Legislative Assembly of Alberta

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head: Committee of the Whole

[Mr. Clegg in the Chair]

THE DEPUTY CHAIRMAN: It being 8 o'clock, I think we'll call the committee back to order.

Bill 41
Water Act

THE DEPUTY CHAIRMAN: Any questions or amendments to Bill 41?

The hon. Member for Sherwood Park.

MR. COLLINGWOOD: Thank you, Mr. Chairman. Continuing debate on amendments to Bill 41, the Water Act, we are, as I recall, now on amendment 3, which I assume you will call A3, and it relates to section 9.

THE DEPUTY CHAIRMAN: Hon. member, it would be A4. They had A1, a government amendment.

MR. COLLINGWOOD: Oh, sorry. Thank you.

Indeed, Mr. Chairman, we will be on amendment A4, dealing with section 9 of the Water Act. That section will have the director, as defined under the legislation, develop the water management plan that is contemplated in the legislation. Now, the development of the water management plan, as I've mentioned previously, has a tremendous amount of discretion to it in terms of the elements or the criteria that have to be considered as the government develops these water management plans. The inclusion in section 9(1) at the end of that statement is that "another person" other than the director can be the party that is responsible for the development of a water management plan, and that is the particular wording in section 9(1) that I and my colleagues take exception to.

I'll indicate to members that the minister and I have had some discussions about this particular aspect of the amendments, and indeed I had discussions with the minister about the amendments that I was going to be proposing under Bill 41. The minister has indicated that some work is already in progress in the development of water management plans in some river basins in the province of Alberta and that there are organizations that are involved in that particular process. I think the minister was referring specifically to the Bow River and some work that's being done there.

Now, that's just fine, Mr. Chairman. I have absolutely no problem and I don't think any member in this House has a problem with the minister and the officials in his department working with Albertans who have some knowledge and some expertise, some history, some experience about various water basins in the province of Alberta, in their being involved significantly in the development process. I have no problem with that at all, and in fact I would encourage it. I think that the director responsible for the development of the water management plan indeed ought to encourage that kind of public involvement.

The difficulty is that under the wording in section 9(1) as it currently reads, the minister can simply bypass the director and go directly to another person. We've seen this before in legislation: no restrictions in terms of the definition of who another person is. It is not the responsibility of another person to develop a water management plan. It is the responsibility of the minister through the director to develop the water management plan in consultation with experts and with those who have experience.

"Another person", as it's stated in section 9(1), is a further delegation of responsibility, and in this case, I submit, Mr. Chairman, it is an abdication of responsibility by the minister and by the director in the development of the water management plan. "Or another person" could encompass a variety of individuals, organizations, or corporations. Indeed, it could be a corporation that is a large consumer of water who could be asked to develop a water management plan.

I know that the minister has for some time now been involved in discussions and consultations with TransAlta Utilities about the ongoing, chronic, and difficult problems with Lake Wabamun, just west of Edmonton. Presumably under section 9(1) as that section is currently worded, if it becomes law, the minister could in fact pass the responsibility for a water management plan to TransAlta Utilities Corporation. They could transfer it to a volunteer organization. They could transfer it to a non-governmental organization.

Now, the minister might say, "Well, we might have, you know, an environmental group develop a water management plan." But the argument still holds: it's not the responsibility of an environmental group to do that. It is the responsibility of the minister to include those individuals and those organizations in the consultation process.

What the section reminds me of, Mr. Chairman, is what we did – the government members recognize that we did it wrong, and we had expressed concerns about this particular issue when it came up. I'm referring to the notion of school councils. The original legislation that the government tabled passed all responsibility down to school councils. School councils said: "We don't want that kind of responsibility. We want input. We want access. We want to be part of the process, but we don't want to have the ultimate responsibility."

Well, in the wording in section 9(1) that's what the minister is doing here again. He is passing ultimate responsibility for the development of a water management plan onto some other organization, institution, corporation, or individual. It's not their responsibility. They should be involved in the consultation process. They should be encouraged to be involved. But ultimately the responsibility should be with the minister and with the director.

Hence, Mr. Chairman, amendment A4 seeks to strike out the words "or another person" as some entity that would then develop the water management plan. If I strike out the words "or another person", the responsibility for the development of the water management plan rests with the director, and the director remains responsible and the director remains accountable to the minister. The director and the minister involve and include that other person, but they do not make that other person the party to do the actual development of the plan.

So the amendment in no way suggests that there ought to be exclusion of expertise in the development of water management plans. It suggests that they can still be very much involved in the process but that they are not ultimately the ones who carry the can for the minister in yet another delegation of authority and that the minister remains responsible for the development of the plan.

That is the reason, Mr. Chairman, that I move amendment A4 and that I look for support for the striking out of "or another person", because it is yet another example in this government of delegation of authority.

[Motion on amendment A4 lost]

MR. COLLINGWOOD: Mr. Chairman, moving now to the next amendment, which will be A5, it deals with section 10 of the Water Resources Act. The water management planning process that the minister is to undertake under the Water Act, as I've said in the past, does not require the mandatory inclusion of critical elements to effective water management planning, but section 10 continues on with that discretion. Section 10 says that "the Minister may establish water management planning areas for the purpose of developing or implementing a water management plan".

It only makes sense, Mr. Chairman, that if you are going to go through the process and expend the resources to develop a water management plan, you would do it in the context of a water management planning area. If section 10 is going to remain in Bill 41 and if the minister is intent on the effective development of water management plans, it is imperative that the minister then establish water management planning areas. It seems pointless to develop a water management plan if you have not identified the planning area for which that plan is to be developed and to be implemented.

8:10

Again, Mr. Chairman, my amendment, which is amendment A5, says that the word "may" should be taken out and substituted by the word "must". That's the amendment that I'm proposing for section 10. Otherwise – and I've commented before on this – it becomes less than a full commitment to effective water management planning if the minister is going to proceed with the development of a water management plan and not identify the water management planning area.

Now, I know, Mr. Chairman, that if you continue on to section 11, the minister has left this so open that "the Lieutenant Governor in Council may approve a water management plan or part of a water management plan". Depending on the whim of the minister at the time, the whole process of the development of a water management plan with the interests of protection of the aquatic environment as the reason for the development of that plan – the minister can on a whim simply avoid the approval of a portion of that water management plan under section 11. It is far from certain that this is going to be an effective program, an effective process because of the minister's retention of his discretion. In referring back to section 10, it is, as I say, essential that the water management planning area be identified if you're going to go through the process of developing the water management plan.

Once again, I say to the minister that if there is full commitment to the process and if there is full commitment to effective planning, then the minister will not have to fear, to shy away from the word "must." If the minister is going to say, "I'm going to do that anyway," if the minister is going to say, "Yes, we have to identify the water management planning area before we can develop an effective plan," then fine; we are in agreement. We are in agreement, and the minister would be able to fully support an amendment that requires the establishment of the water management planning area before there is the development of the water management plan or at least in terms of the implementation of a water management plan.

Mr. Chairman, I say that prospectively, looking at the development of the plan, but even now as I read the section again, the minister is suggesting that a water management plan could be implemented without knowing where it's to be implemented. It makes no sense, and it makes perfect sense for the minister to agree that the word "may" in section 10 should be changed to the word "must" for effective water management planning.

[Motion on amendment A5 lost]

DR. TAYLOR: How many more have you got, Brucie baby?

MR. COLLINGWOOD: Mr. Chairman, the Member for Cypress-Medicine Hat is asking how many more I have. All he has to do is look at the amendments that are in front of him, and he would know the answer.

Mr. Chairman, moving to the next amendment, I advise members that I am not going to move number 5 that occurs on the sheet of amendments, and in its place I will have the Table circulate an amendment that I propose with respect to section 18(2)(b). As the pages are distributing the amendment, I'll give some background as to the essence of section 18(2)(b).

Section 18(2)(b) is the section of the Water Act that causes the greatest concern and is the subject of a number of different interpretations. The minister and I have spoken about section 18(2)(b), and I think it's safe to say, Mr. Minister – and if I'm wrong in this, you can certainly correct me. I think it's safe to say that the minister and I have agreed to disagree on the interpretation of section 18(2)(b). The history of this particular issue is that under Bill 51, which was tabled in the Legislature last fall, there was concern expressed by various individuals and organizations in the province about the wording of section 20, I believe it was, in Bill 51, which made it quite clear that all licences for water issued in the province of Alberta would fall under the new water legislation. It is my view that the minister looked at those concerns and made an amendment, so now section 18(2)(b) of Bill 41 has replaced section 20 of Bill 51.

The concern in a nutshell, Mr. Chairman, is that by virtue of the wording of section 18(2)(b) some licences will come under this legislation and other licences will not. There will be some licences in the province of Alberta that will be able to circumvent the new water legislation. If the purpose and the intent of the new water management legislation is to break through the views of the past under the Water Resources Act that is current, to recognize the importance of water conservation, to recognize the importance of protection of the aquatic and riparian environments, if that's the purpose behind the new Bill, then it is essential, of course, that all licences are covered under the new water legislation. You can't properly manage, you can't properly and effectively deal with critical issues that deal with water if you do not have all licences subject to the same legislative regime.

Section 18(2)(b) indicates that if a term or condition of a licence "is inconsistent with this Act, [then] that term or condition prevails over this Act." I've taken the position, Mr. Chairman, that that means that if the director wants to pursue a remedy under the Water Act as it will be enacted, it leaves it open for the holder of that water licence to challenge the director on the actions that he wants to take and to say, "Your actions are inconsistent with my licence and the terms and conditions of my licence, and

therefore you do not have the authority to interfere with my rights."

Now, a licence under the Water Resources Act that will become a deemed licence under this Act is really nothing more than the right to an allocation of water. Under the Water Resources Act, terms and conditions can be included in those particular licences. Some of the licences that currently exist are pre Water Resources Act licences and in fact are pre-1930 licences issued under federal legislation before natural resources were transferred to the provinces.

Now, the minister says: I direct you to section 10 of the Water Resources Act that currently gives the same kinds of controls as is suggested in section 18(2)(b) of the Water Act. Well, let me pursue that argument a little further. When the Water Act, Bill 51, was before the Legislature and scrutinized by various individuals and organizations, one of the concerns that was expressed to the minister was that the Bill gives the director the power to cancel or suspend a pre-1930 licence. The minister was advised, in a challenge to that particular use of power under this legislation, that that would be subject to a legal challenge.

8:20

I think what I'll do, Mr. Chairman, is put on the record the comment that was made to the minister in a brief that was submitted to him that deals with the whole issue of the grandfathering of licences, the security of title for those licences, and the minister's ability to cancel or suspend a licence that was issued prior to the provinces having control over water resources. What I'm reading from, if I have the full text here – and I'm not sure that I have it. I know *Hansard* is going to ask me for it, and I'm going to have to get back to them on this. Let me read the quote, and I'll assist *Hansard* later.

Quote: most of the larger water licences in southern Alberta were issued under federal legislation prior to 1930. There was nothing in the federal legislation which has enabled the government to cancel a licence when the minister decided it was in the public interest or when there was an unforeseen adverse effect on the environment. It would be inconsistent with the terms and conditions of these pre-1930 licences to now have them subject to the broad cancellation powers which Bill 51, which was from last year, proposes. Accordingly, if the new powers of Bill 51 are used to erode the rights of a pre-1930 licence holder, a court could be called upon to rule on the constitutional validity of Bill 51's new powers. Unquote.

Now, Mr. Chairman, that is in essence the nub of the debate as to whether section 18(2)(b) gives the pre-1930 licences an out and allows them to circumvent the new water legislation or whether indeed they are included by virtue of section 18(2)(b). I take the position that under the annex to the legislation that transfers natural resources to the provinces, indeed the province does have the ability under its legislation to change the rights that were granted prior to 1930, prior to the transfer of the natural resources, so long as it is of broad and general application.

My position is that the new Water Act intended to cover all water in the province of Alberta, all water which is vested in the province of Alberta, Her Majesty in right of the province of Alberta, and that it is therefore within the authority of the provincial government to bring about such changes. So in a challenge, a constitutional challenge to the minister's right to change pre-1930 rights, the minister would be successful, if there were a constitutional challenge to the minister's ability to do that.

The federal government said on the transfer of natural resources: so long as your changes are of broad general application, yes, the provinces can do that. I mean, otherwise, Mr. Chairman, we would be handcuffed in perpetuity because the provinces, who are always asking for more powers, then would be left with natural resources over which they had no control because of pre-1930 arrangements with the federal government. That simply can't be the case, and I think everybody in this Assembly is going to recognize that's simply not the case. So the minister would clearly be successful if there were a constitutional challenge to that.

Now, the minister says that one of the problems and why section 18(2)(b) is in there is because of the issue of security of title. Pre-1930 licences, some of the Water Resources Act licences are not subject to a limited time period. If the licences were subject to the new legislation without any statement that a term or condition of the licence prevails, the security of title could be endangered by virtue of the fact that a licence issued in perpetuity would then become a licence issued for a specific term. I have no problem with that, Mr. Chairman. I have no problem with accepting tenure, with accepting security of title for those licence holders who are looking for some security of title in that regard. So I have no problem with that, but my suggestion to you is that by virtue of the statement I just read into the record, it is not security of title that is the concern or the issue.

The issue is the minister's ability under this legislation, under Bill 41, to cancel or suspend a license for a number of reasons, including damage to the aquatic or riparian habitat. Under the legislation – and I'll refer just specifically at this point to section 55 – the director does have the authority to

> suspend or cancel a licence . . . if in the opinion of the Director a significant adverse effect on the aquatic environment occurred, occurs or may occur that was not reasonably foreseeable at the time the license was issued and compensation may be payable under section 158.

My difficulty, Mr. Chairman, is that if the minister is prepared to accept that licences which do come under this Act ought to be subject, under the rights of the director, to suspension or cancellation, then the minister must agree that if it's good for some licences, it must be good for all licences because of the overall reason for new water legislation: the protection and conservation of aquatic habitats. So if it's okay for some licences, it has to be okay for other licences.

The minister refers me to section 10 of the Water Resources Act and says the wording is virtually the same as occurs in section 18(2)(b). Now, if I then continue on with looking at the Water Resources Act, as the minister has invited me to do, I then go to section 51, which is the cancellation section. I think it's fair to say, Mr. Chairman, that under the Water Resources Act the cancellation powers of the minister are far more restricted than they are under Bill 41. The minister can only

> (a) . . . cancel a licence when he is satisfied that the licensee has ceased to exercise the rights granted under his licence, or
> (b) cancel a licence or amend a licence to decrease the amount of water that may be diverted under it, when he is satisfied that the licensee has wasted any water diverted.

So a licensee will have to either have been wasting water or have abandoned his rights under the licence for the minister to, in effect, cancel that particular licence.

That kind of regulatory structure is far different than what we're dealing with under the Water Act, because under the Water Act we now give much broader cancellation powers, which will include a detrimental effect on the aquatic environment. I say to

the minister that in our discussions we've had, we're concerned that if the director wants to invoke an emergency measure, someone may challenge the director's authority to come in and evoke an emergency measure and could then challenge the minister by saying, "The government, the Legislature, made it very, very clear that they intended that those licences, at least pre-1930 licences or presumably any licence issued prior to the Water Act, bypass and be exempt from the Water Act." So what we do in 18(2)(b), in my estimation, is invite litigation by licence holders who have what they will perceive to be the heavy hand of government coming down and telling them that their water rights are being canceled or suspended under an emergency order.

As I say, I think the minister and I have agreed to disagree. The minister takes the point of view that 18(2)(b), because it is the same as section 10 of the Water Resources Act, covers off all licences in the province of Alberta, and all the authority that the director has under the Water Act, Bill 41, will be available to the director for every licence in the province of Alberta. I think that in the context of the statement I just read – and I might even be able to agree with the minister – perhaps for the invoking of an emergency measure, yes, the minister and the director may very well have the authority under the Water Resources Act licences. But I am still not convinced, Mr. Chairman, because of the broad cancellation powers that the minister gives to the director under this Act that are good for some licences and for some reason not good for other licences, that the minister has specifically accepted that concern that was expressed by individuals and organizations that the cancellation powers under the Act – not the emergency powers but the cancellation or suspension rules under the legislation – would not be caught by those particular licences. I am concerned that that is the end result.

8:30

We have had a number of discussions to try to resolve the issue. I know and the minister knows that there are many legal opinions floating around out there, some legal opinions saying that all is fine with the Bill, other legal opinions floating around saying that this is simply not the way to proceed, because you are tying your hands if you cannot have legal authority over all water licences in the province of Alberta.

What I do, Mr. Chairman, is I then go to the Water Resources Act, to section 13. I accept that under the Water Resources Act all licences are caught by virtue of the emergency section that exists in the Water Resources Act, section 13. Now, in terms of the wording of section 13, where it is accepted that all licences are covered, it says that

> notwithstanding anything in this Act or any interim licence or licence issued under this Act, the Lieutenant Governor in Council may

do various things in terms of emergency measures. I take the view that the wording in the preamble of section 13 says to the courts and says to licence holders that notwithstanding the legislation in this Act, notwithstanding the inconsistencies that may exist between the licence and the legislation, we do indeed have the power to deal with water in emergency situations. I'm of the view, Mr. Chairman, that the ability to suspend should be very, very clear in the Water Act for all licences, including the pre-1930 licences.

What I do in this amendment, Mr. Chairman, is I amend section 18, not in section 18(2)(b), because if the minister is of the view that the security of title for the in-perpetuity licence could be affected by a change to 18(2)(b), I'm prepared to accept that. I don't want to tinker with the security of interest, the security of title that those licence holders have. Fair enough. So we are not tinkering with section 18(2)(b).

I am adding as a last clause to section 18 wording that is similar to section 13 in the Water Resources Act, that crystallized the government's and the department's ability and authority to control all licences in the province of Alberta. What I suggest in my amendment is a new subsection (7), that "notwithstanding anything in this Act, or any term or condition of a deemed licence, deemed approval or deemed . . . certificate" – I'll stop there, Mr. Chairman, and indicate that I use all of those because they are all referenced in section 18, as various categories – "and for greater certainty, sections 43, 55 and 71 apply to all deemed licences, deemed approvals, and deemed preliminary certificates under this Act." That crystallizes and clarifies that the suspension rights that exist in section 43 for deemed licences, in section 55, I think it is, for deemed approvals, and in section 71 for deemed preliminary certificates are then clear. We are clear that the suspension rights will attach to all licences in the province of Alberta, not just the pre-1930 licences. [Mr. Collingwood's speaking time expired]

Now, Mr. Chairman, I have to take my chair. I know that other members will speak briefly so that I can then continue with my debate. If I have unanimous consent from the House to continue with my debate on section 18(2)(b), I'll continue. Otherwise, other members will continue in the debate. I'll ask for unanimous consent so that I can conclude my comments on section 18(2)(b).

THE DEPUTY CHAIRMAN: The hon. Member for Sherwood Park has asked for unanimous consent to continue with his debate on the amendment. All those in favour, please say aye.

HON. MEMBERS: Aye.

THE DEPUTY CHAIRMAN: Opposed, if any?
Continue, hon. member.

MR. COLLINGWOOD: Thank you, Mr. Chairman, and my thanks to members of the Assembly for allowing me to continue.

One other point I think is important to add as to why the amendment comes forward in this form rather than in the form that was proposed originally that did deal with section 18(2)(b) – again recognizing that we are not dealing with section 18(2)(b) and that we are not making any attempt to change section 18(2)(b). If you look at sections 43, 55, and 71, they all contain very much the same wording in terms of the powers they give to the director for the suspension or cancellation of a licence or approval. Section 43, Mr. Chairman, deals with approval, section 55 deals with licences, and section 71 deals with preliminary certificates.

Now, I look at section 55 for licences:

> The Director may suspend or cancel a licence issued under this Act if in the opinion of the Director a significant adverse effect on the aquatic environment occurred, occurs or may occur that was not reasonably foreseeable at the time the licence was issued and compensation may be payable under section 158.

That wording is similar in sections 43, 55, and 71 for each of those categories of rights that exist under the Water Act: deemed approvals, deemed licences, and deemed preliminary certificates.

Now, Mr. Chairman, I know that there is also concern that has been expressed about the ability of the director to do this only in circumstances that were not reasonably foreseeable at the time the licence was issued. Those who hold pre-1930 licences have

suggested: how could anything have been reasonably foreseeable for a licence that was granted in the 1900s, 1910s, 1920s? So those would be the licences that could be subject to cancellation because it was not reasonably foreseeable. I accept that concern, but I don't believe that the reasonably foreseeable test would be stretched to that point, that those who are seeking security of title and have concerns over the broad cancellation powers are going to have their rights affected any more by virtue of the reasonably foreseeable test.

[Mr. Herard in the Chair]

What I do want to point out is that if there is a suspension of a licence, where what's good for some licences is good for all licences, there is then compensation that may be payable under section 158. In our discussions with representatives from the irrigation districts, they had suggested that if there was an attempt to change the rights to the allocation of water that they received many years ago and if the Act was attempting to override, there ought to be some form of expropriation or there ought to be some form of compensation. The suggestion that was put forward by representatives from the irrigation districts is to in fact accept the Water Management Review Committee recommendation.

I don't have the exact reference, Mr. Chairman. I believe it is recommendation 59. I'm not sure of that, so I won't state that unequivocally. Indeed, let me just state what the essence of that recommendation is. What the irrigation districts indicated they could live with is the recommendation that

> new water legislation enable the Government to take over a water licence for specific purposes, including implementing minimum aquatic and riparian ecosystem protection requirements and securing water where it is necessary for the general public good. The process for the licence take over should be clearly set out in the new water legislation and include a mandatory entitlement to compensation when the licence has been taken over.

Now, that is not, I think it's fair to say, Mr. Chairman, the essence of this particular amendment, where I'm suggesting that we add expropriation rights to the Bill. Nonetheless, I think it deals with the elements that the irrigation district had indicated. If there is to be a takeover of a water licence for the general public good, we are prepared to accept that. If it is a takeover of a licence for the general public good, there should be a mandatory entitlement to compensation when the licence has been taken over.

8:40

Now, the point that I'm making there, Mr. Chairman, is that there is concern that there be compensation if the rights that currently exist have been taken away by the government for whatever purpose. The purposes for which a suspension or cancellation can occur are set out in sections 43, 55, and 71 as to when and in what circumstances the director may suspend or cancel a licence. Now, admittedly it is not a mandatory statement; it is a discretionary statement. Nonetheless, there is a statement that is contained in that section that says that "compensation may be payable under section 158" of this particular Bill. Section 158 is the compensation section and says that if a director amends, suspends or cancels a licence,

> the Director must, subject to the regulations, authorize the payment of compensation to the licensee for any losses incurred as a result of the amendment, suspension or cancellation . . . in the manner and amount that the Director considers appropriate.

By my amendment stating very clearly that all licences are covered under this Act, the suspension and cancellation powers of the minister catch all licences, because of the purpose of the Act, but any attempt to affect the current and existing rights of any licensee, regardless if they're pre-1930, post-1930, post-1960, whenever the licence was issued, the minister cannot interfere with that right unless there is compensation paid.

Again, if I'm inaccurate in this representation, he will correct me, but I think the minister has indicated that there was reluctance to come back with further expropriation rights in the Water Act, and there are no amendments, no changes contemplated in the Water Act to deal with greater expropriation rights. Well, the notion behind expropriation is that there is compensation for any change to the rights that those individuals or organizations have. Yes, the right to suspend or cancel covers those pre-1930 licences by virtue of the wording that I have used. The wording, the preamble, the first part of subsection (7) that I'm proposing is the same wording that's taken from the Water Resources Act, excepting the proposition that all licences are covered under the Water Resources Act. I can only assume it's because of those words:

> Notwithstanding anything in this Act, or any term or condition of a deemed licence, deemed approval or deemed preliminary certificate.

So 18(2)(b): fine. For the overall rights that those individuals hold under those licences, the terms and conditions prevail, except for the ability of the minister to suspend if suspension is necessary. When I say "necessary" I'm referring to 55(2), where the Director is of the opinion that "a significant adverse effect on the aquatic environment occurred, occurs or may occur."

What I think the amendment does, Mr. Chairman, is it finally puts to rest the differences of opinion. It is not, as I understand our debate between the minister and myself, a difference of opinion as to whether or not the Act ought to cover all licences. The minister, as I understand his argument, says that all licences are covered, that there is no need to make a change. I'm of the view that all licences are not covered because of 18(2)(b), without anything else that exists in the Act. If we are both in agreement on what the intent of the legislation ought to be, that all licences are covered, then I think that it is a fair compromise to add a section that simply makes a statement for certainty and for clarity, so that if the minister or the government finds itself challenged on its ability to exercise its authority over any particular licence in the province of Alberta, whether it be by way of a constitutional challenge or otherwise, the minister can rely on this particular subsection and the minister can rely on section 2 of the annex, that says that provincial governments can, as long as they use a broad general application, affect rights that existed prior to their acceptance of the natural resources in 1930.

Now, Mr. Chairman, I think I've covered all the points that I wanted to in terms of section 18. Again I say that it is what I consider to be a fair and reasonable change. It will add clarity. It will improve the minister's position. It will improve my position. It will improve an understanding throughout the province of Alberta that the suspension rights do in fact cover all licences and that the minister, of course, needs to act responsibly in that matter because for any suspension, any cancellation, any change, any amendment, there must be compensation payable to that licence holder for any change that's made. If it is for the right reason that there is a significant adverse effect on the aquatic environment, it is right that the minister ought to act, that the minister ought to have the clear authority to act, and it is right that the party affected should have access to compensation.

I want to again thank members for allowing me to continue the debate on that particular matter. I will leave it at that. I hope the minister will take an opportunity to respond. It is a sincere effort

to try to deal with the particular problem.

My original amendment dealt with 18(2)(b). I didn't want to do that because I accepted the minister's arguments to me about security of title. So I'm hoping that this will become an acceptable compromise to put the matter to rest once and for all.

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

MR. LUND: Well, thanks, Mr. Chairman. I've listened intently to the hon. member's argument, and he's certainly added a lot of verbiage to the argument. However, I didn't somehow become convinced that it was necessary.

Mr. Chairman, I want to inform the House that in fact when we got a letter from the Environmental Law Centre indicating that they had some concern about section 18(2)(b) particularly, we then asked the Justice department whether in fact we were vulnerable by having the words as they are in 18(2)(b), whether we could take the appropriate measures if there was the possibility of environmental damage or damage to the aquatic environment. They said to us that, yes, we are covered, that we can take those actions.

I think it's also important to point out to the Assembly that we've had this situation now since 1931, some 65 years of experience with a similar wording, and the fact is that we have never had a problem. As a matter of fact, the irrigation community in southern Alberta are very, very environmentally conscious. It has happened that when there has been a shortage of water, the irrigation districts voluntarily cut back. So I don't think it's necessary to add this verbiage to the Act. It will provide nothing new. I think that as far as the arguments the hon. member has referred to, 18(2)(b), you can go back in *Hansard*. I don't want to go over it all again, but at the time of the introduction into Committee of the Whole I did go over it at some length, the situation relative to 18(2)(b), the one subsection that is causing a little bit of concern.

I would certainly urge the Assembly to not adopt this amendment. I don't think it is necessary. As a matter of fact, the Justice department has said that it's not necessary.

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

8:50

MR. COLLINGWOOD: Thank you, Mr. Chairman. Just a couple of comments in response. I referenced that there were a number of legal opinions out there that dealt with the whole issue of 18(2)(b) and whether or not it allowed certain licences to circumvent the Act. I think one of the problems that we had in this particular matter is that we for some reason were not able to share legal opinions. I suspect, Mr. Chairman, that this is going to become a matter of litigation sometime in the future, and I would invite the minister to come forward and table in the Legislature the opinion that he has received from Justice. As far as I know, the minister has copies of all of the legal arguments that have been put forward on this particular issue, and it would probably behoove the minister to table all of the legal opinions about what the consequence of section 18(2)(b) is. I'm going to invite the minister once again to table all copies of those legal opinions so that we can see the different points of view and not simply have the minister's word on what the opinion of the Justice department is.

MR. DICKSON: That would be transparent government.

MR. COLLINGWOOD: That would be transparent government, hon. member, and I'm sure that the minister will respond in the positive, having said a number of times in this House that he always acts in the interests of more open and accountable government.

The other comment I want to make, Mr. Chairman, is that I have not attempted in any way to single out the irrigation districts in the comments that I'm making about section 18(2)(b). Certainly the irrigation districts are a major player in all of the issues that deal with pre-1930 licences, having been issued those licences under federal irrigation legislation prior to the transfer of natural resources to the province of Alberta. But it is not just the irrigation districts that I'm referring to. I do not want to single out any licence holders. I'm speaking of all licences in the province of Alberta. My concern is that the legislation will attach to licences that are now issued under this legislation to a greater extent than all other licences in the province of Alberta.

I would not for one minute argue with the minister that the irrigation districts act responsibly in the management of water and that they have acted in a voluntary capacity in the past if they find a water shortage existing. It is wonderful when we have the kind of co-operation that's necessary to deal with actions that are on a voluntary basis, but what I suggest, Mr. Chairman, to the minister and to government members is that if we were able to rely on voluntarism for every aspect of society, we wouldn't need a Legislative Assembly in the province of Alberta and we wouldn't need any laws in the province of Alberta. Now, I hear the minister thumping his desk. He doesn't want to have a Legislative Assembly, and he doesn't want to have laws. He'd like to have voluntarism and anarchy. Aside from that, there is purpose, there is reason behind legislation, and I daresay that voluntarism comes much easier when parties know that there is a regulatory structure in place that can persuade voluntarism before it becomes necessary to take any other action.

I do not want to single out the irrigation districts. I have accepted all of the comments that they have made about the Water Act, their concerns and their criticisms, their differences of opinion with the position that I take, with the interpretation that I give to the Water Act as proposed. I accept that we are of a difference of opinion. My interest in pursuing this issue is to come up with the best water legislation we can in the province of Alberta, taking nothing away from the irrigation districts and the attitude that they have towards the conservation and protection of water in the province of Alberta.

I am disappointed that the minister is not prepared to accept this amendment. It is done on a broader scale than the irrigation districts. I think that it is indeed an amendment that will strengthen the legislation, and it will, I think, be seen by all water users and all Albertans interested in good water management that we've made the Act better.

MR. JONSON: Mr. Chairman, I would note that we are up to, I believe, amendment 6, and I would move that the committee adjourn debate on Bill 41 and report progress when the committee rises this evening.

THE ACTING CHAIRMAN: The hon. Acting Government House Leader has moved that we now adjourn debate on Bill 41 and that we report progress when the committee rises. All those in favour, please say aye.

SOME HON. MEMBERS: Aye.

THE ACTING CHAIRMAN: Those opposed, please say no.

SOME HON. MEMBERS: No.

THE ACTING CHAIRMAN: Defeated.

Hon. members, we are voting on amendment A6 to Bill 41 as moved by the hon. Member for Sherwood Park.

[Motion on amendment A6 lost]

MR. COLLINGWOOD: Mr. Chairman, I'll continue debate on the amendments and indicate that this will now be amendment A7, back to the main sheet. This particular amendment is in keeping with a number of other amendments that I put forward. A number of these amendments, as members will see, deal with the issue of the discretion that has been left with the minister to deal with water management planning in the province of Alberta.

Section 38 of this Bill again leaves discretion to the minister in respect to the issuance or refusal to issue an approval. I deal specifically in section 38(2) with the elements that the director must take into consideration when he is making that decision. I refer specifically to clause (b), which says that the director, in making his decision on the issuance or refusal to issue an approval, "may consider . . . potential or cumulative effects on the aquatic environment," and a number of other matters. My point, Mr. Chairman, is that once again it is discretionary. It is my view that if the purpose of the Act is water conservation, when a director makes a decision about the issuance of an approval, the director must take into consideration potential or cumulative impacts on the aquatic environment.

Members will see that what I'm doing in the amendment is saying in clause (b) that "may" should be taken out and substituted with "must" and that I then change slightly the wording in the section so that I then strike out clause (c) and say, once again, "must consider effects on public safety" and then "may consider any other matters applicable." In essence, what I do, Mr. Chairman, is add the word "must" instead of "may," so we "must consider effects on public safety," and the director, then, "may consider any other matters applicable." But in terms of the "effects on the aquatic environment . . . hydraulic, hydrological and hydrogeological effects," and the effects on current licence holders, the director must take into consideration all of those aspects before the director considers the issuance of an approval. As I say, this again deals with the discretion left to the minister and the director. Those elements are critical in making a decision, and it should be mandatory, not discretionary.

MR. LUND: Mr. Chairman, this particular amendment, calling once again for a "must" instead of a "may," really takes away a lot from the spirit of the Act. In fact, to use the "may" is a balance, because these decisions that the director makes are appealable to the appeal board. If in fact the director errs in taking into consideration the things that are mentioned, then of course that will come out at the time of the appeal, because the individuals have an appeal on all of these where they're issued. So I don't think it's necessary. I think it takes away from the spirit of the Act, and I would urge members – because this isn't the only one where we're going to run into this. There are actually four of them according to my count. We'll be running into it again on 51(4), 53(3), and 82(5). I won't be commenting as we're going through those, but they're exactly the same argument. They're all appealable, and this is the balance within the Act.

[Motion on amendment A7 lost]

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

9:00

MR. COLLINGWOOD: Thank you, Mr. Chairman. I'll move to the next amendment, being amendment A8, dealing with section 51 of the legislation. Section 51 is the issuance of a licence. The minister just referred in his comments to an amendment I'm going to be moving that deals with section 51(4), but before I get to that, I want to move an amendment that deals with section 51(1).

One of the changes that is occurring with the repeal of the Water Resources Act and the enactment of the Water Act is that individuals under the Water Resources Act had the right to apply for a licence for a conservation/recreation purpose. That right exists currently under the Water Resources Act, so any member of the public in terms of assisting in the protection of instream flow needs for any particular body of water can apply to the government, to the director for a licence.

Now, the application for a licence is of course subject to the same scrutiny and the same rules as any other application for a licence under the Water Resources Act. It's certainly not an automatic thing, but the right does exist for an individual to apply for an instream flow conservation licence under the Water Resources Act. That particular section, Mr. Chairman, is missing from the Water Act. The Water Act allows the government to take a claw-back on a particular licence so that if there is a transfer of a licence, the government, the director can withhold 10 percent of the water that is the subject matter of that licence that is being transferred. That's the only opportunity for the government to recover water that has already been under a licence that the government wants to recover.

Well, that's fine. It's fine that the government is now taking that opportunity to claw back a percentage of the licence in a transfer, but you have to recognize that it is only in a transfer arrangement that the government has the ability to do that. The government can't claw back without the transfer event taking place; otherwise, we'd be back to our suspension/cancellation amendment circumstances. So it is only in the circumstances of a transfer of a particular licence.

So what we're attempting to do with this one is that the amendment to 51(1), that I'm proposing as A8, gives a member of the public the ability to request a licence to keep water in a water body in a river. By the way, just for clarification purposes, this right currently exists under the Water Resources Act at section 11(1).

So we have the claw-back. We have the Crown reservation under section 35 giving the minister the right to a Crown reservation, but our position is that the public ought to still have the right to apply for the licence as they currently do under the Water Resources Act.

We, again, had discussions about this particular amendment. The minister expressed his reservations about this amendment. The natural state licence idea was dropped because of fears that the public might come forward and make unreasonable requests for water. Where a water basin requires a certain level, a certain volume, there may be an application to retain greater amounts of water than that for purposes of recreation even though it may be in excess of the necessary instream flow needs to maintain the

integrity of the aquatic habitat. Well, yes, that's fine, and that's a valid concern of the minister. I accept that. But as I said in the opening remarks to this particular amendment, the director still has the final authority and the final say as to whether or not the licence is issued or is not issued. If the minister is of the view that the licence ought not to be issued because it will retain a greater volume than is necessary for the purpose of that particular licence, whether it's recreation or whether it's instream flow needs for the aquatic habitat, then the director doesn't have to issue the licence.

So if the minister is concerned that the public might take unreasonable licence with the licence application, if the minister is concerned that the request is unreasonable, the minister and the director retain the power to deal with those kinds of applications. That, in my opinion, is not justification for not allowing the public to continue to have the same rights that they currently have under the Water Resources Act.

I also want to say, Mr. Chairman, that the application for a natural state licence is subject to any valid and subsisting right that currently exists. So it cannot in any way take priority to, interfere with the rights of licence holders that currently hold licences when the application or the request comes forward. It is simply retaining the ability of the public to be part of the whole environmental protection process in the province of Alberta. The minister is on record many times as saying that all Albertans have to be involved in the good stewardship of the water in the province of Alberta, of all the natural environment, but each step along the way we erode the public's involvement in decisions about environmental protection. If we send a message with this amendment that the public continues to be invited to participate in the process, the public will continue to stay involved in the process.

The Minister of Environmental Protection says that he can't accept my last amendment because there is an appeal to the Environmental Appeal Board. The minister knows full well that I completely and totally disagree with current amendments to the Environmental Protection and Enhancement Act that literally make the Environmental Appeal Board a body that is not functional because of the privative clause that is put in there. The public will lose or has already lost confidence in the Environmental Appeal Board.

So if the minister is prepared to say, "Yes, we are prepared to invite the public to be part of the overall stewardship of the water in the province of Alberta," then I think the minister can make that statement by accepting amendment A8.

MR. LUND: Mr. Chairman, I would refer the hon. member to 51(2), and for the benefit of those that don't have Bill 41 with them, 51(2) says that

> on application by the Government in accordance with this Act, the Director may issue a licence to the Government . . .
>
> (c) providing or maintaining a rate of flow of water or water level requirements
>
> for the purpose of implementing a water conservation objective.

Then if we go to the definition of water conservation objective, it says that it

> means the amount and quality of water established by the Director under Part 2, based on information available to the Director, to be necessary for the
>
> (i) protection of a natural water body or its aquatic environment, or any part of them,
>
> (ii) protection of tourism, recreational, transportation or waste assimilation uses of water, or
>
> (iii) management of fish and wildlife.

Mr. Chairman, this amendment is once again totally unnecessary, and I would urge the House to reject it.

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

MR. COLLINGWOOD: Thank you, Mr. Chairman. Yes, Mr. Minister, I am aware that there is reserved unto the government the ability to issue a licence for purposes of implementing a water conservation objective. The important part of that particular section – and again for the benefit of members, section 51(2) is: "On application by the Government . . . the Director may issue a licence to the Government." So the government has to apply to the government for a licence.

That was not the point that I'm making, Mr. Minister. What I'm saying is that under the Water Resources Act the public of Alberta has the same rights as the minister gives to the government in this particular Bill. What I'm suggesting is that the public ought to continue to have the rights as they currently have them and that in that section it would not be only the government that would have the ability to apply for that licence, but it would be the public that would have the ability to apply for that licence and it would be the public who would be part and parcel of the good stewardship of the water in the province of Alberta for implementing the water conservation objectives or for retaining a natural state licence.

[Motion on amendment A8 lost]

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

9:10

MR. COLLINGWOOD: Thank you, Mr. Chairman. Moving to what will be amendment A9, you will recall that the minister made reference to amendment A9, dealing with section 51(4), and indicated to you that he would not be speaking to it because it is of the same issue as other amendments that I have put forward. Indeed, the minister has recognized that section 51(4) is the section that deals with decisions about the issuance of a licence.

Section 38, which is an amendment that I just previously put forward, is the decision of the director in terms of the issuance of an approval. Indeed, the wording is identical in the legislation as to the decision-making process that the director uses for purposes of deciding whether or not to issue a licence. Yes, indeed, the minister is correct. Once again it says that the minister "may consider any existing, potential or cumulative effects on the aquatic environment" and "may consider . . . effects on public safety."

The wording that I have proposed for section 51(4) is indeed consistent with the wording that I have proposed for section 38(2) in terms of the decision-making process. I am not inclined, Mr. Chairman, to agree with the minister that using the word "may" really speaks to the spirit of the Act because there is then appeal to the Environmental Appeal Board. I think it is incumbent upon the director that he consider the existing, potential, or cumulative effects on the aquatic environment before any decision is made about whether a licence ought to be issued or ought not to be issued.

Again, the effects on household users, licensees, and traditional agricultural users: those kinds of things ought to be taken into consideration before the decision is made by the director. Effects on public safety: something that must be taken into consideration

by the director before making the decision.

The minister is well aware of my position and my desire to have mandatory statements in the legislation for the consideration of those aspects, and the discretionary aspect can remain in terms of "other matters applicable to the licence that in the opinion of the Director are relevant." That leaves open every opportunity for the director to consider other matters in relation to that specific licence application. But every time the director looks at a licence application, he has a checklist, and he must deal with every one of those before he gets to the discretionary matters.

That is why, Mr. Chairman, I am now putting forward amendment A9, dealing with the changes that really should be made to section 51(4) before the director issues a licence.

[Motion on amendment A9 lost]

MR. COLLINGWOOD: Mr. Chairman, the wording may not be exactly identical, but the concept is exactly the same in terms of licence applications not accepted, which occurs at section 53(3) of this. In making a decision that no applications for licences may be accepted, the director "must" consider in some sections and "may" consider in other sections. This is in essence the reverse of section 51(4). It is where the director is of the opinion that no further allocation of water should be made in a particular area.

It's in essence the flip side of the issue. Once again, it is our view that the director "must" consider the "effects on the aquatic environment" and "may" consider "any other matters that in the opinion of the Director are relevant." Once again it leaves wide open the ability of the director to give consideration to specific circumstances, but the checklist is there, and the checklist has to be followed. The mandatory requirements that must exist should be included.

Now, on this particular one, 53(3), we have added sections (c) and (d), where we refer specifically to the "applicable water guideline, water conservation objective and water management plan" in that the current section (c) says that the minister in his decision "may consider . . . any applicable water guideline, water conservation objective and water management plan." Well, again, how can you make a reasonable or reasoned decision about the issuance of a licence or the rejection of a licence if you have not specifically taken into consideration water conservation objectives and water management plans? That's a given; that's an absolute must.

We have, then, in essence made editorial changes to this section (c). It would be the new section. It "must" consider the guidelines, objectives, and plans and "may" consider other matters that are relevant. Again, Mr. Chairman, this amendment would in fact strengthen the Water Act proposed by the Minister of Environmental Protection in that the director will have clear direction as to how decisions about the issuance of licences are made.

THE ACTING CHAIRMAN: Hon. member, I could be wrong, but I don't think I heard you move amendment A10.

MR. COLLINGWOOD: Mr. Chairman, my apologies. I will now move amendment A10.

THE ACTING CHAIRMAN: Thank you.

[Motion on amendment A10 lost]

MR. COLLINGWOOD: Mr. Chairman, I am moving amendment A11. Once again, the minister and I have had some discussion about the wording that currently exists under section 56(2). This is the licence that would result, Mr. Chairman, from the amalgamation of two licences. The issue that arises, then, is that if one licence is a licence that is older in nature than a new licence, what is the resulting priority of the new amalgamated licence? It is my opinion that the wording in section 56(2) leads to confusion. It currently states that the director now after the amalgamation has to "assign to the licence resulting from the amalgamation . . . the numerically highest priority number of all the amalgamated licences." The minister and I have once again agreed to disagree. The concern is: does it mean that it is the numerically "highest" priority number or the numerically highest "priority" number?

I think that the wording is confusing, and I have proposed wording that the priority number is "the priority number that corresponds to the most recent licence." It is my understanding that that was the intent in Bill 51, when the matter came forward. The wording has been changed from Bill 51. I can't specifically indicate, Mr. Chairman, if that is the identical wording from Bill 51. Nonetheless, it is an attempt to clear up what I consider to be confusing wording as to which priority number is to be given to the amalgamated licences. So it is in this regard an amendment put forward to clarify what appears to be a rather confusing result from the amalgamation of licences.

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

9:20

MR. LUND: Thanks, Mr. Chairman. Just a very quick clarification. Reading "the numerically highest priority number" is the issue that's causing some difficulty. I think it's really important that we understand what we mean here. The priority number has to be read together. We could say it's A; we could say it's C or whatever. The "numerically highest" means exactly what it says: the highest number. So in fact when you read "priority number" as being one thing and the "numerically highest," that really clarifies what number we're talking about.

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

MR. COLLINGWOOD: Thank you, Mr. Chairman. My understanding of the reason for the confusion is the priority numbers that are issued. The minister can assist. An older licence is going to have a lower number. So when there is an amalgamation of the licences, then the lowest number, according to the minister, is the highest priority. Well, that's fine. If the minister wants to say that it's the highest priority number, then that's the lowest number. But the minister is saying that it's the numerically highest number. Well, the numerically highest number is the larger number, which is the newer licence. I'm still not clear whether it's the numerically highest number or the highest priority number, because the highest priority number is the smaller number and the numerically highest number is the highest number. So that's where the confusion arises.

MR. LUND: Let me give an example. Say that the priority number is 1. The licence that's being amalgamated has the number 100. That is the numerically highest number. So that's the number that we're taking, because the priority number is 100.

I would urge the Assembly to reject this amendment; it's not

necessary. It's very clear. This wording, this verbiage has been used in other parts of the legislation, so if we changed it here to be consistent, we'd have to go back and change every place where we're talking about the priority number. I don't think that it's necessary.

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

MR. COLLINGWOOD: Thank you, Mr. Chairman, and thanks to the minister for using that example. As I read the amendment, we are at least in agreement that that is the intent of the wording in section 56(2). It gives me some comfort anyway to know that we're at least in agreement on that.

Nonetheless, I'll continue to move amendment A11, to substitute clearer wording that that is the intended result.

[Motion on amendment A11 lost]

MR. JONSON: Mr. Chairman, I move that we adjourn for now debate on Bill 41 and report progress on the Bill when we rise and report.

THE ACTING CHAIRMAN: The hon. Acting Government House Leader has moved that we now adjourn debate on Bill 41 and that we report progress when the committee rises. All those in favour, please say aye.

SOME HON. MEMBERS: Aye.

THE ACTING CHAIRMAN: Those opposed, please say no.

SOME HON. MEMBERS: No.

THE ACTING CHAIRMAN: Carried.

Bill 47
Reinvestment Act

DR. PERCY: Mr. Chairman, in Committee of the Whole generally we go clause by clause. I'm going to keep my comments specific. I'm going to start at the back of the Bill and work forward.

I would note in this Bill, Mr. Chairman, the amendments for the fuel tax and aviation tax, and certainly I'd like to commend the Provincial Treasurer for accepting some good suggestions from the Official Opposition. For some time we have been calling for the reduction of these taxes, over two years in fact. I know it's inadvertent on the Provincial Treasurer's part, but he neglected to reduce the tax on small business from six to three, which was also another one of our suggestions in the sense of balance. If you look at where the jobs have been created, it is in the small business sector of this province. While I will accept arguments about the competitive pressures and the ability, then, of both airlines and railways to choose where they would buy fuel tax and aviation tax for the reason they're bringing it in, I would note that this is brought into effect almost a year and a half from now. We would think that if there is a compelling reason to bring this into legislation now, the legislation should in fact become effective much earlier than when it is so deemed in this legislation.

With regards, then, to the aviation and fuel tax, yes, competitive pressures have meant that the higher level of taxation in this province has led airlines to purchase their fuel wherever they can, either in British Columbia or Winnipeg. With regards to the fuel tax, it too has led to purchases in provinces other than Alberta. I mean, that's the nature of tax competition, that people do vote with their feet, and if they have any mobility whatsoever, they will always go to the low-tax jurisdiction.

We accept, then, the amendments, but clearly the question is: why so far down the road, particularly given that there is the interest savings in the budget now? Certainly in the next fiscal year, beginning March 31, there is ample time to introduce it fully into legislation. So the classic opposition: yes, but. It goes part of the way to what it should address. We're certainly disappointed that the interests and needs of the small business community in this province are not being addressed. We would like to have seen a reduction from six to three. It's a good first step, but it's taking too long to implement.

I know several of my colleagues have very specific comments with regards to the family employment tax credit. I'll just say that, again, when you look at the issue of equity, this goes part of the way to addressing the issue of equity. It does keep the working poor in the labour market, and I commend the government for bringing this forward. However, on general grounds of fairness, one would say that the real issue here is one of fairness for individuals regardless of whether or not they have a family.

Now, I know when you look at the data, it suggests, according to their numbers, that the inequity is not that large for the working poor who are just single individuals. On the other hand, the issue of horizontal equity, treating individuals earning similar income equally, I think has some merit. Certainly in debate over fiscal federalism, the issue of horizontal equity is a principle that the federal government ought to pursue, and it doesn't in the treatment of have provinces compared to have-not provinces. I'm just sorry to see that we violate this principle of horizontal equity when it comes to individuals and that we discriminate on the basis in this case of whether they have children or not. But it is a good first step. It ought to be supported.

As well, I know my colleagues have concerns about the issues of maintenance and the payment of the tax credit, and that will come forward later in an amendment. I think it is a good first step. When I think of the complexity – and I've thought about this issue of how the tax credit ought to be paid and treated. When you look at it mechanically, I mean it would be nice for the province to do it, but unfortunately it would very costly for the province to do it. It would result in significant time lags. So the alternative of piggybacking on the federal government and using the processes currently in place makes a lot of sense, and it also speeds up the timing by which the payment could be made.

9:30

Certainly one question I have for the hon. Provincial Treasurer is: how much are they going to charge us? What is the cost to the province of implementing this? Was that cost relative to the province in fact trying to provide a similar service? So those are specific questions with regard to the employment tax credit, but on the face of it, it appears to make some sense.

The issue of the balanced budget and debt retirement, a couple of issues there. Let me just go to the specific section, Mr. Chairman. I don't want to talk about the hocus-pocus of the paydown of the debt. That belongs in an election brochure, not in a piece of legislation. With regards to the cushions, when you go through the mechanics of the calculation of the cushions, it's very clear. Given how the cushions are calculated, the fact that the cushions are calculated separately and each has its own time path,

you could end up with some very perverse results, depending on history. It makes no sense to have current expenditures, the current budget of the province, driven to that extent.

I would just draw hon. members, those in the rural sector, to the impact of GRIP, where you would have farmers planting wheat simply because GRIP payments were going to be very, very high, notwithstanding the fact that wheat prices were extraordinarily low. So when you have programs that are working on a moving average, and the moving average includes a number of variables that are very high historically, you can get a lot of perverse incentives built into the system or perverse constraints.

If the issue with the cushions is to ensure a contingency fund, then the only sensible thing is to ensure that the contingency fund is based on the sum of the volatile revenues. The most volatile source of revenue is corporate tax revenues. The second is natural resource revenues. I would hazard a guess, based on my reading of Mansell, Shaefer and Feicke, that lottery revenues are also very volatile. One would think, as well, if the issue was to cushion against volatility, that in fact this amendment is two-thirds of what it ought to be, that all three items ought to be included in the calculation of the cushion. We have two out of three, and my question to the Provincial Treasurer is: why only two out of three? Because the principle by which they're chosen is one of volatility and variability, and I would point out that when you look at lottery revenues, they have been volatile.

The object, then, is to get this cushion built in so that when we do have the negative swing – and we will, Mr. Chairman. We're on the good side of the resource price cycle. When we're on the other side of the cycle, that cushion has to be there, otherwise program expenditures will have to be cut. So the better we can calculate that, the better off we will be.

I have not brought in an amendment to this effect. I would like to have seen a stabilization fund or some mechanization there to provide additional buffering to the cushions. Certainly our experience to date has been that the cushions are small relative to the magnitude of the fiscal swings. I would just sleep better at night knowing that in fact program expenditures will not be cut when there's a fiscal swing on the negative side of a billion and a half. The cushions may be in the neighbourhood of $600 million to $700 million. That awaits us two to three years down the road, but I think that for the purpose of this legislation, Mr. Chairman, this government has its eyes firmly fixed six months down the road. I would have hoped that in fact the focus might have been a bit longer, focusing on a Bill that would stand the test of time.

Again, when you look at the provisions related to the Balanced Budget and Debt Retirement Act, two out of three highly volatile items are in the cushion. Three should be in, and I would include lottery revenues in there. I would like to have seen a stabilization fund, some move towards that to buttress the cushions.

Again, there's a symmetry here, Mr. Chairman, hon. Provincial Treasurer, where you have the heritage savings trust fund focused on the long term and for when the oil and natural gas runs out. You have a stabilization fund to deal with the cyclical nature of the Alberta economy, because this province is unique in terms of the high degree of economic instability. I would like to have seen that. I am not proposing an amendment because when you look at the complexity of setting it up and trying to introduce such an amendment, you basically need to have the draftsmen at your disposal for some length of time. Certainly I suspect very strongly, hon. members, that after the next provincial election, we're either going to see the legislation rewritten or changed one way or another.

Now, the other issue I'd like to discuss and refer to is the calculation of the net debt and the pay-down. Again I have to say that this belongs on an election brochure. It doesn't belong as legislation. It's good sloganeering, but is it good legislation? I would argue not. If you have concerns about the volatility of this economy, if you have concerns that the cushions are too small, boxing yourself in even more doesn't solve the problem. It may sell well on the hustings, but you're not going to have legislation that stands the test of time. Surely when you're crafting legislation, you craft it for the whole cycle, not just the good times.

I have serious concerns. I think that the net debt figure is too low, I would like to see the unfunded liabilities taken into account, and I think that we did not have to bring in the earlier pay-down because the existing legislation was permissive. There was nothing to stop us from paying the whole ruddy thing off in advance. This is just basically brochure politics at its grossest. It's a reflection of almost the Americanization of legislation, where you choose a title that ties tightly into the electorate but really doesn't have a solid grasp in legislative framework or in good economics.

When I go through this legislation – and it's called the reinvestment legislation – there's one final point I would like to make, Mr. Chairman. The government of Alberta spends $12 billion. This is a province that has some extraordinarily capable, deserving civil servants. In particular, if you look at deputy ministers and assistant deputy ministers, they steer the course. They implement. At some point this province and this government and this Public Service Commission is going to have to realize that if you want to attract good people, running a multibillion dollar enterprise, you have to be competitive with the private sector.

Historically, Mr. Chairman, governments could get away with paying less because there was job security. Well, there's not much job security there now. So you've taken away in a sense the implicit tenure that goes with the job. You've added on a higher degree of insecurity, but there hasn't been a corresponding increase in salary to compensate one for that greater potential of having your department having a new minister; for example, the minister of economic development and trade. I would argue that if you're talking about reinvestment in government, somehow the pay scale of the senior bureaucracy in this government has to be assessed.

Now, I know the public at large likes to bash first the politicians and then the civil servants. It's sometimes a debating match which they go after first. Good governance requires not only good legislation, but it requires capable people to implement what policymakers propose. Governments propose; mandarins dispose. I would think that if we're going to hold on to the quality ministers that we have – and I know from long-standing knowledge of the various deputy ministers in Treasury that they are very capable and very competent people who are earning very much less than they could had they chosen to go into the public sector. They have not because they are dedicated civil servants. You can go across these departments, and you will find career civil servants who view it as an honour to serve this province. At some point we're going to have to reward that and ensure that we retain them and bring in new blood. So to the extent that we're talking about a reinvestment Bill, Mr. Chairman, I think again there is something lacking in this Bill, and I think at some point the government will have to address this, otherwise we're not going to be able to manage the resources at our disposal effectively.

9:40

Now, I have at the Chair an amendment that I'm going to bring in. This is an amendment that we've brought in for a number of Bills, and it requires regulations to be vetted by the Law and Regulations Committee. This is the amendment that will ensure that the hon. Member for Calgary-Shaw is productively employed and that his committee would in fact have something productive to do. It prevents mistakes. It allows greater transparency. What this amendment does, then, is simply require the regulations associated with this Act to go through the Law and Regulations Committee.

Again I'm sure that the hon. minister of economic development and trade and the minister responsible for the Alberta Liquor Control Board would love to have had the Law and Regulations Committee vet some of the amendments that he recently brought. It might have in fact prevented one or two little missteps in the public arena. Such a committee prevents mistakes, allows transparency, and allows those stakeholders who have something to gain or to lose to be aware of what is happening. It just allows for a far more transparent government.

So the amendment which is being distributed, 13.9(1), is basically a motion that we've brought in a number of times. It is a constructive amendment. It requires greater transparency. As I say, it will do the government no harm, and it possibly will do the government a lot of good. I'm sure that the hon. minister in charge of the Alberta Liquor Control Board would be the first member on the other side of the House to speak in favour of this motion. After all, had that safety valve been in place, he would have been a much happier minister.

I believe it's been distributed. I have introduced that amendment, so I won't read it. I think it's self-explanatory, and I will call the question on this amendment. Again, as I call the question, the principle here is transparency in government, greater accountability, allowing stakeholders who both benefit and lose from government regulations to know exactly what is coming to the fore. So I would like to call the question on this amendment.

THE ACTING CHAIRMAN: Yes. Hon. member, the amendment has been labeled as A1.

[Motion on amendment A1 lost]

THE ACTING CHAIRMAN: The hon. Member for Edmonton-Ellerslie.

MS CARLSON: Thank you, Mr. Chairman. It's a pleasure to stand and speak to Bill 47. Certainly I concur with my colleague from Edmonton-Whitemud in his comments on this Bill, so I won't repeat those ones specifically. What I would like to start off discussing are the tax reforms outlined in this Bill. If we go to page 1 and take a look at the first change, the Alberta Income Tax Act, what I see here and read actually is something that I support. What we see is a cleaning up of a series of historic changes that have occurred here, starting back in 1975 and carrying on up to the current time period. It's just really eliminating all the prior tax concessions that had been given to low-income earners within the province and only leaving on the books the most recent one, which was originally brought in in the late 1980s. So I don't see too many problems with that.

[Mr. Clegg in the Chair]

Next what we move to, though, is something that I find of some concern for us. Primarily it's a matter of concern for us because it was never a tax change that was outlined anywhere in the Provincial Treasurer's backgrounder or outlined anywhere in the discussions that he's had on this issue and not outlined either in *Hansard* of August 21, when he got up and spoke to this Bill.

MR. CHADI: A secret agenda maybe.

MS CARLSON: Well, it looks like something's been snuck in here. I see that perhaps we'll have some discussion from the Provincial Treasurer on this tonight, and he can explain why this has happened. This is in regard to the royalty tax rebate that they're changing, specifically section 11 in the Bill. What they're doing is reducing the tax rate from 46.5 percent to 45.5 percent.

Now, nowhere in the backgrounder or in the explanation of the Bill is there any discussion in terms of why this is happening, and I think it's important for people to know exactly who this 1 percent reduction in tax rebate will affect. If we take a look at the Alberta Income Tax Act and we go to royalty tax rebates and credits and look at section 11.1, we see that these amounts of tax rebates

> relate to the production from oil or gas wells or . . . oil sands deposits or coal deposits or to any right, licence or privilege to explore for, drill for or recover petroleum or natural gas or to explore for, mine, quarry, remove, treat or process . . . oil sands or to win or work mines, seams or beds of coal.

It's only a 1 percent tax reduction, Mr. Chairman, but I think it is significant to bring it to the attention of the people of this province and to not just completely ignore and abandon any discussion of it in what otherwise is a reasonably comprehensive news release by the Provincial Treasurer, a summary which talks about the findings in the entire Bill, a backgrounder which outlines the debt retirement plan, which outlines Alberta tax reforms – which is where it should have been included as a discussion – and assorted tables that follow the backgrounder and then talks about changes to the calculation of revenue cushions. Yet nowhere in here is there any discussion at all about a reduction in a royalty tax credit, which, as we really know, means a reduction to high-income earners in this province. The Provincial Treasurer has completely abandoned any discussion on that topic. I'm hoping that he will be next in line to debate this issue and to give us some reasoning why there has been an absence of discussion in this House and outside of this House on this issue and to tell us what the intent was behind this reduction.

Not having any background information, I'll make the assumption that the reason he's making the reduction from 46.5 percent to 45.5 percent is to bring it in line with what the provincial income tax calculation is. I see the Provincial Treasurer is shaking his head in agreement with that, so we'll assume that that's correct, but if he could stand up later in this House and explain to us how it is that he did not have any discussion on this and that it's been hidden in terms of debate.

The next item up for debate on this Bill is the family employment tax credit. I have some concerns with this. While overall I support the tax credit as one of many changes needed for middle-income earners and low-income earners and low-income families in general, there are a number of concerns that we have specifically about how this has been addressed and how the application of it goes for the families that will be affected by this and, also, the timing of the tax credit. It's very interesting to note that nothing changes here until 1997, so I'm wondering why the Treasurer is bringing it in at this time.

There are some interesting comments here in terms of how this

applies to the federal tax. If we go through this part of the tax credit and we look at section 13.2, it's quite detailed. It's a little tough to follow, and there are a couple of discrepancies between what it states in the Bill and what was outlined in the backgrounder. Specifically, we talk in the Bill about all of this tax credit just being applied to an individual's adjusted income or earned income, yet in the backgrounder the Treasurer specifically talks about a family's net income being over $25,000 and families with income over $50,000 not being eligible for the tax credit. So in the backgrounder it's clearly defined as being a combined family income that we're talking about, yet in the Bill it only ever talks about an individual's liability and an individual's adjusted income.

9:50

However, what this Bill does do is reference the federal tax laws and regulations in terms of definitions. If you go there to find out specifically what the definition in this particular application would be for an individual's adjusted income, you have to do quite a bit of searching. What you have to do in fact is go to page 767 of the federal tax Act, go to division E, Computation of Tax, then go to subdivision a.1, the Child Tax Benefit, then go to section 122.6, Definitions, read through all of that, not get the information, but what they do have in the tax Act then is a pending amendment. It's addressed Notice of Ways and Means Motion, June 1996, which was subsequently passed. If you go down that amendment to about the third paragraph, you'll see that what's defined there in terms of a technical note on the application of adjusted income is that "the total of the incomes for a . . . taxation year of the taxpayer and the taxpayer's cohabiting spouse at the end of that year." So if you go through that elaborate history of the tax Act, you will find in fact that when they speak in this particular Bill about an individual's adjusted income, what they're really meaning is the individual and their cohabiting spouse as defined in the federal tax Act. What that means, then, is that you're going to combine the two incomes to come up with this tax calculation. So that's pretty confusing.

Then you get to the actual application of the tax credit, which is a formula which takes some time to figure out. First of all, it's calculated on a monthly basis. Of course, when you take a look at your tax return, you're calculating on a yearly basis, so you have to prorate that, and then you have to go through another calculation where you try to establish what your taxable income is minus the base allowable income of $25,000 there. There are all kinds of qualifications, hoops that you have to jump through in order to calculate whether or not you're going to be eligible.

They talk about using

> the smallest amount under clauses (a), (b) and (c):
>
> (a) the product obtained when $500 is multiplied by the number of qualified dependants in respect of whom the individual was an eligible individual at the beginning of the month; [or]
>
> (b) 8% of the amount, if any, by which the individual's adjusted earned income for the base taxation year in relation to the month it exceeds $6500; [or]
>
> (c) $1000.

The smallest of those amounts is the amount that you use.

However, if you go down further in the Act, you find that these don't really apply in the first year that this tax regulation will take effect, that they're all amended, and particularly see that the $1,000 limitation is really only $500 for the first year in question, and that the $500 means that you are limited to a tax credit for two children per family.

So what this tax credit does is give families a full credit if they don't have a taxable income of more than $25,000 in a year to a maximum of two children. It does nothing for families who have more than two children in terms of some sort of parity for additional tax credits. That's it: two kids. That's all you get, no more. In year 2 that changes, and then the potential credit has a maximum amount of $1,000. Still, that's only for two children, not for any more. The maximum in that year, the ceiling, is $500 per child. So that's a part of the calculation. The part that you reduce the amounts of the credit is determined in terms of how much your income exceeds the $25,000 ceiling.

The B part on page 5 here talks about reducing the A part by "4% of the amount, if any, by which the individual's adjusted income for the base taxation year in relation to the month exceeds $25 000." What we're really talking about there is combined family income. So then we could go through that calculation, and you take a look at the taxable income in year 1, the base taxable family income – so that's anywhere, as the Provincial Treasurer said, for working income from $6,500 to $25,000.

Working income, we should remind people, does not mean income deemed from sources other than employment. So if you're talking about interest income or you're talking about pension income or you're talking about social services income or you're talking about WCB income, that's not deemed to be working income by taxation standards. As the Provincial Treasurer specifically outlined on August 21, this means then that this tax credit is really only applicable for people who have a working income of $6,500 to a maximum of $50,000, but they only get the full credit if they don't have income of any more than $25,000 a year. So if you figure out that whole calculation, the actual credit they'll get for the year is $500. That's to be paid monthly. That means they're going to be getting $41.66 a month. As I understand it, that's to be added onto the child tax credit cheque and calculated by the federal government. I'm sure that if that's not correct, the Provincial Treasurer will be able to clarify that for us.

If you have a base income of $25,000 in year 2, then you will get the maximum credit of $1,000, and that works out to $83.33 a month. However, if you have more than $25,000 of combined earned income in a family with children, then the maximum credit that you can get is reduced by the 4 percent of the amount by which their income exceeds the $25,000.

So let's take a look at what you would get on an MLA's base salary. Our taxable income is $36,420. So if you had children and no spouse or if you had children and a stay-at-home partner, then you would be eligible in the first year for a potential credit of $500. When you take away the 4 percent of income that you exceed the $25,000 base, that comes to $456.80. The actual credit you get for the year is $43.20. Paid out monthly, that's $3.60. In year 2 there's an increase because the ceiling is increased to $1,000. The actual credit you would get for the year is $543; paid monthly, $45.27.

Then when taking a look at the figures, we determined what the maximum amount is that you could make as a combined family in year 1 before you didn't get any of the actual credit. Surprisingly the ceiling is very low. In year 1 if you have a combined family income of $37,500 or more, you get absolutely no credit at all. In year 2 at the same combined family income you would get a credit of $500, which paid monthly is $41.67. Of course, in either year if you have a combined family income of $50,000 or more, you get nothing.

So that's what the calculations actually look like. As I understand it, if this calculation goes in line with the manner in which it's determined for the child tax credit, individuals won't have to

actually make this calculation manually themselves on their tax return. I wonder if the Provincial Treasurer could clarify that. Will it be the same sort of scenario where you simply tick a box on your tax return saying that you want to apply for it and a calculation is done automatically in Ottawa? I'm hoping that he will be able to address that when he gets up to speak to this Bill.

When we take a look at the family income ratios in Alberta as provided in the backgrounder by the Provincial Treasurer, we see that the amount of income changes as the percentage. Just in the last few years, 12 years, it's been substantial. The average decrease has been 15 percent in families that have children. That's a significant decrease. There is no way that this token tax credit that we see occurring here comes anywhere near matching that decrease. It comes nowhere near providing parity in spending power or disposable income power for any of those families. I'm wondering if the Provincial Treasurer would defend that and tell us why he's not prepared to offer anything else at this point in time or put us on an equal footing so that we're not seeing the problems and the changes occurring here affect children, which is what we're seeing across the province now in terms of increases at the food banks and in terms of increases at the school level, where families are having to ask for deferral or a rebate on school supplies and books for their children because there simply isn't that kind of disposable income in the families. I'm hoping that that will be a part of tonight's discussion.

10:00

I'm also wondering why there was nothing addressed here about relief for lower income families with children, those who don't have working incomes and those who fall below the $6,500 level. It would seem to me that those are the families most in need, Provincial Treasurer, and there is nothing in this Reinvestment Act to address their concerns.

I think until we can hear from the Provincial Treasurer, that's the end of my comments. I'm wondering specifically, when he answers, if he'll address why they set the limit at two children and didn't address the needs of families with more than that.

With that, Mr. Chairman, I'll take my seat.

THE DEPUTY CHAIRMAN: The hon. Member for Spruce Grove-Sturgeon-St. Albert.

MRS. SOETAERT: Thank you, Mr. Chairman. Yeah, I would like to know why it didn't deal with families of more than two children, because there are some of us who definitely have more than two.

I actually wanted to speak specifically to the amendment and move the amendment that I have sent up to counsel and just briefly point out what I thought might be an amendment that would improve this Bill. I think everyone has a copy in front of them. Was it handed out?

THE DEPUTY CHAIRMAN: We haven't got a copy, hon. member.

MRS. SOETAERT: I sent it up earlier with one of the pages, at the same time as the Member for Edmonton-Whitemud.

THE DEPUTY CHAIRMAN: Sorry; it had not been distributed, but we'll have the pages do that now.

MRS. SOETAERT: Well, maybe while it's being distributed, I'll read it, if that's okay. I would move that section 13.7 be struck out and the following substituted. Now, this amendment, Mr. Chairman, I had sent over to the Treasurer earlier so he could have a look at it in the hopes of passing it. I know other people who are concerned about maintenance enforcement payments will be interested in this one because it may help in the collection of some of them. This is what it says:

13.7 A refund of an overpayment
- (a) subject to clause (b), cannot be charged or given as security,
- (b) cannot be assigned except under a prescribed enactment,
- (c) is subject to enforcement proceedings under the Maintenance Enforcement Act,
- (d) is exempt from
  - (i) writ proceedings as defined in the Civil Enforcement Act, and
  - (ii) distress proceedings authorized under the Civil Enforcement Act or any other law that is in force in Alberta,

  and
- (e) cannot be retained by way of deduction or set-off except in respect of amounts that have been paid under section 13.3.

In a nutshell, what this really means, Mr. Chairman, is that it clarifies that if there is to be a refund of overpayment, then it can be attached by the director of maintenance enforcement.

I think it's just one more tool in collecting maintenance enforcement payments. I would hope that the Treasurer has maybe discussed this with his caucus and that maybe he could speak to it and explain if it's a possibility that this amendment would make this Bill more effective, hopefully help in some of the collection of maintenance enforcement, and give the director of maintenance enforcement another tool to use.

In my humble submission, I'm wondering if that can't make the Bill stronger and maybe help out some families that are not getting maintenance payments that they need.

MR. DINNING: Mr. Chairman, I'd just like to take this opportunity because the member had given me a copy of her amendment in advance, and I felt it was important to be able to respond to that positive gesture on her part. I appreciate the intent behind the member's amendment, but I would respectfully request the Assembly to not agree with the amendment. What we've tried to do in section 13.7 is to ensure that the family employment tax credit is targeted as best we can to the actual child, to the eligible child, and it's the children that are the trigger for eligibility. The reason, quite clearly, is that the cost of raising children in this day and age, as many members of the Assembly know all too well, is a very expensive but enjoyable proposition. I know that from my own personal experience. The idea is to target that for the eligible child.

My view is, first of all, that the amendment would weaken that targeting in that it would prevent the money going to the eligible child. The eligibility for that taxpayer is triggered by the existence of that child in that family. In fact, the eligibility of a child in family A and a benefit that accrues because of that, I would respectfully suggest, should not then go to family B. That's the primary reason, Mr. Chairman, why I would ask members to not agree with this amendment. I was advised by my officials, when I asked the question when I got the member's amendment, that the federal child tax benefit is specifically exempt from garnishment under the Family Orders and Agreements Enforcement Assistance Act. As well, the British Columbia

government, in having a similar child tax benefit as the federal government does, does not allow enforcement proceedings for its child tax credit under the maintenance enforcement Act.

So, Mr. Chairman, as I say, although I appreciate the intent of the member's amendment motion, I would ask members to not be in support of this amendment.

THE DEPUTY CHAIRMAN: The hon. Member for Spruce Grove-Sturgeon-St. Albert.

MRS. SOETAERT: Thank you, Mr. Chairman. I appreciate the Treasurer's comments. I guess this begs a different issue, of which child is eligible. I guess in my estimation every one of our children is eligible, whether they be in family A or family B or a combination of A and B. I guess that's an issue that has to be addressed at the federal level and here as well. Maybe I'm asking us to be precedent setting, because I feel that if your child is in another family that you don't live with all the time, they are still your responsibility and your child, whether they be in A or B. I realize that's getting into another whole kettle of fish that we won't get into in this Act.

I still would like to move my amendment. I realize I may not have total support of the House. Therefore, Mr. Chairman, I will end with the comments that I would hope members in this House would support this amendment.

THE DEPUTY CHAIRMAN: I wish some of the members, if you don't mind – it's been quite quiet, which is good – would please sit down, because I can't tell who wants to speak or who doesn't.

The hon. Member for Calgary-Buffalo.

10:10

MR. DICKSON: Thanks, Mr. Chairman. I listened attentively when the Provincial Treasurer was giving his explanation and urging members to vote against this amendment. I think members should recognize that what we've heard is a representation of a philosophy that's diametrically opposed to what his colleague the Minister of Justice and the hon. Premier have said is this government's position with respect to recovery of support payments. If we leave aside the Provincial Treasurer's philosophizing, what we have is a sum of money, in this case refund of an overpayment, to which a payer spouse may be entitled.

Now, the Provincial Treasurer's colleagues and his government in the corporate sense have said they wanted to get tough and they wanted to be aggressive in terms of dealing with maintenance enforcement. I recall, although I can only paraphrase now, the commitment of the hon. Minister of Justice, who said: we're going to pursue money that is accruing due to a payer spouse. If he or she is in arrears under the maintenance enforcement program, the long tentacles of that operation will go out and attach those funds.

Now we have the Provincial Treasurer coming along and saying: well, because a couple of other provinces have chosen to say that this payment is somehow sacred, that this payment somehow is earmarked for some purpose more important than providing for the discharge of an obligation to pay support, we're not going to do it in Alberta. So the explanation from the hon. Provincial Treasurer doesn't address that difference. If in fact it's to be consistent, this position in terms of opposing this amendment, then we'd expect a very different reaction from the hon. Minister of Justice and Attorney General when he talks about maintenance enforcement, because the philosophy we've just heard is at odds with the stated position of the government on maintenance enforcement. I think that has to be marked, Mr. Chairman. I think there has to be some stronger and better reason to resist an amendment which is reasonable.

Now, one can understand perhaps the express exemption of writ proceedings under the Civil Enforcement Act, distress proceedings, whether under I guess a chattel mortgage or a leasehold interest, but it's extremely curious that the government would not want this to apply to enforcement proceedings under the Maintenance Enforcement Act. I think there had been a question some of us might have had in terms of whether it was already covered or not, but let's be clear. The hon. Provincial Treasurer didn't say that it's already caught under some other wording. He said that as a policy decision the government of the province of Alberta has decided that it doesn't matter if you owe $20,000, $30,000 in child support arrears – and there are certainly people in this province that owe large sums like that – you will still be entitled to get your refund of an overpayment. You can collect that cheque. You go down to the post office. You collect your mail; you open it up. You sign, negotiate the cheque. You deposit it in your bank account, and you cash it. If you're going to use it for a new pair of shoes or apply it towards a vacation or give it to your new partner, that's fine, because in this province the interests of children only come first in some circumstances, at some times, and in some cases.

Mr. Chairman, I'm surprised at what we've heard from the hon. Provincial Treasurer. I would expect that those members who have spoken with so much vigour when we talked about maintenance enforcement in this Assembly – I remember the Member for Calgary-East, my neighbouring MLA, who came in with a Bill that was going to get tough in terms of maintenance enforcement. He wanted to give the maintenance enforcement director, Mr. Leibel, and his staff some additional tools to ensure that if somebody owed money in terms of child support, that was going to be recovered.

Well, what does the Member for Calgary-East say when he hears his colleague the Provincial Treasurer say: oh, there are some things we'll attach, virtually everything else we can find that may be going to a payer spouse or a payer parent, but when it comes to a refund of an overpayment under Bill 47, hands off. Now, one may wonder: is this because there's some political dimension to it? Is it important that the government is able to say that we're putting money back in the hands of even people who are delinquent, even people who may owe $30,000 or $40,000 in child support? Somehow we're going to suspend our concern about those children. We're going to suspend the righteous indignation we hear from members on the government side about child support because we're going to make sure that that defaulting, delinquent parent is able to scoop his refund of an overpayment.

I'm sorry, hon. Provincial Treasurer, through the Chair; that's wholly inconsistent. It's impossible to reconcile with what this government's stated position is on maintenance enforcement. I think it's a good amendment. I think it's a positive amendment. For every government member that wants to be able to go out to electors in the next general election and say that they've been consistent – and I know the Minister of Community Development in particular is going to be one of those people who, I'm sure, when she sees this amendment that's been introduced by my colleague from Spruce Grove-Sturgeon-St. Albert, is going to be only too anxious to support it. I know the Member for Calgary-Currie, who has spoken in the past about the importance of maintenance enforcement, also is going to want to be on record supporting this amendment.

Just for the benefit of any members that have come in in the last few minutes, the government is proposing that maintenance enforcement net has got a great big hole in it, because it's pretty comprehensive, as the government would have us believe, as the Member for Calgary-East would have us believe. What the Provincial Treasurer wants to do – we're going to have a hole in the net and the hole is going to be big enough that some pretty big fish are going to be able to swim through there. It's with a consequential loss to children who are entitled to support. I think that if there's a better explanation than what we heard from the Provincial Treasurer, let's get that on the table, because all of those Albertans who are interested in vigorous enforcement of maintenance enforcement will be looking to see how members in this Assembly vote on this useful, constructive, and helpful amendment.

I'm hopeful that other people will join the debate, because I think Albertans will want to see where members stand on this issue. We want to see how many members are prepared to put their vote where they put their speeches and how many members are prepared to do what they can to protect disadvantaged children in this province, Mr. Chairman.

Thanks very much.

[Motion on amendment A2 lost]

[The clauses of Bill 47 agreed to]

[Title and preamble agreed to]

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

HON. MEMBERS: Agreed.

THE DEPUTY CHAIRMAN: Opposed, if any? Carried.

10:20

Bill 41
Water Act

MR. COLLINGWOOD: Mr. Chairman, speaking to further amendments to Bill 41, we are on amendment A12. The wording of amendment A12 is similar to wording that I have proposed previously with respect to the issuance of licences and the issuance of approvals. In this particular case, dealing with section 82 of the legislation, it is with respect to the transfer of licences that have been issued. Division 2, dealing with sections 81 and 82 and so on, deals with the transfer of water allocations, and the minister has to give consideration to his decision as to whether or not to approve a transfer of a water licence.

How does the director make the decision? The director has significant discretion as to how he makes the decision. Reference is made in the legislation as to whether or not there are

> any existing potential or cumulative
> (i) effects on the aquatic environment and any applicable water conservation objective,
> (ii) hydraulic, hydrological and hydrogeological effects, and
> (iii) effects on household users, traditional agriculture users and other licensees,
> that result or may result from the transfer of the allocation [of water].

Once again, Mr. Chairman, putting forward the proposition that the word "may" in clause 82(5)(b) should read "must," not "may." So those are considerations that the director must take into account, and making some changes to the wording where indeed it is not discretionary to consider the effects on public safety, but it is in fact mandatory. Changing that word to "must," consideration of the

> (i) effects on public safety,
> (ii) with respect to irrigation, the suitability of the land to which the allocation . . . is to be transferred for irrigated agriculture, and
> (iii) the allocation of water that the licensee has historically diverted.

After taking into account those specific required considerations, he can then consider at his discretion other matters that may be applicable specifically to that particular application for the transfer of an allocation where the director considers it's relevant to take into account those various considerations.

The minister has heard my views on why I consider that the word "must" is an important aspect of the director's decision-making process. The purpose of the Bill is for protection of the aquatic environment with proper and sound management in the context of ensuring the protection of the aquatic environment. It's certainly difficult, if not impossible, for the director to make effective and meaningful decisions if they do not take into consideration the potential or cumulative effects on the aquatic environment.

Again, Mr. Chairman, I've said previously that where the word "may" exists in the legislation, one can also read that to say "may not." Indeed, it may be the case that the director would not consider those kinds of critical elements in the decision-making process, and that makes the Bill weaker than it could be.

[Motion on amendment A12 lost]

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

MR. COLLINGWOOD: Thank you, Mr. Chairman. I will move to amendments recorded on the sheet distributed to members as 12, 13, and 14. They all deal with the same matter and the same issue in the same portion of the Bill, so I will move those three amendments collectively as amendment A13.

Mr. Chairman, the report of the Water Management Review Committee, that I've referred to previously, that was issued in July of 1995 contains as one of its recommendations recommendation 75. This was another unanimous recommendation. It says that there is a suggestion that the terminology "directly affected" – perhaps I should back up a step.

Sections 109, 111, and 115 that I'm referring to in these amendments are all sections that deal with notice and with what the minister spoke of previously that relates to appeals to the Environmental Appeal Board. There is provision in the legislation for individual Albertans to file a statement of concern when there is notice given of an application for an approval for a licence or some authority, some approval given under the Water Act. The individuals who have the authority or ability under the legislation to file a statement of concern are by wording in the legislation only those individuals who are, what is called, "directly affected."

Section 109 specifically says that where

> notice is provided . . . any person who is directly affected by the application or proposed amendment . . . may submit to the Director a written statement of concern.

Now, we have seen in previous environmental legislation in the province, Mr. Chairman, that same wording, where public involvement into the decision-making process is confined to

individuals who are directly affected. It's interesting to note that the terminology "directly affected" was never proposed for any of the environmental protection legislation that exists in the province of Alberta.

Indeed, in the report of the Environmental Legislation Review Panel, chaired by the Member for Banff-Cochrane, their recommendation was that the words "directly affected" not be used in the legislation and the words "those with a legitimate concern" be used in the legislation. Those words suggest that there must be some nexus between the party issuing a statement of concern and indicating an interest to become involved in the decision-making process on environmental decisions but does not have to be confined to the very strict parameters of an individual who was directly affected.

We have raised the issue and the concern previously. Where you have decisions that affect wilderness area in the province of Alberta, you are not going to have any Albertan who is directly affected, and therefore the entire public is excluded from raising concerns about decisions that might be made that affect Alberta's wilderness. Certainly the same could be said for legislation dealing with water in the province of Alberta, where decisions may be made where individuals other than those who are directly affected, yet those who have a legitimate concern, should have the ability and the opportunity to participate in the decision-making process.

Now, what was suggested in recommendation 75 of the Water Management Review Committee was that

> the test of "directly affected" . . . not be carried forward into the new water legislation, but be replaced by clear criteria that specify who can provide input on water decisions made under the new water legislation.

Well, Mr. Chairman, we have had the benefit of the discussion with respect to the words that I am proposing, and that discussion came through that report of the Environmental Legislation Review Panel, chaired by the Member for Banff-Cochrane in 1991. So we have the background and we have the benefit of discussion about the terminology, "those with a legitimate concern."

[Mr. Herard in the Chair]

We have seen the "directly affected" terminology used in the Environmental Protection and Enhancement Act. The wording has been the subject of an interpretation in front of the courts in the province of Alberta, and the courts have interpreted those terms with all the evidence before it that it was the intention of this government that "directly affected" be very, very narrowly defined.

Mr. Chairman, I spoke previously about the need for the minister to make a public statement that if the government is suggesting that the public of the province of Alberta are to be involved and included stewards in environmental protection, then they must be given some indication that they are welcomed into the process and that they are not excluded from the process.

I deal specifically, Mr. Chairman, in this particular amendment first with section 109, where I propose that the statement in 109 (1)(a) not use the words "directly affected," as was the recommendation of the Water Management Review Committee, and that that terminology, that wording, be changed to – the specific wording is "who has a legitimate concern with the application of the proposed amendment." I make a similar proposal in section 111(1)(e) by striking out the term "directly affected person" and replacing it with "person who has expressed a legitimate concern." Similarly in section 115, with respect to appeals to the Environmental Appeal Board, in section 115(1)(a)(i), replacing the words "who is directly affected" with the words "who has a legitimate concern with": that is consistent with the recommendation that came to the minister through the review panel chaired by the Member for Banff-Cochrane.

10:30

It is consistent with the government's policy that it wants Albertans included in environmental decision-making policy. It will improve upon this legislation as it currently stands. It will improve upon and send a clearer message about the government's intention with respect to the public's involvement in all environmental legislation. It will assist the public in the province of Alberta who do not, then, have to rely on the government's statement in the guide to Bill 51 from last year that the interpretation of "directly affected" can change over time, so, you know, stay tuned and you just may have an opportunity to become involved in the future.

Mr. Chairman, I don't think that's good enough, and I think that the public deserves better. I think the public needs to be involved, I think the public ought to be involved, and I think this Bill falls very short in the area of public involvement. I think these amendments will help send that message that public inclusion and public involvement is something that the government is interested in. With the defeat of the amendment, on the other hand, taking the other point of view, if the government chooses to defeat it, the government continues to send a clear message that the public ought to be excluded from environmental decision-making in the province and that the government is not interested in having the public of Alberta involved in decision-making processes.

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

MR. LUND: Mr. Chairman, thank you. I just want to comment briefly on the amendments. The hon. member is absolutely right: this same clause is found in EPEA. It's also found in the Natural Resources Conservation Board. The hon. member is not accurate, though, when he says that out in the wilderness, so to speak, no one would be able to appeal. In fact, there has been just recently a ruling that gave a trapper the right to appeal because he traps, fishes in that area that could be affected. I can see that someone living downstream quite a long distance from an application may have the right to appeal, because if they use the water, they're directly affected. So there are cases.

I would urge the Assembly to reject the amendments. We've now had some experience with "directly affected." It's working very well, and the public appreciates it.

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

MR. COLLINGWOOD: Thank you, Mr. Chairman. Just a brief comment to the minister's response. It wouldn't surprise me that there would be an interpretation of "directly affected" as it currently stands where a trapper would be allowed to file a statement of concern. What it says to me is that as long as you have a monetary interest in a matter, then you have the right to appeal, but unless you have a monetary interest in an area of Alberta's wilderness, then you may not have the opportunity. The minister speculates . . .

MR. LUND: Trapping is the recreation.

MR. COLLINGWOOD: The minister suggests that trapping is recreation. I would be of the view that trapping can have some monetary benefit, that what it requires is a physical presence in that particular part of Alberta for some matter, for some reason.

If I were a cottage owner in a particular area, I would be directly affected. If I were a trapper in a particular area, I'm directly affected. But if I simply have an interest in what happens in the province of Alberta, in the Caribou Mountains with logging practices, with forestry, with wildlife movement, with any of the issues that I might be interested in – if I were looking at an area of the province of Alberta like the Caribou Mountains, I and many Albertans would not have the ability to participate in a specific mechanical process dealing with an appeal to the Environmental Appeal Board through the filing of a statement of concern. If I'm not directly affected, I can't.

The minister has just solidified my position by saying that as long as you have a presence, as long as you have a reason for being there, if there is a monetary aspect to your being there, you have the right to file because you're directly affected. I agree wholeheartedly, but if that trapper was not there, that trapper would not have the ability to file the statement of concern even if he had a legitimate interest.

Mr. Chairman, I'm not swayed. I'm not convinced by the minister's argument. We need to move in the opposite direction. We have to include Albertans, and I think the minister is indicating that the use of the terminology "directly affected" is working very well from his perspective in excluding Albertans. But I think that the Environmental Appeal Board can easily control its own processes and can easily accommodate statements of concern or appeals or the director can accommodate statements of concern from those individuals who want to express their views and who have a legitimate concern with the licence or the approval that's been granted by the department.

Mr. Chairman, I'm not persuaded by the minister's arguments. I think this is a necessary change. The minister knows that I've made the suggestion many times when we've dealt with amendments to the Environmental Protection and Enhancement Act. The minister continues to reject the notion and continues to send a message to Albertans that they're not invited to participate to the same extent that they really ought to be.

[Motion on amendment A13 lost]

[The clauses of Bill 41 as amended agreed to]

[Title and preamble agreed to]

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

SOME HON. MEMBERS: Agreed.

THE ACTING CHAIRMAN: Opposed?

SOME HON. MEMBERS: No.

THE ACTING CHAIRMAN: Carried.

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

[Motion carried]

[The Deputy Speaker in the Chair]

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

MR. HERARD: Thank you, Mr. Speaker. The Committee of the Whole has had under consideration and reports Bill 47. The committee reports Bill Pr. 2 and Bill 41 with some amendments. 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?

HON. MEMBERS: Agreed.

THE DEPUTY SPEAKER: Opposed? So ordered.

10:40

THE DEPUTY SPEAKER: The hon. Member for Medicine Hat.

MR. RENNER: Thank you, Mr. Speaker. I wonder if I might seek unanimous consent of the House. I understand that there have been discussions between respective House leaders that we may proceed to third reading of Bill Pr. 2 this evening.

THE DEPUTY SPEAKER: You've heard the motion by the hon. Member for Medicine Hat that we move to third reading of Bill Pr. 2, Covenant Bible College Tax Amendment Act. All those in favour of this motion, please say aye.

HON. MEMBERS: Aye.

THE DEPUTY SPEAKER: Those opposed, please say no.

Hon. member, you have unanimous consent to proceed.

head: Private Bills
head: Third Reading

Bill Pr. 2
Covenant Bible College Act

MR. BRASSARD: Mr. Speaker, it gives me great pleasure to move third reading of Bill Pr. 2.

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

MR. COLLINGWOOD: Thank you, Mr. Speaker. We certainly are in agreement, although I did hear you say the title of the Bill, which I understand was amended at committee stage. So as we proceed through third reading of the Bill, it is not the Bill that you, Mr. Speaker, had indicated to us at third reading, if I'm correct in that.

THE DEPUTY SPEAKER: The hon. Member for Sherwood Park is exactly correct. The Chair must blushingly mention that the Chair had neglected to strike off the offending remarks. We are on the Covenant Bible College Act.

[Motion carried; Bill Pr. 2 read a third time]

head: Government Bills and Orders
head: Third Reading

Bill 41
Water Act

SOME HON. MEMBERS: Question. Question.

MR. DAY: On behalf of the Minister of Environmental Protection I would move Bill 41 for third reading.

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

MR. COLLINGWOOD: Thank you, Mr. Speaker. As the Government House Leader rushes third reading, he does have to move it before he calls the question on it.

Mr. Speaker, we have had under consideration this evening a number of amendments to Bill 41. I have indicated to the Assembly several times, as has the Minister of Environmental Protection, a very lengthy process that has been undertaken in the development of new water legislation for the province of Alberta. The Water Resources Act has gone through a series and a number of amendments. It is very old legislation. In some senses it continues to be adequate; in some senses it is certainly outdated and needed revision.

Mr. Speaker, I think what I would like to do at this point in time is congratulate every Albertan who participated in the lengthy public consultation process that occurred throughout the province of Alberta, a number of hearings that were held in a number of communities and centres across the province: excellent input from workshops, working groups, individuals, Alberta residents who live in cities, Alberta residents who live on farms, Alberta residents involved in agricultural and livestock activities, those who earn their livelihood from agriculture in irrigation districts, all who have had the ability for input into a public consultation process, and all who joined in on that process very willingly.

I think it's also important to extend thanks and congratulations to the stakeholders who sat on the Water Management Review Committee who spent countless hours in debate to write the report of the Water Management Review Committee in July of 1995 for their significant input into the review of the public consultation process and the development of the recommendations that came forward to government.

One of the real benefits of the Water Management Review Committee report is that it laid out for the government and for the minister those recommendations that had received unanimous support from the stakeholders on the Water Management Review Committee, those that had strong support, and those that had support with some reservations. Indeed, throughout the report where there is not unanimous recommendation, the report does go on to include in the text of that report the reasons why and some of the opposing views as to those particular and specific recommendations. Nonetheless, it is the kind of process that is the right kind of process. There is not always unanimity, but there is an effort to achieve unanimity to work through the process.

There is – and the minister has heard me say – disappointment in various circles in the province of Alberta. For those who were participants on the Water Management Review Committee, for those who are interested in environmental protection throughout the province, there is disappointment that the unanimous recommendations of the Water Management Review Committee were not accepted in total and were not automatically included in Bill 41 as being unanimous recommendations, those recommendations coming out of the public review consultation process.

It is left to the minister to explain why the unanimous recommendations were not included entirely in the Water Act, Bill 41, and of course we have made every effort through debate to make improvements to the Bill. Not to rehash, Mr. Speaker, but the minister and the government members have rejected an opportunity to try to improve on the Bill that has gone through this lengthy process to get to a point where we have new water legislation.

Mr. Speaker, I think that, again, as the minister has indicated, it is important for Albertans to be proper and good stewards of all that we have in our natural environment. That becomes the essence and the basis of Bill 41. It is incumbent upon all of us to use and to conserve water wisely. It is incumbent upon the government to ensure that it protects this very precious resource on behalf of all of the people of the province of Alberta.

THE DEPUTY SPEAKER: The hon. Minister of Environmental Protection to close debate.

MR. LUND: Thank you, Mr. Speaker. I want to take this opportunity to thank all those Albertans who did participate in the discussions on the Water Act. I was fortunate enough to be a member of the Water Resources Commission that started this process back in 1991. It's been a long and very involved process. We had a lot of very valuable input, and I want to thank the people that took the time and effort to come and make comments on this most precious resource.

I also want to thank the members, my colleagues in the Legislature. We have spent many, many hours discussing this Bill in order to get it right. It is a piece of legislation that is setting out something that hasn't been done before in Alberta; namely, that we are addressing the environment and addressing the aquatic environment like it has never been done before in the province. There's a lot of work to be done yet, but I'm confident that this will occur and that in fact we will have in place a regime that will see the proper use and not abuse of this most precious resource.

There are a number of things in the Bill, and I won't go on long describing them. For the first time ever we'll have the ability to trade and sell licences. I think this is extremely important. There are areas where the water is becoming more scarce, and it is extremely important that it be used for the highest and best use.

I want to thank everyone that participated in this, and I look forward to the passage. So I would so move.

[Motion carried; Bill 41 read a third time]

Bill 44
Motor Vehicle Accident Claims Amendment Act, 1996

MR. DAY: I would move for third reading Bill 44 on behalf of the Minister of Justice.

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

MR. DICKSON: Thanks very much, Mr. Speaker. There's already been considerable debate about this Bill and the shortcomings that have been identified with Bill 44. I don't propose to go through all of those concerns at this stage; it's almost 11 o'clock. I'd just incorporate by reference the debate that this Assembly has

already heard, the analysis that's already been offered at second reading on Bill 44.

I would want to make this observation. Bill 44 addresses something which is pretty basic to most of us in this province in terms of operating a motor vehicle and the kinds of liability that go along with that opportunity, and I would indicate that some of us had hoped that in this government we would have seen a more comprehensive approach to addressing the entire auto insurance process. In fact, what we see in this Bill is simply a very small sliver of the issue, Mr. Speaker. I think that I will simply leave it at that, and we'll have to continue to press the government for a much more ambitious approach to what I think is a serious problem.

Thanks very much.

THE DEPUTY SPEAKER: The hon. Member for Sherwood Park on third reading.

MR. COLLINGWOOD: Thank you, Mr. Speaker. I recall when Bill 44 was first introduced by the government in the spring of this year. I can specifically recall that on the very same day that the Bill was introduced, Members of the Legislative Assembly were hosted by representatives of the insurance industry. At our table in having discussion over dinner I asked those who were representatives of the insurance industry what they thought of Bill 44. Those in the insurance industry said: "Well, what's Bill 44? I've never heard of Bill 44. What's that?" The members of the insurance industry, those who relate with and deal with government on an ongoing basis, didn't even know that Bill 44 was being tabled in the Legislative Assembly.

10:50

We know that the purpose of Bill 44 is to now take away the ability of Albertans to recover damages for property damage if they suffer that damage at the hands of an uninsured motorist. The Minister of Justice, I think, explained to this Assembly that it had to be done because the motor vehicle accident claims fund was in difficult financial straits. Of course the funding for that comes from registration of motor vehicles in the province of Alberta. Nonetheless, the funds can no longer be used for purposes of claiming for property damage.

In listening to debate, I was unable to make the distinction: if it's okay to recover for damages under the law in a tortious action for bodily injury, is it then also okay to recover for property damage? How the government can come to the point of making the distinction that this damage is okay and this damage is not okay is just an incredible quantum leap that the government is taking.

Now, of course the decision about the rights of individuals is not paramount in Bill 44. What's paramount in Bill 44 is money. It's not people; it's money. [interjection] All this is about in Bill 44, so that the Member for Calgary-Currie understands, is the money in the fund. It is not about the devastation that people suffer through absolutely no fault of their own in making a claim under the motor vehicle accident claims fund.

Of course, the government's response will be: you can always go and buy insurance. Now, that's fine, Mr. Speaker, but if it's okay to recover damages in one respect, then it's okay to recover damages in the other respect. You cannot legitimately justify the distinction between injuries and damages on the one aspect and injuries and damages on the other aspect. You either accept the proposition and you accept the concept or you reject it, but to go halfway is a complete disservice to the people of Alberta, who, I daresay, are going to let the government know just exactly what they think about its decision to think about money first and people second as it passes third reading of Bill 44.

[Motion carried; Bill 44 read a third time]

Bill 46
Electoral Divisions Act

MR. DAY: Mr. Speaker, on behalf of the Minister of Justice, I would move Bill 46 for third reading.

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

MR. DICKSON: Thank you, Mr. Speaker. There are probably few things more difficult for a Legislative Assembly to deal with than electoral boundaries. The only thing I can think of was when we've dealt with MLA pensions and remuneration and pay.

Electoral boundaries, I guess, are by definition something that's going to be contentious. I think that when we come at it, it's interesting the range of opinions one gets from Albertans. I had the opportunity to spend last weekend in Leslieville and at a family reunion in Alhambra. It's interesting, you know, in terms of talking to people in a part of the province who have one particular perspective on what kind of representation they think they're entitled to and that they expect in this place and then of course to talk to people in Edmonton-Centre, who in some respects have much in common but also some very different kinds of concerns.

Now, having grown up in Drumheller, I understand the concern, I think, that Albertans have in smaller communities, those Albertans not living in Edmonton and Calgary, their concern for effective representation and ensuring that that's protected and not unfairly diluted or undermined. It seems to me that even my cousins in Alhambra and Leslieville recognize, Mr. Speaker, that the principle of equality of voting power or parity in voting power and trying to come as close to that as possible is a fundamental principle.

Mr. Speaker, I think that when one looks at the final report from the Alberta Electoral Boundaries Commission and you look at page 5, where they tried to summarize the elements of the Alberta Court of Appeal decision in that reference, reference is made there to "the right to have the political strength or value of the vote of an elector," wherever that elector may be, "not unduly diluted." I think Albertans everywhere understand the importance of that principle. This isn't something that the courts have dreamed up; I think this is something that Albertans understand because it makes sense.

I think that the other point,

> the right to have the parity of the votes of others diluted, but not unduly, in order to gain effective representation or as a matter of practical necessity,

again is a principle that Albertans understand, wherever they live, in the largest urban centre and the smallest rural community. I think they understand the value and the importance of those kinds of principles.

I think that when we look at Bill 46 and when we deal with the electoral boundaries, we have to be mindful that other provinces have found a way, Mr. Speaker, to do a much better job of coming closer to a kind of parity. In Saskatchewan it's plus or minus 5 percent; Manitoba and Newfoundland, plus or minus 10 percent. Those provinces also had challenges. Those provinces

also have people living in remote communities. They also have concerns in terms of how the population is spread out around the province. They also had to wrestle with the notion of how you provide effective representation to electors in those provinces in whatever part of that province they live. Those provinces that also have physical geography to challenge them and those kinds of uneven settlement patterns and so on have found a way to live with these kinds of narrow tolerances of plus or minus 5 percent, plus or minus 10 percent.

11:00

What we're dealing with in Bill 46, Mr. Speaker, really reflects a very different kind of approach. What we see in Bill 46 is that this province and this government opted to live with a much lower kind of standard. We've asked our citizens to live with a much greater kind of discrepancy and a much greater variance in terms of voting power than Saskatchewan, Manitoba, and Newfoundland. I don't think citizens in this province should have to accept a lower standard in terms of voting power than their cousins in those other three provinces.

When we look at what we're going to be left with in Calgary-Fish Creek and Calgary-Cross, for example, and you look at the population of Albertans in those constituencies and you contrast that with Drumheller-Chinook or Cypress-Medicine Hat or Peace River-Rocky Mountain House, there's a disparity. One has to ask whether that can be defended, whether after all of the debate we've heard, all of the analysis, two voluminous reports from the Electoral Boundaries Commission, that part of Bill 46 still makes sense. It seems to me, with respect, Mr. Speaker, that in Bill 46 we had an opportunity to do what's been done in other provinces to ensure that section 3 of the Charter of Rights and Freedoms and that right for every Alberta citizen to have a vote. We had an opportunity to empower people, to recognize and respect and reflect that important principle in the Charter in section 3. In the Bill that's currently before us as amended we've taken a look at the opportunity, and we've backed away from it. I just refer members to page 58 in the final report to the Speaker from the Electoral Boundaries Commission. The comment is made:

> We conclude adding one electoral division to Calgary to assure effective representation shall not unduly dilute the relative parity of the vote of Calgarians. Calgary shall have twenty-one divisions, two less than is indicated.

Well, that may well be the opinion of the Electoral Boundaries Commission, and it's clearly reflected in Bill 46, but I think it's not the opinion of a great many Albertans who feel that effectively their voting power is going to be diminished and depreciated. The commission says – and this is reflected in the Bill that's in front of us – at the bottom of page 58: "We do not think the parity or equality of the vote has been unduly diluted." Well, we have a means of measuring that.

We know what the Electoral Boundaries Commission says, but we're not bound by that. It was important we had an independent review, but we make the final decision in this Chamber, so we also have to weigh section 3 in the Charter. We have to weigh all of the statistical input, all of the empirical data that's been assembled and packaged in the two reports, particularly the final report. Ultimately, we have to make the decision in this Assembly, and electors in Alberta expect us to make that decision not in terms of what's going to advantage any single MLA or either of the two parties in the Assembly but in terms of what we do for individual Albertans, because it's their right that's at stake. We're here ostensibly to serve that right, respect it, and enhance it.

At page 60 of the report we again have the commission saying: we find the average population in Edmonton and Calgary is "7.3% below the provincial quotient of 30,780." They then go on to say that they think that "it is necessary for effective representation as has been demonstrated by our analysis of the degree of difficulty." Well, I'd say respectfully, Mr. Speaker, that I don't think that case has been made. I'm simply not convinced.

When the commission says at page 59, and this is reflected of course in Bill 46, that "excessive weight . . . must not be given to these very densely populated areas," they're talking about 1.6 million Albertans, Mr. Speaker. We see the comment that excessive weight must not be given to these densely populated areas. Well, in my respectful submission we're not giving adequate weight to the rights of those Albertans.

It's for that reason, with regret, that I can't support Bill 46. I say that simply because I think we have an enormous body of law right across the country that has said that when you talk about outside limits, that's not the target. The target isn't to try and bump up against 25 percent plus or minus in as many constituencies as possible. The goal ought to be – and I think this has been said clearly by the courts – to get as close as we can to ensure that we have parity and that the political strength or value of an elector is not unduly diluted. In my respectful submission, in Bill 46 we do have an undue dilution of the voting power of Albertans certainly in the cities of Edmonton and Calgary. I think there are other ways we can address some of the problems that have been raised in debate, some of the problems in terms of representation.

I just want to be really clear, Mr. Speaker, on the record this evening on debate on this Bill that I think it doesn't go far enough. I think that if we support this Bill, we're locking Albertans, at least Albertans in the two major centres, into a kind of disproportionate representation to at least 2003. I don't think that's acceptable; I don't think it's reasonable.

For all of those reasons, Mr. Speaker, I feel compelled to vote against this Bill.

Speaker's Ruling
Third Reading Debate

THE DEPUTY SPEAKER: Before we continue debate, I would remind all hon. members that since we have a series of third readings, we ought to remember that third readings are limited to the contents of the Bill and that reasoned amendments which may raise matters not included in the provisions are not permissible. So just a reminder of that.

Edmonton-Centre.

Debate Continued

MR. HENRY: Thank you very much, Mr. Speaker. I would like to speak relatively briefly on Bill 46. I did have the opportunity to speak at second . . .

THE DEPUTY SPEAKER: Third reading; yes?

MR. HENRY: Third reading, yes.

I did have the opportunity to speak at second reading and committee, but I wanted to summarize some of my comments for the record. I walked through the process that was used to get to this point in previous debate, and I wanted to say that I think that this Bill is lacking in many ways with regard to bringing voter parity to Alberta. There are some problems with the matrix that was used to determine the degree of difficulty of representing a

constituency. What I recapped before was the fact that the matrix deals specifically with geographic characteristics. It seems to me that there are other characteristics that need to be considered.

Of course, in the first report the matrix dealt specifically and only with population sparsity, unincorporated communities, elected communities and appointed bodies, reserves and settlements, primary and secondary highways, and contiguous boundaries.

11:10

The second report went a bit further and dealt with and merged elected and appointed bodies with reserves and settlements and added geographic area, population density, number of households, and distance from the Legislature, et cetera. I did note that in terms of degree of difficulty it moved my particular constituency, the one that I represent, from number three in terms of ease of representation – along with Edmonton-Norwood, Edmonton-Glenora, Edmonton-Gold Bar, and Calgary-Montrose – to a 32 rating, along with Calgary-Cross, Calgary-Glenmore, Edmonton-Strathcona, Innisfail-Sylvan Lake, Leduc, Lethbridge-East, Lethbridge-West, and Stony Plain. The point there in the Bill is that I think in terms of the population distribution that's been given, it recognizes that urban ridings are not harder or not easier to represent than rural ridings, that rural ridings are not by definition harder or easier to represent than urban ridings, and each have their own characteristics that make them a bit more difficult or a bit easier to represent. I commend the report for that.

Again, I wish we had looked at linguistic groups, incorporated societies, number of organizations, business revitalization zones, et cetera. However, having said that, a submission that I made to the commission suggested that we needed to look very closely at population demographics in my riding and not assume that because it was a downtown riding, the population was stable. In fact, there has been significant infill in the riding. I believe in recognition of that the report which has led to this piece of legislation does reduce the size of the riding by well over 1,000 people. While I'm sorry not to be able to continue to represent the people in that community of Prince Rupert, I am pleased that the commission did listen to some of the input that I have. I also, Mr. Speaker – and I indicated this before – in my submission to the commission indicated to them where it would be logical to add or subtract as they needed to to my particular constituency.

In summary, I have spoken about what I believe is the sanctity of an independent process of drawing boundaries. If it were legally possible, I would have the original legislation that created the commission simply have the commission draw the boundaries and place them into law, but I recognize that we have to do that in this Legislature. I oppose the amendment put forward by the hon. Justice minister that tinkered with the report on that basic principle.

So while I have some concerns about the final piece of legislation, while I have some concerns about the matrix, concerns about what census figures are being used and the amount of time for revision, on a matter of principle, because this was an independent commission that I believe worked independently and that I believe did work within the confines we dictated in this Legislature, I will vote for this piece of legislation on third reading.

Thank you.

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

MS LEIBOVICI: Thank you, Mr. Speaker. I rise this evening to speak to third reading of the Electoral Divisions Act, Bill 46. [interjections] There seems to be some conversation going on here.

I wish to address the Bill as it's put before us. We've heard throughout the various stages of the Bill the opinions of various members either for or against the divisions as put out in the Bill itself. We've also heard from numerous members the fact that this Bill does not seem to address the issue of effective representation and that there is a hope that in the future if we are to look at electoral divisions again, which is most likely to occur after the next election, the mandate of a commission that would be set up would be to look at issues of providing more effective representation than what some of the Members of the Legislative Assembly feel this current Act does provide.

If I may be so bold as to put forward for the members' attention a Bill that I had put forward in the Legislative Assembly last year, Bill 224, Parliamentary Reform and Electoral Review Commission Act. In there what I had suggested was that there be an independent commission set up that would

> prepare a report containing recommendations for parliamentary and electoral reform which shall address, but shall not be limited to, the following.

To give an example of what some of that would be:

(a) public service appointments,
(b) conflicts of interest legislation,
(c) the use of free votes,
(d) recall,
(e) fixed sittings of the Legislative Assembly,
(f) fixed terms and fixed election dates,
(g) stricter time limits governing by-elections.

Speaker's Ruling
Third Reading Debate

THE DEPUTY SPEAKER: Hon. member, the Chair intervened before the hon. Member for Edmonton-Centre spoke to remind hon. members that in third reading we are limited to the contents of the Bill, not to what might have been or some amendment that didn't get passed or to previous legislation. Third reading is a narrow focus. We just gently reminded you before and now not so gently. So, hon. member, please stick to the third reading of Bill 46.

Debate Continued

MS LEIBOVICI: Thank you, Mr. Speaker. That's exactly what I am doing. I'm sticking to third reading of Bill 46, which is, on page 195, "to review the bill in its final form after the shaping it has received in its earlier stages." Part of that shaping was to look at the issue of effective representation. It was spoken to again and again in this Legislative Assembly. That is exactly what I am referring to. That is part of the shaping of this Bill that we see in front of us now in third reading.

Some of the other issues that were discussed were

(m) the use of a proportional representation system,
(n) the use of a standing list of electors, and
(o) the number of electoral divisions in the Province of Alberta,

which in this particular case in Bill 46 is 83 electoral divisions.

Now, when we look at the electoral divisions in front of us, we do in fact see that there were a number of Members of the Legislative Assembly who spoke specifically to the Bill, spoke specifically to the boundaries that are set out in the schedule of the particular Bill, and who indicated that there were problems with the Bill as set forward in its final shape that we are looking

at right now. Those individuals were, for instance, the Member for Barrhead-Westlock, who indicated that the Bill was flawed because of the matrix that was involved with the putting together of the Bill.

When we look at the Member for Three Hills-Airdrie, the member indicated that she would

> never sit back and allow the number of MLAs in rural Alberta to be lowered without a corresponding lowering of the number of MLAs in Edmonton and Calgary.

[interjection] I guess there are other members on the government side that agree with that comment.

When we look at the Member for Lethbridge-West – and that constituency is outlined at 63 of the electoral boundaries – that individual indicated that he wants "to be on the record as indicating that . . . it's a bad report . . . because it did not listen to the people of Alberta" in its final form.

When we look at the Member for Lac La Biche-St. Paul, who was speaking on behalf of the Member for Pincher Creek-Macleod, the indication was that

> Albertans are feeling that they had no input in the final report, which was so different from the interim report they agreed to and were quite happy with.

The Member for Olds-Didsbury:

> The thing that's wrong with the report, which is the substance of this Bill, is that little or no thought was given to severing communities and trading patterns. As I pointed out earlier, representation is about people and their common interests and concerns.

The Member for Cardston-Chief Mountain indicated that

> my purpose in standing today is to make it very pointed that what they did to the people of those communities is wrong. It's not fair, it has no reason to it, and I stand opposed to the report for those reasons.

11:20

The Member for Little Bow. I'm not going to go into the details of the report, but not one of the proposals that his constituents had put forward was included in the first draft.

The Member for Taber-Warner:

> With the whole concept of fair and effective representation, certainly the new proposed riding of Cardston-Taber, if this report is passed, would not be able to be represented as effectively as it has in the past.

Last but not least, the Member for Calgary-Foothills.

> We should not be looking at representation by population, because that's a fallacy . . . I do think it's unfortunate that a situation that was politically driven has made us get to this point, where we're having to look at boundaries all over again and upset ridings throughout this province and the people throughout this province without the fundamental question being answered.

Which is the question of effective representation.

It is unfortunate, Mr. Speaker, that in fact the population of Alberta has been subjected to another Electoral Divisions Act. This, I believe, is at least the third Act in the last 10 years. The boundaries have continually changed. In fact, there appears to be representation from the government members that this Bill is not adequate. I would have hoped that we would have seen during the formative stages of the Bill that some amendments might have come forward to make their constituents more pleased with the content of the Bill, but that was not the case.

Up to this point in time there have not been any of those members who wish to speak to the third stage of the Bill and reiterate their stance that they will vote against the Bill. The reason for that is quite clear. There is no rush to pass this particular Bill in its current form. If the Bill is as flawed as those government members indicated it is, then in fact this Bill should not be passed now. This Bill should not have gotten to the third stage. In fact, the Bill should have been put aside and perhaps, as I indicated earlier when I read out some of the areas that were proposed in Bill 224, those areas could have been looked at and might have addressed some of the concerns of those members I quoted from *Hansard*s in the past. Those individuals perhaps would have been supportive of the Bill, Bill 224 at that time, and may have wished to put that forward as one of their own Bills to ensure that there would be effective representation across this province.

The reality is, however, that the commission was given guidelines. Those guidelines constrained the commission as to what they could and could not do, and as a result the commission worked with what they had and came up with the electoral divisions to the best of the commission's ability. The constraints are flawed, as the members on the other side of the House had indicated, because we do not know whether we should have 83 MLAs, whether we should have, as some members have indicated, 65 MLAs. Maybe we should have more MLAs. We're unsure of what that number should be, yet we provided the commission with a figure of 83.

We do not know whether the interests of our constituents are best served by our current parliamentary system or in fact might be better served by a system of proportional representation. We do not know for sure that constituent assemblies are not the way to go, nor do we know for sure that fixed sittings of the Legislative Assembly or fixed terms and fixed election dates are not the way to go. We do not know for sure that citizens' initiatives are not the way to go. This would have been an opportune time to look at those things as opposed to saying, as some members on the government side have said: we'll pass this Bill, and after the election we'll look at it again.

Now, for a government that says that they are looking at saving every penny possible, for a government that says that spending is not on their agenda, why would you go ahead and do this? Why would you do this if the Bill is flawed, as you have said? If the Bill is flawed as your government members have said – and some of those members were ministers; they were not backbenchers – why would you do this?

The only possible reason could be that in effect we are looking at an election in the very near future. Once again this government is looking at the short term as opposed to looking at the long term, as opposed to looking at what's good for the people of Alberta. There are at least two years left to your mandate. In fact, within those two years, some of those issues of effective representation that you yourselves have brought up could have been addressed and the people of Alberta could have had the opportunity to look at those issues and to address them as well. But, no, you decided to take the other route. You decided to take the route that provided for constrained input into the system. Perhaps one of those reasons was in order to maintain a power base. We will see after the next election if that served the purpose of your government or not.

In reality this Bill has been provided, has had some input. It has not made everyone happy, and that's been obvious. In reality we know that this Bill will be passed and that there will be not a word from the government members. As we have heard in the last few stages of the Bill, as we heard on second reading, as we heard at Committee of the Whole stage, and as we will hear on the third stage, there will be not one of those government members – the Member for Barrhead-Westlock, the Member for

Taber-Warner, the Member for Lethbridge-West: we can just go through the list. None of those individuals who are here tonight will have the guts, if I may use that word, to say no. Even though you said it in your speeches, you will not be able to say no.

This Bill is a Bill that does not really affect my constituency. I am in an enviable position, much like the Member for Barrhead-Westlock, where there's not much effect on my constituency. But the reality is that some of the other constituencies have been affected. Those constituencies that have been affected, unfortunately, when it comes to the government members who spoke on their behalf, have not had the full representation that's required when it comes to the actual voting on the Bill.

With those few comments I would like to urge the government members to rethink their position. If the Bill is as flawed as they have indicated, if they really feel that there is need for further consultation, which is what the Member for Athabasca-Wabasca indicated with regards to the naming of his constituency, that he did not have time to have full consultation on that name, if in fact that is the case, then I would urge you to follow your hearts, disregard your Whip, and vote in accordance with the wishes of your constituents, as you have indicated you would do. Stand up and vote in accordance with the wishes of your constituents, because if you do not, then you have not served those constituents who have elected you to the position to represent them.

Thank you.

[Motion carried; Bill 46 read a third time]

11:30

Bill 47
Reinvestment Act

MR. DAY: Mr. Speaker, on behalf of the hon. the Provincial Treasurer I move Bill 47 for third reading.

[Motion carried; Bill 47 read a third time]

MR. DAY: Mr. Speaker, as I move Motion 24, as passed in the Assembly, the adjournment motion, I would congratulate all members. Maybe the goodwill which is often exhibited the last day of session could be spread retroactively at the next session from the beginning through to the middle. I congratulate all members for their input.

[Pursuant to Government Motion 24 the Assembly adjourned at 11:32 p.m.]