay. Sure. Why not? That sounds fine. I don't have any problem with that. I trust the Minister of Environmental Protection."

Well, actually, Mr. Chairman, I don't, and I don't want those particular sections to be left in section 182.1. Therefore, I move amendment A10, which is number 12 on your sheet. I want the words "or registration or as otherwise provided for under this Act" removed from section 182.1, and I want any hazardous waste disposal operation in the province of Alberta to be governed by way of an approval and through no other process, giving Alberta residents notice of the application, giving Alberta residents the right to object and to have their voices heard with respect to hazardous waste landfill management in the province of Alberta. That is why I am moving amendment A10 this evening.

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

MR. GERMAIN: Thank you very much, Mr. Chairman. You know, there is no lack of amazement as to how good the quality of these amendments is, amendment after amendment after amendment. I want to publicly tonight, on the record, congratulate and commend the hon. Member for Sherwood Park for standing up here for three hours straight, bringing forward amendment after amendment in the face of defeat, yet doing it with the good grace and good, discreet qualities that we've come to respect him for. You know what he's doing now? He's protecting every single Albertan who is getting ready to curl up

in their bed and go to sleep. He's protecting every single Albertan.

DR. TAYLOR: Thank you, Bruce.

MR. GERMAIN: I see the hon. Member for Cypress-Medicine Hat is thanking the Member for Sherwood Park, and well he should, because someday somebody in this Legislative Assembly is going to have a dumping station right next to farmland or lake land or property that they hold near or dear or that might have been in their family for a hundred years in this province. They're going to wake up one morning, they're going to look outside their door, and people are going to be taking hoses off of trucks marked with skulls and crossbones and discharging the effluent into a place that is close to them and may have deep sentimental value. They're going to say, "How come they did that?" It's because amendment 12 was not passed in the Legislative Assembly, Mr. Chairman.

You know what? You're going to phone the department of the environment, and the department of the environment is going to say: "Oh, yeah. The minister got a phone call about that, and he granted a registration over the phone." "Well, where do I appeal?" "Sorry; there is no appeal." "Well, can't I go to the Court of Appeal?" "No, there is no appeal." "Well, can I have a hearing?" "No, because it's not set up for that; it's a simple registration." That is simply wrong, Mr. Chairman. But there is a remedy, and the remedy tonight is the hon. Member for Sherwood Park's amendment. The hon. Member for Sherwood Park's amendment says that before you go dumping hazardous waste in this province, you will go get an approval. It's as simple as that. Before you dump hazardous waste in the province of Alberta, you will get a proper approval.

The hon. Member for Barrhead-Westlock was once the minister of the environment. I ask him, I challenge him orally tonight: is there anything wrong with that simple proposition that before you dump hazardous waste in this province, you go get an approval? I know he'll want to stand up and speak to that. I know the hon. minister of transportation will want to stand up and fight for his constituents by speaking favourably to the amendment.

The amendment makes good sense. It's logical. It's nonpartisan. It sends a message that we care dearly about our environment. Someday somebody might be reading these *Hansard* transcripts, Mr. Chairman, and I will be honoured to have had the opportunity tonight to stand up and support the hon. Member for Sherwood Park as he has fought for the environment in the province of Alberta against overwhelming odds this evening.

With that, I will take my place, Mr. Chairman, but I will do so by concluding and urging the Legislative Assembly once more time to say to Albertans: "If you are going to dump hazardous waste in the province of Alberta, you will get a proper permit. You will get a proper approval. That's what you're going to do. That's what you should do. That's what's right to do." It is not fair to adjacent property owners to look out their window one night and see somebody pulling up in a truck, discharging hazardous waste off the back of it.

DR. TAYLOR: On their front yard.

MR. GERMAIN: The hon. Member for Cypress-Medicine Hat jokes about this, that it might be in somebody's front yard. Indeed it might be. We have to stand up and protect the environment, and the way to do that is to say yes to this amendment.

With that, Mr. Chairman, I'll take my place. You know why I'm going to take my place? Because even though it's late, I know that every Member of this Legislative Assembly will want to get on record tonight by saying that the only way that you dump hazardous waste in this province is with an approval.

MR. DICKSON: Mr. Chairman, who could resist an invitation like that? Speaking in support of amendment 12, I just want to make this observation before I deal with the text of the amendment. I also want to express my admiration for the MLA for Sherwood Park. He spent the better part of the day involved in the second public inquiry under the freedom of information Act, doing an absolutely outstanding job in terms of asking the questions, cross-examining department experts to ensure that the freedom of information Act works for Albertans, that it works for the Member for Calgary-Fish Creek and her constituents, and that it works for every resident in the province of Alberta. Here he is tonight, at 11:20 p.m., still attempting to do the job that the government has neglected to do.

Now, on the amendment, Mr. Chairman.

THE DEPUTY CHAIRMAN: Hon. member, I know the gentleman from Sherwood Park is a fine gentleman; he does his work well. We are way off the amendment. Get on the amendment or you lose your turn.

11:20

MR. DICKSON: Mr. Chairman, it's just that we've seen so many excellent amendments defeated, with no good argument on the merits. I thought maybe if we could tart the amendment up a little bit by talking about the virtues of the sponsor, it might be a little more palatable to some members opposite. [interjections] It amazes me that when we look at as meritorious an amendment as this one, we still hear skeptics in the House. We still hear those that aren't persuaded after some of the most compelling speeches that I've heard in the four years I've sat in the Legislative Assembly.

Mr. Chairman, I can think of few environmental issues that are more serious, more important, of greater focus for Albertans throughout this province, than disposal of hazardous waste. Why, oh, why would we contemplate a diminution in the standards? Why would we contemplate or countenance any kind of relaxation in the procedural safeguards that exist and surround and govern disposal of hazardous waste? This section 182.1 as it's proposed in section 44 effectively, substantially reduces the notion of a standardized threshold, a constant degree of supervision, a uniform policy that governs disposable hazardous waste. What it purports to do in section 44 is set up three acceptable means of disposing of hazardous waste. For all the reasons pointed out by our colleague for Sherwood Park, it's quite adequate to simply end by saying, "No person shall dispose of hazardous waste except in accordance with an approval." Full stop. The balance, which says "or registration or as otherwise provided for under this Act," is unnecessary. What's of greater moment than the fact that it's not necessary is that it means that we're relaxing our standards.

Now, Mr. Chairman, I've spoken in the House before about constituents that have raised concerns with me, particularly since Bill 27 and the repeal of the waste control regulation, that in Alberta we're moving in the opposite direction. Within six months after the new Freedom of Information and Protection of Privacy Act came in – and section 31 has a particular public interest override in cases of environmental risk where there may

be injury to the environment – we see that sort of additional protection but moving in exactly the opposite direction, as section 182.1, which is a dramatic step backwards.

As has often been said in the House, if the government wants to relax the standard, surely the burden of proof is on the proponent, on the government member to come forward and indicate in clear and unambiguous language the justification for the change. Why is it that Albertans would feel that in any respect their environment would be better protected, Mr. Chairman, if section 44 was passed in the fashion it was? If it isn't, then it seems to me clearly that all members ought to embrace the amendment, which would ensure that we maintain that high level of scrutiny, that an approval would be approved in every case, not just in some cases but in every case where hazardous waste is going to be disposed of.

The other concern I have is the final phrase "or as otherwise provided for under this Act." We have an opportunity here to consolidate in a single place, and once again in a way that's user friendly, that's easy for Albertans to pick up the statute and know exactly what the rules are. Then we embrace something sloppy – and I use that word decidedly – in "or as otherwise provided for under this Act." Why wouldn't we make it absolutely clear what the process is and put it in a single section, a place that's easily accessible? The statute we're amending here, the Environmental Protection and Enhancement Act, is one of the larger statutes amongst the statutes of Alberta. It's an arguably very cumbersome statute. Section 182.1 simply makes it more cumbersome, makes it less easy, less accessible. Those are negative qualities, not qualities that I would think members in the Assembly would want to support.

For all those reasons, Mr. Chairman, I think the amendment is a very positive one. It warrants support. I think without it we do a tremendous disservice to all Albertans, because 182.1 as it will read with the passage of the Bill and section 44 if unamended is a retrograde step. Those are the observations I wanted to make relative to this particular amendment.

Thank you.

THE DEPUTY CHAIRMAN: The hon. Member for Leduc.

MR. KIRKLAND: Thanks, Mr. Chairman. I would stand in support of the amendment. When I look at the amendment, the removal of those last seven or eight words, "or registration or as otherwise provided for under this Act," it strikes me as a very sound amendment. If we take it as it's amended, it simply says "no person shall dispose of hazardous waste except in accordance with an approval" and would end the sentence at that particular point. Well, when we talk about approval, we talk about due process. We talk about an evaluation and steps that will take you to that particular point. I think that's critical. Now, to include, as is being proposed by the government, "or registration or as otherwise provided for under this Act" tells me that in fact registration simply could mean the discretionary call of the director or the likes thereof. I don't think that is satisfactory when we're dealing with hazardous wastes, and I don't think that that's stringent enough when we're dealing with hazardous wastes.

When we read in the other clause, "or as otherwise provided for under this Act," that would again in my view take the form of a regulation. Regulations that are outside the public perusal and the public scrutiny when we're dealing with disposal of hazardous wastes are just not satisfactory. It would be my suggestion that Albertans would be very, very supportive of ensuring that the most stringent of conditions and the most stringent of approvals are in place when it comes to dealing with hazardous wastes. The proposed clause 182.1 as read leaves many windows to be opened, and I would suggest that we cannot leave windows open when it comes to dealing with the disposal of hazardous wastes.

So I support the amendment. It's a sound amendment. As I indicated, it would end clause 182.1 after the word "approval." That is very definitive and clearly indicates that in fact there is a due process that would be followed to arrive at a due and diligent decision-making process.

So with those comments, Mr. Chairman, I will take my seat.

MRS. McCLELLAN: Mr. Chairman, I would like to move that we adjourn the debate.

THE DEPUTY CHAIRMAN: The hon. Minister of Health has moved that we adjourn the debate on amendments to Bill 39. All those in favour, please say aye.

SOME HON. MEMBERS: Aye.

THE DEPUTY CHAIRMAN: Opposed, if any?

SOME HON. MEMBERS: No.

THE DEPUTY CHAIRMAN: Carried.

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

[Motion carried]

[The Deputy Speaker in the Chair]

11:30

THE DEPUTY SPEAKER: Order.
The hon. Member for Dunvegan.

MR. CLEGG: Thank you, Mr. Speaker. The Committee of the Whole has had under consideration certain Bills. The committee reports the following: Bill 43. The committee reports progress on the following: 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 DEPUTY SPEAKER: Does the Assembly concur in this report?

SOME HON. MEMBERS: Agreed.

THE DEPUTY SPEAKER: Opposed?

SOME HON. MEMBERS: No.

THE DEPUTY SPEAKER: So ordered.
Hon. Government House Leader.

MR. DAY: Mr. Speaker, I move to have unanimous consent to revert to Notices of Motions.

THE DEPUTY SPEAKER: May we have the Assembly's consent to revert to Notices of Motions?

HON. MEMBERS: Agreed.

THE DEPUTY SPEAKER: Opposed? Carried.

head: Notices of Motions

MR. DAY: Mr. Speaker, I give notice that further consideration of any or all of the resolutions, clauses, sections, or titles of Bill 24, the Individual's Rights Protection Amendment Act, 1996, shall be the first business of the committee and shall not be further postponed.

head: Government Bills and Orders
head: Third Reading

Bill 33
Victims of Crime Act

[Adjourned debate May 15: Mr. Woloshyn]

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

MR. GERMAIN: Thank you very much, Mr. Speaker. Speaking to third reading of this Victims of Crime Act, there are peculiarities in this Bill that have been attempted to be focused on in the second reading and in the committee reading of this particular Bill. I want to, however, point out only a few of those interesting peculiarities in third reading of this Bill.

First of all, this Bill is the direct result of the public perception that the Minister of Justice and his government are soft on crime and in particular failing to protect the victims of crime. So we have this particular piece of legislation for which the protection is more illusory than real and which seeks to criminalize victims by indicating that victims should report the crime and co-operate with law enforcement authorities. One has to ask why they would report the crime when they are kept in the dark and kept in silence about the reasons why the case is handled in the way in which it is.

Now, last year, Mr. Speaker, we debated at great length in this Legislative Assembly on the freedom of information legislation and in particular those sections that were put in that Act intending to protect the victims of crime by giving them notice of why a case was dismissed or was not prosecuted. The government was caught by that failure to adopt the amendments that were brought forward by the hon. Member for Calgary-Buffalo, so they attempted in a lacklustre way in section 4(1) to bring the hon. Member for Calgary-Buffalo's amendments forward so that victims of crime would now be told exactly how their case was going, but they will never be told, if there is no prosecution, why there is no prosecution.

In third reading . . .

Speaker's Ruling
Third Reading Debate

THE DEPUTY SPEAKER: Hon. member, just to remind you and the Assembly again, third reading, as we've been instructed by *Erskine May* and we've been reminded on various occasions, deals with what is in the Bill as opposed to amendments that may or may not have been a good idea or anything of that nature. That's more properly a reflection of second reading or even committee. In third reading it's the contents of the Bill.

MR. GERMAIN: Thank you, Mr. Speaker. I was talking specifically to section 4, one of the primary contents of this particular Bill, and a kind of lament for what could have been.

Debate Continued

MR. GERMAIN: Victims in this particular Bill now will be told about the status of the police investigation and any prosecution that results from that investigation, but they will never be told why the case that has made them a victim is not being prosecuted. That is but one of two examples of the weaknesses in this particular Bill and why the protection afforded to victims is more illusory than real, but it is gratifying to see the government at least recognize the many people who are victimized by crime in the province of Alberta.

[Motion carried; Bill 33 read a third time]

Bill 34
Municipal Government Amendment Act, 1996

MR. LANGEVIN: Mr. Speaker, I'd like to move third reading of Bill 34.

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

MR. GERMAIN: Thank you very much, Mr. Speaker. In speaking at third reading to Bill 34, it is indeed disappointing to the community of Fort McMurray and the municipality of Wood Buffalo and all smaller communities outside of Edmonton and Calgary that the Minister of Municipal Affairs in this Bill prejudices against those smaller municipalities by giving the city of Edmonton and the city of Calgary special rights relating to audit procedures that are not shared equally by all of the many competent cities in the province of Alberta, including the cities of Grande Prairie, Peace River, Red Deer, Medicine Hat, the municipality of Fort McMurray and many other municipalities.

This Bill also brings forward the concept that in the province of Alberta you will be asked to pay the taxes owing by another man, and that is in the area of municipal taxation of mobile homes where the peculiar oddity of taxation of mobile-home landowners for the unpaid taxes of the individual who owns the mobile home sitting on the land is preserved. So for the first time, to my knowledge, in Canadian taxation history a government has had a chance to correct an obvious flaw in taxation legislation and has failed to do so.

Mr. Speaker, those will be the legacies of this amendment to the Municipal Government Act.

THE DEPUTY SPEAKER: The hon. Member for Leduc.

MR. KIRKLAND: Thanks, Mr. Speaker. As the hon. Member for Fort McMurray indicated, there will be disappointment for the two areas that he identified, and that's the taxation component as well as the audit component.

I would suggest also that there would be a disappointment by many communities or municipalities across this province as a result of clause 126 in the Municipal Government Amendment Act, 1996, and that 126, Mr. Speaker, specifically removes a due process from communities that are in a position of negotiating or attempting to negotiate or would like to move into annexation proceedings. Now, we spoke at length about that particular clause, and certainly when read and applied, it removes some very

definitive steps in a very definitive process that ensured annexation would be very well advertised. It removed a process where in fact proposals to seek public input have been removed.

11:40

If I recall correctly, it removed also orders that municipalities should meet to discuss and reports that could show any sort of progress, the conditions that had been set aside in an annexation process. It circumvented a municipal government board which was specifically put in place not 18 months ago to deal with annexation. It very clearly gave the minister the ultimate in power when it came to ordering an annexation and set aside all of those very important components that municipalities in the past have used and have used successfully. So I would suggest that the disappointment goes beyond the two points that the hon. Member for Fort McMurray advanced here this evening.

I would suggest that this particular amendment in clause 126 will come back to haunt many municipalities. I say that, Mr. Speaker, because the minister has on many occasions telegraphed his philosophy in this House and publicly, and that is that the strong should inherit the weak. The weak do not have the opportunity to put their case forth by the amendment in clause 126. I would suggest that is a diminishing of the democratic process, and I would suggest it would work to the detriment of most of the municipalities within this province.

So I would certainly like to register those particular disappointments as well as the ones that the hon. Member for Fort McMurray registered.

[Motion carried; Bill 34 read a third time]

Bill 38
Child Welfare Amendment Act, 1996

SOME HON. MEMBERS: Question.

THE DEPUTY SPEAKER: Are you ready for the question? My records don't show that it's been moved.

MR. DAY: On behalf of the member I move Bill 38 for third reading.

MR. KIRKLAND: A very brief comment, Mr. Speaker. The Bill is a positive Bill; the Bill is an evolutionary Bill. I would have to compliment the hon. member and the government for proceeding as they indicated they would one year ago and bringing this back to open up the adoption records for birthright parents. I think that most Albertans have waited for this. The fact that there has been a veto included in it, I would be inclined to suggest it's a positive Bill. As I indicated before, I'd support it.

[Motion carried; Bill 38 read a third time]

Bill 43
Election Amendment Act, 1996

MR. DAY: On behalf of the Member for Taber-Warner I would move Bill 43 for third reading.

MR. DICKSON: Mr. Speaker, a couple of concerns are still outstanding. I think there is much merit in the chief aim of this Bill, but we still have some concerns outstanding. I go back to the Standing Committee on Legislative Offices, that had looked at three different recommendations to overhaul or modify our Election Act. One had to do with the appointment of returning officers, the other one had to do with giving returning officers tenure, and then the third one of course dealt with a kind of universal voters list. I'm disappointed that the government elected to deal only with one of the three recommendations and ignored the other two. I think that's a disappointment.

On the principal recommendation I think there's this concern that the Information and Privacy Commissioner, Mr. Clark, had indicated some concern with respect to the business of telephone numbers on the electors list, which is provided for. That may have adequately been dealt with by the provision that someone could elect not to disclose a telephone number on the list. We simply have to see with the passage of time if there's abuse, if in fact this idea of having this kind of a massive integrated voters list will be an inducement for direct mail outfits and so on to make an effort to access the list.

The other observation and concern would be this. The idea of a unified voters list is I think mistakenly sold by some as a means by which the government of Alberta can recoup some of their cost of elections, recoup in the sense that you're going to have this wonderful database which shares both federal electors lists and provincial electors lists, and the question will be whether government will have the will and the discipline to withstand the inducement to share that voters list with direct mail solicitation outfits, to share that standardized voters list with other people who will offer the provincial government money for the information. The temptation will be a real one and a serious one, and I hope that in this province we'll be able to have collectively the kind of discipline and good sense to pass up that massive breach of personal privacy. I hope that doesn't happen. It's a concern. I simply flag it now.

Overall, we've supported the Bill because we appreciate the notion of a universal voters list. I'm hopeful that the government will take another look at moving in those other areas that had been the subject of recommendations from the Chief Electoral Officer at the Standing Committee on Legislative Offices.

Thanks, Mr. Speaker.

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

MR. GERMAIN: Thank you very much. Bill 43 represents a modern step forward into technology and the desirability of creating one voters list used by multi levels of government. It is regrettable, Mr. Speaker, that when we were taking that multistep forward into modern technology we did not at the same time shed some of those age-old concepts concerning patronage appointments. It is difficult for Albertans to wonder what has changed about this government when amendments to remove patronage appointments were resoundingly defeated by the Assembly.

Thank you, Mr. Speaker.

[Motion carried; Bill 43 read a third time]

Bill 26
Child and Family Services Authorities Act

MR. SHARIFF: Mr. Speaker, I move third reading of Bill 26.

MR. DICKSON: Mr. Speaker, I regret that we're dealing with this Bill this evening at about 10 minutes to midnight, and the reason is that at the start of the day the Government House Leader provides the Opposition House Leader with a list of the Bills that are coming up for debate in the afternoon and evening. In fact,

we had some 14 Bills that we were put on notice would likely come up for debate either in committee or third reading. That's fair. That's a lot of Bills to go through, and we were prepared to deal with those. What's happened is that the government having gone through that list now starts throwing in other Bills willy-nilly.

11:50

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

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

Point of Order
Relevance

MR. DAY: I fail to see how this is relevant to the Bill and would ask and beseech you to possibly rule on relevance.

THE DEPUTY SPEAKER: The Chair would indicate that agreements or lack thereof are not part of what the Chair is aware of. Debating that is maybe of interest to hon. members but is really not pertinent to the third reading of this particular Bill. So the Chair would have to concur that that isn't found to be relevant although maybe very interesting.

MR. DICKSON: I understand your concern, Mr. Speaker. It seems to me with every Bill there's a process element and a substantive element, and I think that as the Bill wends its way through the legislative process sometimes not only is the substance of significance but the way the Bill is brought forward. The way it's advanced or delayed through the process is significant and I think something that Albertans would expect we would be entitled to address in the Assembly.

The point I was making is that if the government is anxious to have focused debate and economical debate in the Assembly, then with it is a concomitant responsibility to make sure that members in the Assembly know in advance what's coming forward so that when this particular Bill comes forward, there's some advance notice. Why? Because it allows members to bring their files with them. It allows the critic to . . .

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

THE DEPUTY SPEAKER: First of all, the Chair prematurely jumped up and gave his ruling before the hon. Member for Calgary-Buffalo had a chance to say his point. So the Chair was allowing him to make his point. If the point has now been made, hon. member, I think the ruling will still stand that it is not relevant to third reading of this particular Bill. Your agreements or lack thereof are really between the two sides, and the Chair is not privy to those agreements or to their absence. So we are in fact legitimately on the Bill that's before us, and third reading requires us to focus on the contents of the Bill.

MR. DICKSON: Mr. Speaker, I'm happy to focus on the terms of the Bill. I think I was anticipating somebody raising a concern that my comments might be even more disjointed than usual on third reading. In anticipation of that, I thought I'd start my apology before I started my speech.

Debate Continued

MR. DICKSON: Mr. Speaker, when we look at Bill 26, I think the concern continues to be that so much of it is a hope and a prayer. The Bill is general to the point of vagueness. The Bill sets out some very general kinds of principles when I think what many Albertans want to see when it comes to advantaging children and families are some very concrete objectives, some very specific kinds of protection. In Bill 26 there was an attempt made through a host of amendments to try and ensure that we got past the very general kinds of objectives to get past the excessive delegation of a lawmaking power to subordinate legislation. Unfortunately, but for a couple of amendments the Bill has not been fundamentally changed despite, I think, herculean efforts in good faith by the Member for Calgary-McCall and the opposition critic in the area of Family and Social Services.

I think this is a Bill which clearly is going to pass because it has the numerical support of the government. Despite the result in the by-election this evening the government still has a majority, but there ought to be something in terms of a challenge. There ought to be something of a challenge to the minister who will be responsible for implementing the Act. There is a sense of disquiet. There's a sense of unease. There's considerable apprehension about whether children are going to be adequately protected under Bill 26.

MRS. FORSYTH: Who have you talked to?

MR. DICKSON: The Member for Calgary-Fish Creek may have a contrary view, Mr. Speaker. The Member for Calgary-Fish Creek I'm sure has people she speaks to. There are people who are involved in children's services I speak to as well. Those people have some legitimate concerns and worries. Those worries and concerns I believe are going to become compounded by Bill 26, not allayed.

You know, it's interesting. I see government members shaking their heads. Well, all I can say: in the city of Calgary there are plenty of agencies that are involved in terms of providing services to children. A considerable number of those agencies and professionals have concerns with Bill 26, and I think it's sufficiently important to raise those concerns, to mark them. That's what we do in effect at third reading of a Bill. The bulk of the debate is behind us, but I think now it's fair to serve notice on the government that those people who work with children, that are involved with child care on a day-to-day basis are going to be watching to see if the promises that have been made by the government in introducing and supporting Bill 26 are in fact going to be followed up with the kind of commitment of resources, with the kind of specific detail that would come by way of regulation.

Too much of Bill 26 is done by way of agreements, Mr. Speaker. I think you recall that when this thing was debated at second reading what we got was a whole range of agreements that are being entered into between a minister and one of the 17 authorities that are going to be set up around the province. There's going to be provision for wide variation, wide discrepancies, in what's going to be a contract in one end of the province and what may exist in another end of the province. Children in Alberta don't deserve a lower level of protection because they happen to live in Peace River than they do because they live in Calgary-Buffalo. Children in High River deserve the same degree of protection and support and commitment in terms of government services as a child in Lac La Biche. We're not going to know whether those apprehensions are borne out or not, but I think it's important to mark them. I think it's important to recognize that there will be that concern and that perspective.

The other observation I'd make is that I know members of

government get impatient every time opposition members speak to Bills, but I'd just remind them that they have the advantage of a process that allows them to deal with Bills long before they're ever introduced in the Assembly. For those of us on the opposition side, Mr. Speaker, we deal with Bills usually when we first see them, if we're fortunate a short time before they come in for first reading, and then you have a relatively brief time before the Bill is at third reading stage. So I ask government members to be mindful of that advantage they have. They may have agonized over this for a much longer time. They may have satisfied themselves and their constituents in terms of these issues that have been raised by my colleague the critic in this area and certainly some of my other colleagues, but the subject matter of the Bill is sufficiently important that it warrants that kind of consideration.

The other point I'd just make is that Bill 26 is of little significance if there isn't the commitment in terms of resources, Mr. Speaker. I continue to have a concern when I see inadequate resources being devoted to children in high-needs areas, children in families who are in all kinds of distress. It seems to me that Bill 26 doesn't do anything to enable or assist those children. I don't see anything in Bill 26 that's going to advantage those children.

12:00

The government and certainly the Member for Calgary-McCall in moving the Bill – and I don't for a moment question his sincerity or his commitment. He would probably tell us that he believes that children will be advantaged by this Bill, but that advantage will be not through anything in the four corners of this piece of legislation. It will be through the contracts that are entered into, the support that's provided to each of those 17 authorities that will be distributed around the province. It'll be in the degree to which there is an attempt to ensure a standardized level of service, a uniform quality of protection, and checks and balances to protect Alberta children that will be provincewide.

I think those are my principal concerns. I might have had a few more if I'd had the advantage of knowing in advance the Bill was coming in, and I could have had my Bill brief with me, Mr. Speaker. [interjection] But I'm hopeful that the Minister of Public Works, Supply and Services will share some of my concerns and at the cabinet table will ensure that those questions continue to be asked. [interjections] We only get a chance to do this four or five months out of the year, Mr. Speaker.

Mr. Speaker, I know I have to speak through you, but there are so many distractions this time on this debate that it's tough to focus on the Chair at the end of the room.

Mr. Speaker, I think I've made the observations I wanted to, and thank you for the opportunity.

THE DEPUTY SPEAKER: The hon. Member for West Yellowhead.

MR. VAN BINSBERGEN: Thank you, Mr. Speaker. It's a pleasant surprise to find this Bill suddenly before us. It's a Bill that I've longed to speak to, more so than many of the others, because I think the Bill before us suffers from a great number of shortcomings, unfortunately. It's interesting to ponder the fact that this Bill is the product of some two years of work, I would say, within the bowels of the Department of Family and Social Services. During the two years the machinery has been set in motion, machinery that is being legitimized supposedly by this Bill. All over the province some 8,000 members of the community have bent to the task of putting together the machinery to deliver children's services in these regions that are going to be constructed on the basis of this Bill.

Mr. Speaker, what I found amazing is that when I attended one of these meetings a year and a half ago in I think it was Hinton, there was a great amount of enthusiasm and earnestness on the part of this large group of about 20 people. They spent about two or three hours in agitated talk trying to find out what they were supposed to do. It's amazing. It's like being in a fog. Everybody was talking; everybody was moving; nobody really knew what was happening. Then a year and a half later, I ended up . . .

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

Point of Order
Third Reading Debate

MR. HERARD: Yes, Mr. Speaker. Just referring to the ruling that you made on an earlier speaker with respect to relevance at third reading, I wonder if you could focus the speaker to the Bill.

THE DEPUTY SPEAKER: I don't have right at hand the copy of *Beauchesne*, but it can be found at the top of page 508, where it does instruct us that on third reading we don't go back over all the things that may have been or should be or ought to be. We're confined to only the contents of the Bill and the amendments that successfully passed and therefore are part of that, as opposed to some of the things – the Chair was assuming that this had some point that bore down to all of the contents.

So if you could bear down on the contents of the Bill, hon. Member for West Yellowhead.

Debate Continued

MR. VAN BINSBERGEN: Mr. Speaker, I was getting to that major connection.

On the principle of this Bill, though, which is supposed to have been part and parcel of all those conferences that have gone on or all those meetings that have taken place all over the province, the amazing thing is that according to this Bill any region is allowed to offer certain services as they see fit. There is absolutely no compulsion in this Bill that forces any regional child welfare services or whatever they're going to be called to in fact deal with child welfare services. It says very clearly that the types of services the authorities will be responsible for "may include." I find this hard to understand, because it means that conceivably early intervention programs could be excluded or support to families with children with disabilities or you name it. All that stuff could be excluded if that particular region decided that.

Now, that is not the only thing, Mr. Speaker. Amazingly enough, in the agreements that are to be struck between the minister and these boards of these regional groups, once again the subject "may" be the offering of certain services; the subject "may" be finances. I'm still searching for the right page here, but it is "may" be all the way, and I think when we're dealing with kids, there ought to be more security for those children. What amazes me is that as we all know, the United Nations convention on the rights of the child has been signed by 170 countries and every province in Canada except Alberta. I wonder. When I see those rather significant omissions in this Bill 26, then I can see there's some sense that there must be a reason why the province has failed to subscribe to that convention.

Mr. Speaker, those are the elements that bother me the most:

the fact that there is no clear duty given, no clear direction given to either the regional boards or to the minister. I find that a significant omission, and therefore I have to vote against this Bill.

Thank you.

THE DEPUTY SPEAKER: The hon. Member for Leduc.

MR. KIRKLAND: Thank you, Mr. Speaker. As this Bill sits before us in the Legislature this evening, I will be voting against it. I think it's been said in this House many, many times that our most valuable resource is our children. We should give them the absolute best in protection when they require it. I find that this Bill does not hold the government accountable. I find that the Bill, as it is written, does not provide the secure funding that's required for the regions to ensure that they can provide the necessary services. I would suggest that critical components such as that are not entrenched in the Bill, and as a consequence I won't be supporting it.

Now, there can be no question, Mr. Speaker, that there's a need and a requirement to revamp and rethink the delivery of child welfare services. However, I think if we're going to do it, certainly we should do it correctly and we should do it thoroughly. So I offer tacit support, because the changing to the Child Welfare Act certainly can be accomplished through this. We can't lose sight of the fact that the reforms are intended to be based on four very major principles. One was a community-based service; the other was an early intervention; there were improved services to the aboriginal people and the integration of services.

Now, I want to go back to the community-based services because this is critical and it's important to me. When we are looking at a community-based service, it would seem incumbent, before we arrive at handing that off, that those communities are very well-versed in what it actually costs to provide and deliver those services. To date the government has not with forthrightness or with co-operation offered to those communities what it costs to deliver, for example, services in the city of Leduc, in Beaumont, Devon, Calmar, New Sarepta or to the counties, so it's very difficult for these communities to properly prepare. I would suggest that there are some areas as far as secure funding is concerned that have to be addressed, and it could be addressed in that information to be advanced to those communities.

12:10

I certainly think early intervention is the only way to go, Mr. Speaker. Early intervention in any child's life I think will result in the best product when it's all done. I have some concern, when we appoint steering committees, whether the expertise is in some communities to actually define what is the best early intervention. There's a tremendous amount of expertise in this province when it comes to child welfare, and it would strike me that we haven't bridged that gap to make sure that information is transferred to the communities so they can have the best ability and the best knowledge and the best methods that are required as far as early intervention is concerned.

Now, when I looked at one of the concepts, providing improved service to the aboriginal peoples, I think certainly that's long overdue, and the aboriginal people would tell you that it's long overdue. I can recall a couple of incidents here in the last two or three weeks, where in fact up in the Saddle Lake reserve a couple, young aboriginal individuals, chose to take their own life. When we listen to that story unfold, Mr. Speaker, it becomes very evident even as we move into the transition of improving services to aboriginal people, as this Bill is intended to do, that it's moving too quickly. They can't cope and they don't have the expertise. So I see that as being an area of concern here.

The integration of services. I think behind that concept is the saving of money. It's difficult to argue that in fact we shouldn't do that. I think this Bill unfortunately has a tendency that when we look at including women's shelters in it, we are perhaps beginning to muddle things up a little to a convoluted state, and it may work to a detriment somewhere along the line.

Now, if I recall correctly, this Bill and the way the planning process was to unfold here was that there would be a steering committee appointed or selected for each one of the 17 regions in which child welfare services were to be delivered. That would seem, Mr. Speaker, to be a sound idea. They are actually supposed to be the ears and the eyes of the communities and bring back what is required. I do have some concern that those steering committees have been overwhelmed with the task before them and by not giving proper and due knowledge and expertise on how they should achieve it. So I am concerned that for their best efforts and their most valiant efforts, in fact they haven't been given all the tools that are required.

As I indicated, revamping the child welfare services certainly is necessary, and I wouldn't want to do anything but stress the fact that I think we can improve upon it. What we're losing here, I think, in this transition period or through this Bill is that the best interests of the child should be paramount. I'm not convinced, when we look at contracting out, that in fact the dollar doesn't become paramount and the child second to that. So I have a concern with that.

I indicated in my opening comments, Mr. Speaker, that I didn't think the Bill held the government accountable. There are children in this province who certainly need the protection of government, and the government has to be held accountable for that. I would suggest that this Bill is a classic situation of giving the government an avenue of avoidance in being held responsible, and I think that's truly unfortunate. We have known many children in this province that have been in the protection of the government. I know it is a difficult task and I know it's extremely challenging, but we've had many examples, one we're very close to today, where things didn't work out very well for the child involved. Now, to further remove it I suspect will only see an acceleration to some of those children that in fact don't receive the very best care and benefit there.

I would also suggest – and I alluded to it, Mr. Speaker, when I was commenting about the fact that the authorities or the steering committee or the communities do not have a good, firm, solid handle on what sorts of dollars it takes to deliver the services. As a consequence, I would expect that when it comes the actual time to implement, you are going to see some struggling and some diversity there. I can see neighbouring communities offering considerably different services to the children in need. I would suspect we're going to have very much a dual standard there. That causes me some concern because at that point we'll be looking to move from community A to community B to access a service that children require. That will put drains on the larger municipalities, I would suggest, because generally speaking that's where the services are provided.

So, Mr. Speaker, you can see I have some concerns about Bill 26. Those are based on the fact, as I indicated in my opening comments, that children are our most valuable resource. They should be given the absolute best piece of legislation to protect them. I'm not convinced that this piece of legislation will do that. As I read it and as I understand it, it certainly encourages the

authorities to promote the safety, security, and well-being of children, but to promote doesn't give the absolute protection that's required for children. So it is a concern to me.

Mr. Speaker, I also think, as I look at this Bill, that one of the glaring deficiencies, as I see it, is the fact that there are not clear regulations developed in this Bill outlining standards, what standards have to be met. I spoke of the patchwork that I envision will come about as a result of this Bill and its lack of very solid regulations and lack of good solid direction. Again, we will see tremendous difference between the regions. I don't think that is correct. I think children across this province deserve very consistent treatment and very consistent protection. Without good solid guidelines and good solid direction to the authorities I would suggest again that you will see differences between the two. I certainly see a gravitation of children that need services to the larger centres, and of course, as you know, that will in fact cause a large financial drain on those communities. There have to be some more factors considered and there have to be more regulations put in place so that in fact these children receive the best care. So those would be the reasons I would stand and indicate that it is not my intention to support the Bill.

I can also recall in this House the debates about the fact that there really didn't appear to be any sort of appeal mechanism in place. There's no one to investigate child care that's off the base. I see the minister is shaking his head, so I will state that perhaps I am wandering a bit.

With that, I've expressed my concerns as to why I can't support it. Rather than become repetitive, Mr. Speaker, I will take my chair.

THE DEPUTY SPEAKER: The hon. Member for Edmonton-Meadowlark.

MS LEIBOVICI: Thank you, Mr. Speaker. I, too, rise to speak to Bill 26, the Child and Family Services Authorities Act. Since its inception I've had difficulties with the concept as put forward by the government and with the Act as it now sits in front of us. The reason I've had doubts and concerns about the particular Bill is partially from my background as a former social worker – so I do have that in common with the Member for Calgary-McCall – where in fact I did deal with children who were in difficulties and could see how legislation could either help a social worker do their job or prevent a social worker from doing their job.

I also have been involved with a reorganization that occurred in the province of Quebec, where I practised, where what we saw was a devolution, as it were, from community agencies to more centralized agencies, and I saw the reasons for that devolution of community agencies to centralized agencies. Now I'm sitting in a Legislative Assembly, and one of the primary reasons I entered the Legislative Assembly was because of my concerns for child welfare and how child welfare was handled within this province. I am now seeing a trend that I think is dangerous for the welfare of the children in our province. What I'm seeing is the institution of child and family service authorities that are going to consist of appointed members. They're not even elected members. There's no indication of who these individuals are.

12:20

Their scope of responsibilities is incredibly, incredibly large from entering into agreements with regards to child and family services to looking at funding sources to having powers delegated to them by the minister to engaging in and promoting the safety, security, et cetera, of children and families in the community to "planning and managing the provision of child and family services." Yet from my reading of the Bill this is going to be done by a group of volunteers, it seems. I think that the Member for Calgary-McCall must well recognize as well as the minister, should he have been here tonight to hear this, that it is not possible for volunteers to have all this power and all this authority and to be actually in fact able to carry it on.

I think there is a role for volunteers. As a matter of fact, one of the agencies I was involved with in terms of my social work practicum – so that perhaps dates me – was one of the first agencies probably in Canada to have volunteers from the community who became board members. Those board members in fact helped in terms of providing the policy for children's family services, as it was called at the time. That was the method of engaging the public and engaging the community to ensure that the services being provided within that community would in fact be tailored to the needs of that community. That did not mean an abdication of responsibility by the agency. That did not mean an abdication of the responsibility by the governing authorities as well. That's what I am seeing within this Act.

Now, in actual truth there were some hopes of being able to perhaps engage in that kind of process when the government first indicated that they were looking at having local authorities who would engage in helping to deliver child services at the community level. Again, as I looked at what happened with the regional health authorities and the sham, in essence, that health community centres are at this point in time within this province, I see that same potential happening here. In fact, children are too important, Mr. Speaker. They are too important to leave to the whim of a government that just wishes to do nothing else but dump their responsibility onto the community. This is not an issue that should be taken lightly.

When one looks at the dilution of the child authorities Act in that it now includes family services and that it now includes women's shelters – who knows what it might include next year? – in fact the emphasis is not on children. It is not on the welfare of children within this province. We have no funding formula that is being put forward in this Act. We have no idea as to what the standards are that are going to be held across the province to ensure that children across this province are able to access the services that they need. [A bell rang] That's not 20 minutes.

THE DEPUTY SPEAKER: Order. The hon. Member for Edmonton-Meadowlark has the floor still.

MS LEIBOVICI: I beg your pardon?

THE DEPUTY SPEAKER: You still have the floor.

MS LEIBOVICI: I thought so.

Speaker's Ruling
Speaking Time

THE DEPUTY SPEAKER: Order. The Chair is unable to hear the infrequent ringing of the bells, but we have noted that the hon. member started speaking at 20 after midnight, which means that without interruption she would be completed at any time before 20 to 1 o'clock in the morning. The bell may not have been reset because we have been dealing with some issues.

With those facts in mind, we would realize, then, that the hon. Member for Edmonton-Meadowlark has a perfect right to continue speaking for a few moments more.

Debate Continued

MS LEIBOVICI: Thank you, Mr. Speaker. I was just getting by my first couple of points, so I knew that I still had at least 15 minutes left with regards to this very important topic of the protection of children within the province of Alberta, that I don't think should be taken lightly by any member within this House. We have a duty, as Members of the Legislative Assembly, to ensure that the children of this province are taken care of and are properly looked after if the need occurs.

Now, as I was saying, there is no funding formula, so we have no idea as to what the funding may or may not be for these authorities that are being set up. For all we know, we may see much of the disaster that we've seen in health care with regards to the funding of the 17 regional health authorities across the province where it is not sure how that funding is actually distributed and where in fact what ends up happening is that the need for services is not met. That's exactly my fear with regards to Bill 26, that as there is no funding formula within Bill 26, there will be needs that are put forward by the authority to the minister and that in fact they will not be able to be met by the service providers.

Again, if I can just appeal to the Member for Calgary-McCall, who I'm sure knows that there is nothing more frustrating than not having the services available to provide to children in need. There's nothing more frustrating than going to a home and not knowing where you're going to be able to put that child. There's nothing more frustrating than to not be able to deal with an emergency immediately because of the lack of resources that are available or because you have two other cases that are sitting on your desk that need to be dealt with and it's a matter of juggling priorities. Who is to say that one child's need is any less than another child's need?

These are indeed issues that arise over and over and over again, and all one needs to do is speak to any of the social workers in children's services at this point in time to find that there are in fact unbelievable gaps for children in need. In fact, we as the opposition and I'm sure the members from the other side received much correspondence on this very issue. There is the Edmonton Committee on Child Abuse and Neglect, who indicated again that there were developing gaps in services and that this was in particular for children in region 10 and that in fact old unmet needs were not being addressed and new gaps in service delivery were developing.

So rather than the minister of social services saying that this is what the system is, that this is what the problems are within the particular system, and that this is how we need to look at addressing those needs, what the minister of social services has done – and, you know, I feel bad to say this – with the aid of the Member for Calgary-McCall is said: well, let's just hope the community comes up with some kind of reason, with some kind of a rationale; let's just hope that the community will be able to fix and address the various problems and issues that we have seen within the department of social services for years and years and years.

Now, I ask you, fellow Members of this Legislative Assembly: does that make any sense to you? Does it make any sense to you to have 5,000 volunteers sitting around tables and trying to figure out something that should be resolved within the government department itself? Now, I'm not saying there is no place for those volunteers. I'm not saying their input is not valued. What I am saying is that the issue should have been taken care of within the ministry itself. It should not have been dumped onto the community without adequate resources. We heard in this Legislative Assembly that members of these volunteer teams didn't even have paper and pen to write with.

Speaker's Ruling
Third Reading Debate

THE DEPUTY SPEAKER: Hon. member, the Chair has unfortunately been required to remind hon. members that when we're dealing with third reading, it is different from previous goes at the Bill, as it were, that we are restricted to the contents of the Bill. The regional health authorities and all those other kinds of things really are not in the contents of the Bill. So if you could bear down on that, please.

MS LEIBOVICI: Thank you, Mr. Speaker, for putting me back on track. The regional health authorities were just an example that I threw out to show how perhaps a good idea can go wrong. I think that's exactly what we will see within Bill 26.

12:30 **Debate Continued**

MS LEIBOVICI: What I was alluding to just previously was the fact that we have within Bill 26 a new structure that's been developed, and that new structure is the child and family services authorities, that would look at doing all these wonderful things that the department of social services hasn't been able to do in all its years of existence, I would imagine, and that's the reason this Bill is in its place. I would like to put it forward to the members: if the department couldn't do it, why will the authorities be able to do it any better? That's strictly related to the Bill. It's strictly related to the concept of what these child and family services authorities are.

I would like to know whether there has been any research done anywhere throughout the continent in terms of the authorities as they are set up here. My guess is that there is not one iota of research that says that this is the way to go. In fact, there are numerous cases and examples across Canada of different kinds of authorities, if we want to call them that, different kinds of boards that have been set up to advise agencies. I don't think there is any anywhere across the continent – and hopefully someone can let me know whether that's true or not – that has it set up this way, in this fashion and in this manner.

My concern, quite frankly, Mr. Speaker, is that the children in this province will have their needs unmet and that they will fall through the cracks just like – and again, I'm going to bring in the example of health care – all those people that we are seeing in the health care system day in and day out in this Legislative Assembly who have, as the Premier likes to say, fallen through the cracks. I would like to know on whose conscience that child is going to be that's going to die because they have fallen through the cracks because of this Bill.

Now, you can say I'm overdramatizing; you can say whatever you want. But again the Member for Calgary-McCall, in his capacity as a social worker, has dealt with child welfare issues, with children who have had their lives put in danger. I defy any one of you – and the hon. member, the doctor from Bow Valley, if he has been in an emergency room, can attest to the children who have been brought in, the one year olds, the two year olds, the three year olds who have been malnourished, who have had burns all over their bodies, who have been mistreated and neglected. This Bill, which is set out to address those issues, will not do it.

DR. TAYLOR: We're changing it.

MS LEIBOVICI: If you are changing it, I am behind you 100 percent, because as I said, that was one of the reasons that brought me into the Legislative Assembly. When I came out to the province of Alberta and I read about what was happening to the children in this province, I was, as that member says, astonished.

DR. TAYLOR: It's not the government's fault, Karen.

MS LEIBOVICI: What I'm saying at this point in time is that this Bill is a dangerous Bill.

DR. WEST: But your plan is only six pages long.

THE DEPUTY SPEAKER: Order. Hon. minister and hon. Member for Cypress-Medicine Hat, I wonder if we could let the hon. Member for Edmonton-Meadowlark conclude her debate. Then if you are so exercised to get into debate, the Chair would recognize you at that occasion. In the meantime let us hear Edmonton-Meadowlark.

MS LEIBOVICI: Thank you, Mr. Speaker. This Bill can be a dangerous Bill in that it will not protect the rights of children. Now, I can sit back and say that I have faith, that I have faith that it's going to work out all right, that I have faith that the regulations the minister of social services will put in place will be okay, that I have faith that the 15 members on each one of the 15 authorities, I believe it is, that are appointed by the minister of social services will have the ability to do everything that is required in this Act on a volunteer basis – it's my understanding that they're are not paid; nowhere in here do I see that they're paid – that those 15 people in each one of the regions will be able to do all these things.

They will be able, as I indicated before, to enter into the agreements. They will be able to be responsible, and that's the operative word. These authorities are responsible for "promoting the safety, security, well-being and integrity of children, families and other members of the community." This is supposed to be an Act dealing with children. You've thrown in families. Now it's "other members of the community." Who else is the authority supposed to be responsible for? They're going to be "planning and managing the provision of child and family services." They're also going to be "determining priorities in the provision of child and family services and allocating resources accordingly." Well, read that carefully, fellow MLAs, because what that means is because there's no funding formula, some of your areas are not going to get enough dollars to treat those children, to be able to take those children through the care that's required. That's what that means. Nice language, but "determining priorities" means there are no dollars available. "Assessing on an ongoing basis the social and other related needs of the region."

I'm not even halfway through the list. Now, you tell me. You've got a full-time job as an MLA. Your husbands or wives, your spouses, have full-time jobs. Can they be volunteers and do this as authorities? Can they? Be realistic. This is not possible. [interjections]

THE DEPUTY SPEAKER: Order. Hon. member, you are not allowed to engage or encourage the others to . . .

MS LEIBOVICI: I'm not engaging in any discussion; I'm trying to keep focused. The members on the other side are alternately either laughing or getting angry, and I'm not sure which one is the better of the two. The reality is that this is an emotional Bill because it's dealing with children and it's dealing with the abdication of this government's responsibility to the children in this province.

Now, we've seen what has happened in the past with regards to that. We have seen . . .

DR. WEST: We've spent $192 million on children's services.

THE DEPUTY SPEAKER: Hon. Minister of Transportation and Utilities, it's late in the morning. I wonder if we could hear this hon. member out, and then you can have your chance to debate.

Edmonton-Meadowlark.

MS LEIBOVICI: Thank you, Mr. Speaker. I believe the hon. minister of transportation said that we spent $100 million on children. Well, we spent $60 million on Bovar in this province. How much have we spent on MagCan? How much have we spent on NovAtel? That to me is an indication of what this government is about.

Bill 26, which was originally the child authorities Act and has become the Child and Family Services Authorities Act, I think is an Act that doesn't even have in it the ability to say that it's an Act that's going to protect children. That I think is most telling of all. In the amendments that were put forward by the hon. Member for Edmonton-Beverly-Highlands, there were requests with regards to the Bill. There were requests with regards to the preambles. In fact, this Bill does not even have within it the fact that this is a Bill that is dedicated towards children and the protection of children.

Again I'm sure the Member for Calgary-McCall and the minister would probably say: well, that's covered in the Child Welfare Act. Fine. Let it be covered under the Child Welfare Act. Why not cover it under this Act as well? What would be the harm? What would be the harm to put that principle in this Act as well? I don't think there would be any harm at all other than to show the government's intentions to ensure that children in this province have protection, have safety, and have security. I don't think it's too much to ask for each one of these government members to recognize that that is one of their roles: to ensure that there is safety for children within this province.

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

MR. GERMAIN: Thank you very much, Mr. Speaker. I don't know which is the most cruel and unusual punishment, delivering one of my speeches at 20 to 1 in the morning or having to listen to one.

SOME HON. MEMBERS: Listening to them.

MR. GERMAIN: Some hon. members reflect that it's listening to one. I was encouraging the minister of transportation to take my place and give his 20-minute dissertation on the issues important to children in the province of Alberta, but I see that he will presumably speak after I speak and take his turn then.

You know, Mr. Speaker, the hon. Member for Edmonton-Meadowlark gave an impassioned speech about why this particular

Bill has some risks. At the risk of attracting the Speaker's ire, I too will make some analogies only in speaking to some sections of the Bill, and that is to relate to the authorities that will be set up.

12:40

Now, it's not possible to speak to the authorities in this Bill without having recourse to the other authorities that we have, of course, which are the health authorities. What are the differences between the two groups? First of all, in recent surveys that have been taken, it seems that virtually everybody in the province of Alberta has an interest and an extreme concern about the issues of health. When you move outside of the local sphere of interest for community children, the interest level falls off very rapidly, Mr. Speaker, in terms of the problems that people assess as being most important to them, which really leads me to conclude – and I think it's a fair conclusion – that poverty and difficulty with children is something that many people in our society, whether rightfully or wrongfully, if they don't ignore, at least have other issues that they put higher than that.

That, then, begs the question, Mr. Speaker, the question that was raised by the hon. Member for Edmonton-Meadowlark with much enthusiasm tonight. The question is: will these authorities actually work? What are the two schools of thought? The minister alleges in his public relations that this will bring child care and child welfare matters closer to the grass roots, where it's important to be dealt with on an individual community basis. Well, my little community is an interesting example of that. We're already working with various steering committees and various front organizations that are starting to settle the matter and starting to have education on the issue. The first thing we find is that our region will likely have the community child welfare issues based out of Lac La Biche. That's interesting, and I'm happy for the community of Lac La Biche. It's an important community, and it has a certain amount of need in the area of child welfare. But the bulk of the population in the region, if it is coterminous with our health boundary, lives in Fort McMurray or north, and the bulk of the needs are also in that geographic area. So already you see stresses and strains in a system that hasn't even got off the launching board.

[Mr. Herard in the Chair]

Other difficulties come to our attention mirrored against this Bill, in third reading of Bill 26, and the difficulties recognize that we have a tremendously diversified community. We have a community that has some of the highest wealth in the province of Alberta. We also have a community that has some of the greatest levels of poverty. We have an area that is geographically diverse, a large territory. Into that local mosaic we're going to add a child welfare authority that will not have the large facilities and the large hospitals and the fancy boardrooms to work out of, that will not have all the interplay with the multitude of health care workers there are in the province of Alberta, ranging all the way from the doctors at the highest level of the provision of services down through the health care ranks. What we will have are people who will be asked to provide charitable, benevolent services effectively for the proper administration of children in care in the province of Alberta.

Will they have any authority? No. In fact, Mr. Speaker, they won't. This Bill completely emasculates the authority of the regional authorities. All you have to do is look at section 18 in this particular Bill to see that "the Minister may by order dismiss all the members of an Authority and appoint an official administrator." Now, isn't that an interesting scenario? How would you repel the criticism of that section, that all the minister has done here is create another layer of volunteer bureaucracy, someone hopefully that will take the heat for errors of the department and allow the minister to stand up in this Assembly like the other minister dealing with authorities and say, "Oh, blame it on the authority," or "Go back and talk to the authority," or "It's an authority problem," or "It hasn't come to my desk yet because it's an authority problem," or "I don't have to study it because the authority is studying it." Do we hear all of those statements here in this Legislative Assembly? We certainly do. We hear them day after day after day, and we will hear them again day after day after day under the authorities created under this particular Act.

Now, as if that weren't enough, if we look at section 11 of this particular Bill, Mr. Speaker, it allows further erosion of these authorities that are being created under this child welfare legislation when it says, "The Minister or any other member of Executive Council." So now we're going to have 18 – it's a good thing the Premier doesn't appoint more cabinet ministers or we might have more people on the Executive Council that would interfere in child welfare rights. However, let's just stick to the minister. The minister can still enter into an agreement even if some services are provided in a region by one of these regional authorities.

So what real authority have we given these authorities, or have we in fact, just as the critics allege, created a straw man that we can continue to blow down every time things get a little tough in the trenches of child welfare work? Now, the hon. minister of transportation was illuminating us with his knowledge about how many social workers there are in the province of Alberta, and the way he said social worker in this Legislative Assembly was almost like he was referring to some kind of a poisonous snake. The words just rolled off his lips.

DR. WEST: Point of order, Mr. Speaker.

THE ACTING SPEAKER: The hon. Minister of Transportation and Utilities is rising on a point of order.

Point of Order
Imputing Motives

DR. WEST: It's late at night, but under 23(h) and (i) he's imputing motives that were not at all insinuated by anything that I said in this Assembly. I want an apology for what he just said because that's absolutely ridiculous. I made no mention nor said anything in the context of what he just alluded to in this Assembly to another member. I don't know how you can tolerate that in this House.

THE ACTING SPEAKER: Hon. minister, I must admit that I was temporarily distracted and I did not hear anything of what you allege went on. Therefore, I must apologize to you for not picking that up. So I'm going to have to let it go at this point and ask the hon. member to continue.

MR. GERMAIN: The minister earlier referred to social workers, and I inferred in his voice some element of concern or some element of distaste. If the minister says that he in fact holds social workers in the highest possible regard, I accept that as an honourable gentleman, and I apologize if I suggested that he holds social workers in some disregard. I was misled by the tone of his

voice, and I do apologize for that. Even though you didn't hear the point of order, I'm happy to alleviate the minister's concerns and make it very, very clear that I misinterpreted exactly the sound of his voice. Having sat here with him for two and a half years or three years, I thought I'd learned to read his voice, but he does amaze from time to time, and I do apologize.

Debate Continued

MR. GERMAIN: Now, moving on with third reading debate, Mr. Speaker, I want to sort of continue my analogy between the health authorities . . . [interjections] I want to continue my analogy if my hon. friends would stop disrupting me.

DR. WEST: Point of order, Mr. Speaker.

THE ACTING SPEAKER: The hon. Minister of Transportation and Utilities.

Point of Order
Imputing Motives

DR. WEST: The hon. member has admitted that he needs to apologize, yet you're trivializing it by laughing over here.

MR. VAN BINSBERGEN: No, he's not. I am.

DR. WEST: No. He was also. So how is that constituted as an apology?

THE ACTING SPEAKER: Hon. minister, I think that the apology was made. The laughter was begun at, you know, 11 minutes to 1 in the morning, and I think that probably that contributes to the giddiness of certain members. I don't think it was intended for you.

MR. GERMAIN: They do say that laughter is contagious, Mr. Speaker. I wasn't laughing at the minister. I want the record to reflect that. The hon. Member for Edmonton-Meadowlark was commenting on her career as a social worker, and that was causing a certain amount of chuckles.

12:50 **Debate Continued**

MR. GERMAIN: I want to go on in my comments about this Bill, Mr. Speaker, to talk about secret government. Now, how secret is it? Well, earlier today we had a point of order ruling in which the Speaker of the Legislative Assembly was not aware that this particular Bill would be here for third reading today. He wasn't aware of that and felt that it wasn't on the Order Paper.

That is not the only relevant issue about secret government in this particular Bill. Let me direct the members' attention to section 5: "an Authority may make by-laws respecting the conduct of the business and affairs of the Authority." Now, remember, this is an authority that is dealing with children in the province of Alberta and spending the government's money. Now, here's what the authority can do. The "Authority may make bylaws respecting the conduct of [their] business." Point (3) of this Bill in this section 5 says that "the Regulations Act does not apply." Now, what's the significance of that, Mr. Speaker? The Regulations Act, of course, is the Act that obliges the publication of these regulations and bylaws in the official *Gazette* of this province so that people can know what their obligations are and what they have to deal with.

Let's talk as well about other regulations that are found in this particular Bill. If you look at section 20 of the Bill, you will see that this is a Bill in which the largest bulk of the work of the authorities is going to be done by regulations and by contractual agreements. The regulations are set out in section 20. Contractual agreements are set out in the definition of the Act under section 1(a), and the agreements under section 7 of the Act indicate that "the Minister and an Authority" can agree on "any other matter agreed to by the parties." Of course, these contracts also do not have to be published in the *Gazette*, do not have to be referred to anywhere.

Now, let us look at the ultimate in what I suggest is the ultimate community insult, Mr. Speaker, and that is section 2 of this Act, that says that the minister will create one or more family service regions in the province of Alberta and that an order under the section must name the region and describe its boundaries. But this is interesting: "The Regulations Act does not apply to an order under this section." So even the creation of these authorities and their boundaries, which one assumes will mimic to some extent the regional health authority boundaries – at least, this is the public message that has been communicated in the region from where I come, Mr. Speaker. Even those official boundary lines are not to be gazetted in the *Alberta Gazette* so that everybody can have clear and open access to them. This is further evidence, I suggest to all members of this Assembly, that this particular government will work in secrecy around the issues of child welfare matters. Frankly, if you're not squeaking out there, you're not going to get any grease, if I could use the squeaking wheel gets the grease analogy.

This Bill has all the potential, Mr. Speaker, to blow up badly in the face of the government. It is laudable that the government wants to involve grassroots decision-making in child welfare matters, but it is not so laudable if the recipe for disaster is spelled out in their particular Bill even before it gets off the launching pad.

Finally, Mr. Speaker, whatever these authorities develop, however far they go, whatever they accomplish, if they accomplish the minister's goals or otherwise, this legislation of course will sunset itself roughly eight years hence, in 2004, and one has to wonder why a social service policy delivery model is in fact treated by this government as the same type of legislation that will sunset itself. Does the government presume that in some miraculous and mysterious way there will be no children requiring welfare services in 2004? We can only, Mr. Speaker, as I close debate on this particular Bill, hope that is indeed the case but know in a sure and certain understanding that it will not be the case and that what we will have here in this particular legislation is a recipe for disaster despite the government's good intentions.

With that, Mr. Speaker, there may be others that want to speak on this particular Bill, so I will take my place.

THE ACTING SPEAKER: The hon. Member for Calgary-McCall has moved third reading of Bill 26. Does the Assembly agree to the motion for third reading?

SOME HON. MEMBERS: Agreed.

THE ACTING SPEAKER: Opposed?

SOME HON. MEMBERS: No.

THE ACTING SPEAKER: Carried.

[Several members rose calling for a division. The division bell was rung at 12:56 a.m.]

[Ten minutes having elapsed, the Assembly divided]

For the motion:		
Ady	Gordon	Paszkowski
Burgener	Hlady	Pham
Calahasen	Jacques	Renner
Clegg	Kowalski	Shariff
Coutts	Laing	Tannas
Day	Langevin	Taylor
Doerksen	Magnus	Thurber
Dunford	McClellan	West
Forsyth	McFarland	Woloshyn
Fritz	Oberg	Yankowsky
Against the motion:		
Dalla-Longa	Kirkland	Sekulic
Dickson	Leibovici	Van Binsbergen
Germain		
Totals	For – 30	Against – 7

[Motion carried; Bill 26 read a third time]

Bill 31
Business Financial Assistance Limitation Statutes Amendment Act, 1996

[Adjourned debate May 15: Mr. Evans]

THE ACTING SPEAKER: The hon. Member for Fort McMurray.

MR. GERMAIN: Thank you very much, Mr. Speaker. It's my pleasure tonight to speak to third reading of Bill 31. This Bill purports by the press spin of the government to restrict the ability of the government to make loan guarantees and give loans and go through a long litany of disasters that have befallen our province so that today in this province we are $32 billion in debt, more or less.

AN HON. MEMBER: Thirty-five.

MR. GERMAIN: Thirty-five billion dollars in debt, more or less; I've been corrected.

We spend $1.5 billion a year in interest payments alone. The Premier is scratching his head in the province and wondering what to do with any surplus. We say: what surplus when you're $35 billion in debt and paying 1 and a half billion dollars a year in interest? [interjections] I am speaking to the Bill. In particular, Mr. Speaker, I'm speaking to section 6 of the Bill found on page 4 of the Bill, and let me read section 6 of the Bill found on page 4 of the Bill into the record so that people can clearly understand what our anxiety is about this Bill. At first blush if you ask the Alberta Liberal opposition if we favour loan guarantees to business, what is the answer? The answer is no. If we favour loan guarantees and handouts and grants to business? The answer is no. But what does the government do on page 4 of this Bill? They pass this piece of legislation. "Notwithstanding any other law, including section 2" – section two is another qualifying section – "the Crown may give an indemnity." May give an indemnity. Can you believe that this Bill that supposedly speaks about curtailing loan guarantees in the province of Alberta is couched in positive permissive language, that they may give an indemnity such as what Bovar got from the province of Alberta, over $500 million? And MagCan, how much was MagCan?

1:10

MR. SEKULIC: Two hundred and some million.

MR. GERMAIN: Two hundred and some million. How much was NovAtel?

MS LEIBOVICI: Six hundred million.

MR. GERMAIN: Six hundred million dollars. And the list goes on, on and on and on and on. The government that never stops giving.

So what they do is they come forward – it gets out in the community that this government is soft when it comes to loan guarantees and handouts and grants to business. So the government has to do some quick damage control, and that quick damage control is this Bill 31, the Business Financial Assistance Limitation Statutes Amendment Act, a courageous title, Mr. Speaker, but for what? For a government that is obviously too afraid of their own lack of willpower that they have to legislate themselves some guarantees that they will not be tempted.

I used the analogy before on this Bill, Mr. Speaker, when I said in second reading that it is akin to a person throwing a padlock around his own refrigerator so that he can keep maintaining his diet. You know, that's what the government has done in this particular legislation. [interjection] That particular section goes on.

You know, earlier the hon. minister was dialoguing with me, and now again he wants to get me in trouble here by making inappropriate comments from time to time. He does it in a mischievous way, Mr. Speaker, because he does it sitting down and just gets these quick, undervoice little jabs in that are so disruptive at 1:15 in the morning.

Now, the Crown can continue to give guarantees. So, Mr. Speaker, Members of the Legislative Assembly will say, "Well, is there any restriction at all?" Let the debate be the judge of that. In this particular Bill the government can make a guarantee if it is specifically authorized by or under an Act . . . [interjections]

THE ACTING SPEAKER: Order please.

Hon. member.

MR. GERMAIN: Thank you. They can make loan guarantees if it's specified under any other Act or regulations. Of course, these are the regulations that are made in secrecy around the cabinet table, secret regulations to provide secret loan guarantees. Does the bleeding ever stop, Mr. Speaker? No, because paraphrased against that permissive section of making loan indemnities, there is this section:

> The Lieutenant Governor in Council may, on the recommendation of the Provincial Treasurer, make regulations respecting authorizations for the purpose of [this subsection].

So we now have an absolute, hundred percent, ironclad guarantee not that there won't be any guarantees but a hundred percent, ironclad guarantee that if the government wants to give an indemnity or a loan guarantee, they will have the ability to do so.

So whatever mileage the government hopes to take on this

particular Bill as they travel down the rocky roads in the next few months, whatever plan they have for the spin-doctoring of this particular legislation, one question will come back to haunt the government again and again, Mr. Speaker, and that is this question: if this is truly an Act to restrict loan guarantees and indemnities, why is it worded in positive and permissive legislation that permits and provides for the very indemnities and guarantees that the government wants to avoid?

Some of the members looked stunned when they see that revelation. I hope that they have taken the time, Mr. Speaker, to read carefully this Bill, because rather than restrict loan guarantees and indemnities, this Bill in fact permits and allows them. That is an extremely tragic day in the province of Alberta because that tells me that this Alberta government's penchant for giving away the future of our children will continue to go on and on and on. It is unreined, unbridled, and uncontained in any way.

So I urge all Members of this Legislative Assembly to take the profound step and vote no to this particular Bill 31.

THE ACTING SPEAKER: The hon. Member for Leduc.

MR. KIRKLAND: Thank you, Mr. Speaker. Looking at Bill 31 and its intention and objectives, as the hon. Member for Fort McMurray indicated, certainly it was intended to get the government out of the loan guarantee business. I would also have to reiterate his comments that obviously they didn't have the discipline, the control, or the good judgment, so they had to pass legislation to prevent them from reaching into the cookie jar, if I could use that terminology.

However, I would suggest that the Bill, as I examine it, is weak. It has some holes in it. I don't think in fact it will close the loan guarantee handouts that this government is so famous for. Certainly when we look at it, the Bill removes the cabinet's ability to approve loan guarantees over a million dollars in all cases. However, there is loan guarantee legislation outside of that that's contained in the Financial Administration Act that remains intact up to $1 million. So, Mr. Speaker, you can see that in fact there are some deficiencies there and that there are some opportunities still to advance it.

When you speak about the principle of the Bill and the objective of the Bill . . .

DR. TAYLOR: I'm about ready to strangle Liberals with it.

MR. KIRKLAND: Well, it'd take a few more than you to do that, so I'm not too concerned.

When you look at the Bill itself, it only restricts loan guarantees over a million dollars and forces them to come to the Legislature. I think that's a positive step. I would suggest that that excludes all those loans below the million-dollar limit, and I don't think that's desirable. I think that it's very important to close the door in its entirety. There can be no question that we're on record time and time again as bringing the atrocious loan guarantee record of this government to the public's attention. Certainly we have spoken out against loan guarantees for years as opposition members.

So on one hand you say that this is a positive step forward, but on the other hand it doesn't go far enough. It has some deficiencies in it. We look at what the hon. Member for Fort McMurray indicated, and section 6 clearly still enables and entitles the government to give out loans. I think that's very unfortunate. On the positive side, the loan guarantee must be brought in the form of an appropriations Bill, and I think that that brings it to this Legislature for debate, so that certainly is a positive step, without question.

When we look at the Bill itself, Mr. Speaker, like so much of the legislation that we've dealt with and discussed over the last several months, there are positives to most of them. Unfortunately, most don't take it to the absolute optimum position for all Albertans, and it is unfortunate that when we're passing legislation, we don't ensure that in fact it is the best that's available.

This Bill, as I indicated, is a positive step towards closing the door to loan guarantees. However, Mr. Speaker, I would suggest that in fact it could be improved upon as such. I know that there are members that put amendments forth to try to make it a better Bill. Unfortunately, they were defeated by the government, and that truly is unfortunate because it would have been a much better Bill. I think it was the Member for Edmonton-Manning that advanced a goodly percentage of those amendments.

So, Mr. Speaker, in light of the fact that it's a step in the right direction to limiting loan guarantees, it's not complete. It doesn't close the door entirely. Governments shouldn't have to pass legislation to ensure that they advance good judgment and good decision-making processes. It would seem that this government certainly has to do that. We've seen this one and other Bills that are of a financial nature that tie their hands. It's unfortunate that you have to tie the hands of government, because one certainly should be able to make good, sound decisions on behalf of all Albertans so that in fact we wouldn't have found ourselves in such a deep fiscal mess in this province. As I indicated, it's a bit of a twist. Certainly I applaud them, on one hand, because they're stepping in the right direction, but I would also fault them for not taking it to the full, complete closure, Mr. Speaker.

So with those particular comments I will yield the floor to others who may want to elaborate on some of those loan guarantees of past years and hope that in fact we've learned something from it. I suggest that we haven't learned as much as we could have or should have, and if we had, it would have been a tighter, fuller, and more thorough Bill that would not have left some holes and some cracks, because certainly if we look at the past record, this government will fall into those holes and those cracks again.

With those comments, Mr. Speaker, I will yield the floor.

1:20

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

MR. DICKSON: Thanks, Mr. Speaker. I have a little trouble jumping on the Bill 31 bandwagon, and I guess the reason is that Bill 31 to me is testament to a government unable to discipline itself. You know, it's difficult to argue against anything which purports to put some checks and some limits on what we've seen as being excessive, irresponsible investment and spending by past governments, but I guess a concern I have is when I hear the Premier and the Provincial Treasurer touting Bill 31 and in fact representing it to be something very different than it is.

Until the Constitution Act of Canada changes, Mr. Speaker, the Legislative Assembly and the government of Alberta are sovereign. That means that as long as it's consistent with the division of powers, the Alberta government can do virtually anything it likes and it's not in any meaningful way restrained by Bill 31. I mean, if we wanted to genuinely take out of the hands of the government – if we were so insecure and so frightened by the inability of the government of Alberta to ensure that they didn't make these kinds of foolish investments we've seen so many examples of in the past, then what we should be looking at is

some kind of a constitutional change. So in fact it's beyond the ability of the Legislative Assembly to change.

Bill 31 is simply another statute. There's nothing that gives us any primacy over any other piece of Alberta legislation. There's nothing that in any way impedes or restricts the ability of a further government to come along and repeal the Bill, amend it, change it, and, Lord knows, we've seen plenty of amendment Acts since June 15, 1993.

So Bill 31 would be easier to support if it wasn't part of this great chest-thumping exercise on the part of some members of government, who say that this effectively binds their hands, that this effectively ensures that Alberta will never be in this kind of a jam again. I'd be much more comfortable with it if in fact the Provincial Treasurer was more candid and said that all Bill 31 effectively does is that it's something like a statement of intention, and it ought not to be oversold. It ought not to be represented to be anything more than that, and Albertans should be told that the real safety they have as taxpayers is in the discipline of government, in the responsibility of cabinet decision-making. That, fortunately or unfortunately, is the only real bulwark we have. That's the only refuge for good sense, common sense.

The Bill may be a great marketing tool, and certainly somebody who dreamed up the idea of the Business Financial Assistance Limitation Statutes Amendment Act I suppose deserves some credit, because many Albertans that don't have an opportunity to read the Bill or consider how easy it is to change it may think that the government genuinely has in some fashion restricted their ability to make improvident business transactions, but in fact Bill 31 doesn't do that. Bill 31 is nothing other than a statement of intention. It's a Bill that I expect I'll support because I can't disagree with the principle, but I do wish the provincial government would acknowledge the shortcomings in the Bill and not oversell it, because I think that does a disservice to Albertans. I think it misleads and misrepresents to Albertans really what's going on with this modest Bill.

The problem with Bill 31. If the government were so concerned about ensuring that Albertans had an absolute kind of security, that we'd never see the MagCan and NovAtel and that whole sorry history of misadventure again, then what they would be doing is looking at a creative way of ensuring that there was a constitutional change to actually take it out of the hands of the provincial government. But there's no interest in doing that. We've heard absolutely no consideration even of a step to do it. I can think of three interesting ways in terms of how one might go about that, but I heard the rulings earlier in terms of relevance, and I don't want to stretch the patience of the members opposite or you, Mr. Speaker.

THE ACTING SPEAKER: The hon. Member for Medicine Hat rising on a point of order.

Point of Order
Questioning a Member

MR. RENNER: Thank you, Mr. Speaker. I wonder if the member might entertain a question in debate.

MR. DICKSON: I'd be happy to entertain a question from this member, Mr. Speaker.

Debate Continued

MR. RENNER: Thank you, Mr. Speaker. The member has indicated that this Bill does nothing to prevent the government from simply changing the legislation and carrying on business as usual. I've spent a fair amount of time reading the Bill, and I think I understand it. Quite frankly, I see nowhere in this Bill that the government can do anything to change this Bill without coming to the Legislative Assembly, doing it in front of all Albertans and in full view of everyone. I wonder how the member suggests that the government could change this Bill without making known to all Albertans their intention to do so.

MR. DICKSON: It's an excellent question, Mr. Speaker, and I'm glad that the Member for Medicine Hat raised it. I think the response would be this. I never said that you didn't have to have recourse to the Legislative Assembly, but the simple fact is that we've looked at – what? – 60-odd pieces of legislation, we've looked at a Miscellaneous Statutes Amendment Act that's come forward with the consent of the opposition. We worked on it for about two and a half or three weeks; we're mending all kinds of things in there. There's a host of legislation that comes through. Some is argued and contested vigorously, some not so. But the point is that the government has the numbers, and between elections a majority government can do anything it darn well pleases. The point is: it's no big deal for a government that has the numbers, that's not in a minority situation, to bring in a Bill in the fall session of the Legislative Assembly.

MR. RENNER: It sure is.

MR. DICKSON: Well, you know, the member opposite may take a different view, but it seems to me that the short answer is that the government can come back in as they do multiple times. They introduce a new Bill. They change an existing piece of legislation. [interjections]

THE ACTING SPEAKER: Through the Chair, please.

MR. DICKSON: Mr. Speaker, I hope I was responsive to the Member for Medicine Hat in his question.

I just sum up by saying this: I acknowledge that to change Bill 31 requires another Bill, but what's the big deal with that? [interjection] I'm sorry, Mr. Speaker. I thought I was still on Bill 31. My point is that Bill 31 is nothing other than a statement of intention. All I ask of the provincial government is that they not oversell it, that they acknowledge the limitations of the Bill and indicate that this is only good until the government gets around to deciding they want to modify it, vary it, change it. There are many ways they can do that.

1:30

So let's recognize those limitations, hold the government to account and, I guess, serve notice that the government will have a rough ride if they bring in legislation that would purport to change any element of the Bill. They'll still be able to do it. After the enormous hemorrhaging we've seen, the over – what was it? – $2.3 billion of wasted, so-called investment by the government of Alberta, I'm not sure that this in and of itself is going to restore confidence of Albertans, and that's unfortunate. Those are the observations I wanted to make with respect to Bill 31, Mr. Speaker.

Thank you.

[Motion carried; Bill 31 read a third time]

MR. DAY: Mr. Speaker, I move the Assembly do stand adjourned for 12 hours.

[At 1:31 a.m. on Wednesday the Assembly adjourned to 1:30 p.m.]