

Legislative Assembly of Alberta

Title: Monday, March 30, 1998 8:00 p.m.
Date: 98/03/30

[The Deputy Speaker in the chair]

THE DEPUTY SPEAKER: Please be seated.

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

[Mr. Tannas in the chair]

THE CHAIRMAN: Before we commence the usual proceedings with Committee of the Whole, may we have unanimous consent for the brief introduction of guests?

HON. MEMBERS: Agreed.

THE CHAIRMAN: Opposed? Carried.
 The hon. Member for Edmonton-Glenora.

head: Introduction of Guests

MR. SAPERS: Thank you very much, Mr. Chairman. This evening it is my pleasure to introduce to you and through you to all members of the Assembly here tonight some visitors from Mexico who are competing in an international gymnastics competition. They are in the public gallery, and they are accompanied by their billet parent Val. I would ask that Val and her charges please rise and be welcomed by this Assembly.

Bill 13 Alberta Personal Property Bill of Rights

THE CHAIRMAN: As usual in Committee of the Whole, we will try and stick with one person standing and talking at a time.

Do we have any comments, questions, or amendments on this bill? The hon. Member for Cardston-Taber-Warner.

MR. HIERATH: Thank you, Mr. Chairman. I propose to begin this evening by addressing some of the issues raised by members in second reading of Bill 13. There were seven main points that were raised.

The first one is the intent of the bill. As I indicated in second reading of Bill 13, it is of fundamental value for all Albertans, despite what opposition members may say. It plainly sets out that tangible personal property – that is, property other than land that can be touched, seen, or moved – which is owned by Albertans cannot be taken permanently by the Crown by legislation unless there is a process in place for determining and paying compensation for that taking.

For example, suppose legislation is proposed to allow certain persons to do things such as mining or harvesting crops on farmland, and those persons, after they are done, leave machinery or other pieces of equipment behind. If it is to be provided that property can be taken by the Crown to pay for such things as rent owing and the like or simply to clean up the land, then before we can do so by legislation, we have to set up a scheme for compensation to provide for an exception from this bill. It is therefore more than a slogan. It is a fundamental principle that this government feels should be enshrined in legislation.

Bill 13 in effect requires an addressing of the issue of compensation each time legislation is brought forward where personal property of Albertans is to be taken on a permanent basis. This

is achieved by the bill stating that unless a compensation scheme is in place or unless an exemption is made, the provision in the legislation that takes that property is in no effect. It provides transparency where there was none before, transparency to the extent that the issue has to be addressed one way or the other. As I stated in second reading of Bill 13, we recognize that there will be times when the taking of permanent title is necessary, but we also stressed that there are exceptions that are designed to be only necessary exemptions.

Number two is the unnecessary as to what there is that this province would want to acquire permanent legal title to. I have already mentioned two examples that actually exist today. Others might be where for public health reasons we seize things, such as meat that has gone bad, and destroy them. When diseased animals may affect other animals or diseased crops may affect other crops, we may want to destroy them so that the disease won't be spread. As you will recognize, this is the ultimate acquiring of title to property, by the government seizing and destroying that property. Again, there are actual examples that exist today. What the bill would do is require a careful consideration of the issue of compensation to the owner of the property. Legislation like this is considered; otherwise the seizure cannot be made.

The number three concern was that exemptions under the bill are so many that it's not likely that this bill was intended to be taken seriously. As I've just said, this bill will require legislators to address this issue in every case where the Crown proposes to acquire the property of Albertans. As I also indicated in second reading, there will be exceptions to the bill, but they will only be necessary exceptions. Many of these, as I noted, are not surprising. Sometimes royalties or taxes are taken in the form of property rather than money. In these circumstances no one could seriously question an exemption. No one could seriously question the taking of property as part of the penalty for the commission of an offence without compensation to the wrongdoer. Equally, no one could seriously question the taking of property in a normal commercial transaction or for such things as distress for the rent of Crown lands and so on without compensation to the owner. Again, those are normal commercial transactions.

There is also bound to be a situation where property must be taken where no compensation would be required, but I stress again that these will only occur where it is necessary to do so. These will be done by regulation, because unlike those exemptions that appear in the body of the act, most of these are peculiar situations. An example would be the taking and destroying of Africanized bees that would have the potential to destroy our bee industry. Situations like those are novel ones that require specific attention in regulations.

The number four concern in second reading was that this bill is not like a charter and can be repealed by the government at any time. It is the nature of parliamentary democracy that the Legislature is supreme. Legislation of any sort, except perhaps some constitutional related legislation, can be repealed by the Legislature at any time. It doesn't matter whether you call a piece of legislation a charter or a bill of rights. Unless it has that constitutional quality about it, the Legislature can and should have the power to control its legislation. That is the very nature of the parliamentary supremacy. That doesn't mean, however, that we intend to do so. Again, as I have indicated before, we believe that Bill 13 reflects fundamental values of Albertans, and we believe it is a good bill for that reason.

The number five concern in second reading was a preamble.

I heard several speakers on second reading inquire about a preamble or a purpose clause. I heard at least one speaker say that statements of principle in preamble are becoming more and more commonplace in bills, particularly legislation that deals with rights. Actually, preambles and purpose clauses are archaic and were used mostly in early legislation in this country and in Britain. Our modern drafting practice is to avoid the use of such clauses, especially if, as in the case of this bill, the principles are clearly stated and the bill is only three or four sections long.

The number six concern in second reading is contradictory statements in the clauses in Bill 13. I believe I heard one speaker in second reading note that there are contradictory statements in the clauses in this bill. It was related to the Assembly, I believe, that in one section the bill says that the provincial enactment doesn't affect a person's right under the act unless there is an act of the Legislature that says that the enactment operates notwithstanding this bill. This contradicts, it was said, another clause within the bill that says that something can be excepted from the application of this bill by regulation. Actually, the two don't contradict each other, Mr. Chairman. They are complementary.

The exception to the bill could be done by regulation, as provided in section 3(d), or specifically setting out in the act in question an express declaration that it operates notwithstanding the Alberta Personal Property Bill of Rights as provided in section 4. So there is a choice, set out by regulation or specifically in the enactment, in seeking an exception. Sometimes this choice will be necessary because the exception being sought is to a regulation that is not an act of the Legislature. In those cases, exceptions will have to be done by regulation.

8:10

The seventh concern in second reading was plain language. The issue of plain language in legislation is always a difficult one. What is plain to some is not so to others. We always strive for plain language, but sometimes it is more difficult in some cases than in others, particularly when difficult legal concepts are involved. The concept of "tangible personal property" is a good example. It has a specific legal meaning that if we were to change, the potential exists for an interpretation other than what we intended. A change from normal legal concepts would, I believe, put a measure of uncertainty into the bill that I am sure members will agree is undesirable. I can assure every member of the Assembly that every effort has been taken to ensure that this bill is as readable as it can be to Albertans, given the nature of the subject matter. The drafting of the bill follows the same conventions that other drafters have for years followed in this province, and I can also assure you of that.

I hope that this brief account assists members in addressing this bill and that it clears up some of the points raised in second reading. As you can see, the point of the bill is simple: an act or regulation cannot provide for the Crown to acquire the tangible personal property of Albertans unless a scheme for compensation for that acquisition is in place or unless an exception is made to the bill. As I have stressed continually, it is our intention that only necessary exceptions are to be made to this very important principle.

Thank you, Mr. Chairman.

THE CHAIRMAN: The hon. Member for Edmonton-Gold Bar.

MR. MacDONALD: Thank you, Mr. Chairman. It's a pleasure to rise this evening and speak in the Committee of the Whole regarding Bill 13.

I've been reading this, the Alberta Personal Property Bill of Rights, and I find that if we were to take the number 26 and subtract 13 from it, it would come to 13. Now, Bill 26: we all know what that was, and that was the absence of rights. This is half as bad as Bill 26, this Bill 13. Bill 26 took away rights of over 700 Albertans, and this bill I do not understand the purpose of. We can go to whichever section we want to, Mr. Chairman, and I don't understand what this bill accomplishes. We can go to the definitions here in this act, and we see "personal property." There's a definition of personal property here, but we've left out very important things like health information once again. The use of health information: that's property. The data that's collected about our personal lives, about our credit, about our cars, about our insurance, our insurance rates: this is all property. This has value. It's not mentioned in here.

This, Mr. Chairman, I think is a slogan bill. That definitely is what I would conclude about this, but I would like the sponsor, if he would, in due course of time to explain to me why, in personal property here, we're not talking about health information or other electronic data, because this is very, very important. It is very important to Albertans. The sincerity of this bill would not be nearly as much in doubt if more than tangible property was discussed in this bill.

Now, going on further into section 3, Mr. Chairman, the exemptions, and also into the acquiring of personal property, could the hon. Member for Cardston-Taber-Warner in due time also please explain to myself and other members of this House, in the situation where the Crown acquires property from the illegal sales of drugs whenever they arrest an individual or a group of individuals regarding this, just exactly what will happen in that case? I think he gets to it here, but if he could explain that, I would be very grateful. That is a situation we see every evening on the news; for instance, that there are illegal drugs being grown in the city. It's a sad thing to say, but it's an export of this city. What will happen in situations like this with the property gains of these individuals where they're again with illegal returns on an illegal product? What is this bill going to do to satisfy – and if this is going to become property of the government, then what happens with the money? Is it tied into the police forces? What's he going to do with this property? Or is it going to go to a charitable organization? Or perhaps it's going to go for hospital equipment. If he could explain this, I would be very grateful.

Of course, we also have our standard regulations. We're going to make up our mind about certain things later, and we're going to have regulations. I'm afraid that is not good enough when we have only one session of the Legislative Assembly in a year, Mr. Chairman.

With those remarks I will cede the floor to another hon. member. Thank you.

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

DR. MASSEY: Thanks, Mr. Chairman. I'd like to address a few comments to Bill 13 in Committee of the Whole. I had the pleasure of addressing the bill when it was at second reading, and I tried to make a number of points then, some of which, I think, the hon. member has tried to address in his remarks this evening. But I guess if I would make a plea, it would be a plea to the member to give this poor bill a merciful and early death. I hope he can find some way in parliamentary procedure to relieve all of us from the agony of having to deal with Bill 13.

Mr. Chairman, the bill has got to be unique in terms of the

ones that we've dealt with in the Legislature since 1993, because it is so obscure and it does so little in terms of what it might have done. I referred in second reading to similar pieces of legislation elsewhere, and the legislation behind property rights has a long history in philosophy and in legal circles. I talked about the kind of language that's being used in other documents. If you look at the American Bill of Rights, a quote from their Bill of Rights is:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.

You look at that language, and then the one section of the bill, the only section that seems even to compare is section 2 of the bill, and even that starts off with "subject to section 3." Section 3 is a whole list of exemptions, and "subject to" talks about where

- (a) personal property is owned by a person other than the Crown, and
- (b) a provincial enactment contains provisions that authorize the acquiring of permanent title to that personal property by the Crown,

these are in no way in force. So it really is a very weak, weak statement of property rights.

8:20

I go back to some of the other statements. If you look at the American amendment to their federal Bill of Rights:

No person shall . . . be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

The individual's right to own, to dispose of, and to be compensated for private property should it be acquired for public purposes is central to their notion. That seems to me to be so much clearer and to be much better language than what we have in Bill 13.

So I would go back to the sponsor of the bill and ask: isn't there a better way? Isn't there better language that better captures the notion of individual property rights that would speak to ordinary people as they read this piece of legislation, that wouldn't be couched in the ands, ifs, buts, nors, maybes, and all the kinds of qualifications that permeate Bill 13? I guess I'm really almost at a loss to say how we should deal with it in the Legislature, but surely Albertans deserve something better than this, particularly those Albertans who share the concerns of the sponsor of the bill over their individual property rights.

I would be curious as to the number of individuals and the groups of individuals that the sponsor of the bill consulted in the preparation of the legislation. The language doesn't seem to match, doesn't seem to grow out of any of the individual rights, language, or writings that I'm familiar with. So if the bill's sponsor could share with us the root of some of the ideas and just who was consulted, it may help members like myself who are really struggling trying to find something good in the bill, wanting to support it yet finding very little to hang our hats on in terms of how we can justify making sure that this piece of legislation proceeds through the Assembly.

So with those comments, I would conclude and ask, I guess plead with the mover to give us something, to give us some substance so that we can react and try to improve the Alberta Personal Property Bill of Rights.

Thanks, Mr. Chairman.

THE CHAIRMAN: The hon. Member for Edmonton-Mill Creek.

MR. ZWOZDESKY: Thank you, Mr. Chairman. I rise to give some comments and some questions on Bill 13, the Alberta

Personal Property Bill of Rights, as proposed by the hon. member across the way.

I have to confess, Mr. Chairman, that when I first saw this bill I did get excited because I enjoy reading issues that pertain to rights of individuals, and when I saw this particular title of the bill, I really did delve into it with great enthusiasm. I got into the first section of the bill, which provided some descriptions to do with owner and personal property and intangible personal property and incorporeal rights and provincial enactments and so on, and it crossed my mind that these particular definitions I believe are consistent with what is already in law elsewhere. So I didn't feel tremendously enlightened by that, but I can understand why they're there.

Then as I got into section 2, I was expecting to find something a little more along the lines of some specific protections that might be built in, because usually when we talk about rights, particularly rights as they pertain to individuals and in this case to the personal property of individuals, generally speaking there is an expectation that there would be some clauses to do with protection of those rights and/or protection of that property. I do see some references to that aspect later. However, the issue of rights and freedoms in this province and in this country is of paramount importance and should never be treated lightly.

So I did delve into section 2, which is an explanation of "restriction on legislation affecting personal property." I started to read this section through and come out with an understanding of my own as to what was intended, and I'm still not extremely clear on that. I listened very carefully to the hon. Member for Cardston-Taber-Warner as he explained in his opening remarks tonight what it was that was intended here with respect to property that may be taken away and that where compensation is not required, some of this would then be further explained through regulations. Then he went on to cite the example of, I believe, Africanized bees or something to that effect. Now, I'm not that well versed in Africanized bees, but I am reasonably well versed, I think, in individual personal property and personal property rights. So with that particular frame of mind I read through very carefully section 2, which talks about personal property that is owned by an individual as opposed to being owned by the Crown being impacted, subject to section 3, by a provincial enactment which might contain provisions that would "authorize the acquiring of permanent title to that personal property by the Crown."

I thought to myself, as I read on after that where it says that "those provisions are of no force or effect," et cetera, that there must be some reason why the hon. member is bringing this bill forward. Even though it's a personal member's bill, I'm assuming that it has some support from the government side and that, therefore, there is something contemplated of a more specific nature under section 2.

Now, section 2 still confuses the reader somewhat, because it's not yet specific enough to an individual item which would perhaps by example make the point more clearly than it's being made at the moment. So when I read this through and said to myself, "What may be contemplated here is that there is no force or effect upon the personal property that may be taken by the Crown from an individual," that caused me some concern, and I had to retract my thought because it immediately came to mind that it's possible that the government or the Crown may be contemplating removing property from individuals. I better put that in the form of a question, Mr. Chairman, because I'm just not clear as to exactly what is being driven at here in section 2. So I would ask the hon. member: in this section 2 of the bill, which is basically the guts

of the bill, is the government contemplating the possibility of having to remove personally owned items from Albertans and therefore it's necessary for us to have this bill to protect against that from happening, or is it in here to say that the Crown may, if it wishes, extract a piece of personal property from that individual and then through its own self-authorization as a Crown pay compensation for the acquiring of the title to that particular item? Is that what's contemplated here, or is it something much deeper or perhaps closer to the surface? I'm just not clear.

8:30

Mr. Chairman, I have read this bill now, which is very short, as the member said – it's only about two and a half pages long – at least a dozen times, and it still escapes me as to what it is that the main intention of that section is. It does set up and suggest, in my opinion, that the Crown may already be contemplating the possible removal of personal property from individuals, and that causes me to suspect that there is something else contemplated there which we have not yet heard about. For example, the issue of guns and knives and that kind of thing comes to mind, and if this is intended to be a complement to some existing legislation in that respect, then I would ask the hon. member to please tell me which other act or bill it complements in that respect.

Once again I just want to say that the rights and the freedoms and the entitlements that we have are extremely special and extremely privileged. Therefore, I wouldn't want to be voting for a bill that doesn't sit clearly in my mind with respect to the longer term implication of this.

Also, in what scenarios would this type of clause, such as is advanced in section 2, be put into effect? If it has something to do with forthcoming gun control or gun registration or something like that, I would ask someone from the government side, perhaps the sponsor of the bill, to just straight-out say that. Then I would have a context within which to address section 2 more clearly. Unfortunately, as it sits, I am more suspicious than I am supportive of what may be contemplated there.

Now, I appreciate the fact that these provisions are of no impact on individual property unless there's a specific process in place to determine the compensation or the payment of that removal and pay for the privilege for acquiring the title. So if the Crown is contemplating removing items and/or ascribing to itself the acquisition of title to that property, I would like to know and have that cleared up.

The other part of section 2 – I wonder if it's possible under this section, hon. member, for the Crown to extract some of the items referred to as personal property but under a later decision to perhaps return those items. If that's the case, where in this act is that addressed? Let me give you an example, Mr. Chairman, with respect to items that are sometimes seized inadvertently or items that are taken in bulk, some of which perhaps were meant to be confiscated or title taken on them, but in the process of taking one group of personal property items, others – let's call them innocent items – were mixed in there. Does this bill allow for the safe return of those items?

Secondly, even after the personal property referred to in section 2 is taken, is extracted from an individual Albertan, under what circumstances is it possible for that person to reacquire those items, to get them back in other words? I don't see a contemplation for that type of reciprocity in this bill. Maybe it's not necessary, and perhaps the examples I'm raising are not specifically relevant to the bill, but they are interesting questions that I would like to have addressed.

As I read through the bill, Mr. Chairman, in fact I found more

exemptions than inclusions. I find that to be an interesting turn of events and also one that causes me some concern. In fact, out of probably a sum total of 60 lines or so 31 lines are dedicated to exemptions. So the purpose of Bill 13 is still not clear to me.

I also listened to the hon. sponsor's attempts to clarify the issue of no preamble and no stating of principles up front. I believe he indicated that that practice was archaic and was not used anymore, but I think bill construction is extremely important, and for the few bills that I've had the pleasure of authoring and presenting before Parliamentary Counsel, I think it was impressed upon me that when you really wish to state something up front about the nature, purpose, or principle of a bill, that in fact is the place to do it.

Now, I would agree with the hon. member that some of the parlance that we hear and use and read in this Assembly is of an archaic nature. I would also argue that some of it could well stand to be modernized. However modernizing something for the purposes of clarity, Mr. Chairman, is one thing; totally removing it is completely another. I would say that this bill may have been better served if the construction in the opening page were such that it gave a little clearer idea of what was really the purpose or thrust that propelled the member to bring this bill forward. I'm not secure in my understanding of that. Nonetheless, he did make the point and defend his non-use of a preamble, so I will accept that for face value.

The other aspect that the hon. member alluded to which caused me to stop and reflect again was a statement that he made with respect to this bill not being like a charter; in other words, it was not intended to be a charter of rights. Yet it uses the title "bill of rights" freely, and it appears in a couple of other spots in the bill, and the word "rights" is something I feel very strongly about.

I have often said that if we could have a little less government in our wallets and a little less government in our bedrooms and a little less government in our face, Mr. Chairman, we would probably appreciate that. However, here when we're talking about rights, I think the government is treading on very delicate ground, because they're empowering themselves to seize personal property without sufficient explanation as to what the rationale or purpose to that seizure may be, and that should cause all of us to stop and reflect a little more deeply. So whether this bill is like a charter or not like a charter, the fact that it uses that term "bill of rights" in my view likens it to a charter or perhaps a subcharter.

8:40

The fact that he said that this can be repealed at any time is not inconsistent with all the other bills that we see in this House, Mr. Chairman. So I'm not concerned about that part, because if in fact we do find the need for parts of the bill to be reviewed or updated or amended, I know we have the right to do that. But I think we have seen ample examples in this House where we know how difficult that can be. Even the simplest amendments sometimes are very painstaking. They're very time consuming. They take up a great deal of our time in this House when there are other important issues to deal with, and they're not that easily or readily accepted. Then you have to go through the whole round of speaking with stakeholders and affected groups and so on. But this bill affects everybody. This bill affects every single individual Albertan. So we must be very, very careful when we're enacting a bill that impacts the magnitude of our rights.

The principle of this bill, therefore, is not easy for one to spot, and that leads me to another question for the hon. member. That is to query on what basis this bill is being advanced. Is it on

some need that suddenly this bill has come to us in this form? Is it based on some outcry or some survey? Is it based on perhaps some barrage of letters that were brought to the member's attention? Or is it anticipatory of some other actions which are contemplated at the provincial level of government or perhaps at the federal level? Those questions remain unclear to me.

I generally read bills through, Mr. Chairman, with a sense of balance that I'm attempting to reach before I cast an opinion, but where the spirit and thrust of a bill escapes me, I'm hard pressed to say anything that specific that would be positive here, because I just don't see it. I don't see how this improves the situation that we have in the province at the moment with respect to our individual rights. I don't see how it enhances those rights. Or does it correct some rights? Are we being wronged somewhere? Am I missing something here? I hesitate to say that I don't get it, but in this case I'm just having trouble following it. I don't see anything new being initiated per se other than the Crown attempting, in some preventative way, to garner unto itself some form of additional power to acquire real tangible property from Albertans. That's the only conclusion I can come to.

I don't believe this bill fills a void of any sort. I will stand back and hope to be convinced otherwise, but I just can't see how it is that this particular bill, in the state that it's in, advances any of those causes. I should probably apologize to the Member for Cardston-Taber-Warner for making those statements, but honestly, hon. member, I just am at a loss to see how this advances the quality of life for Albertans. We already have protection against those kinds of issues in other legislation. I note that there are examples given later. Is that the bell?

MR. SAPERS: That was the bell.

MR. ZWOZDESKY: I'm sorry. Okay, I'll come back a little later. Thank you.

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

MR. SAPERS: Thank you, Mr. Chairman. I don't doubt for a minute the intentions of the Member for Cardston-Taber-Warner, and I listened to his explanation when he opened up debate at committee. I take him at his word. He and I obviously, though, have studied differently when it comes to the role of government and the role of the individual in society and the nature of law and the nature of property. So I'm not challenging him at all in his beliefs or in his commitment to the protection of individual rights. I will, however, try to convince that member and all members of this Assembly that Bill 13 is actually contrary to the direction that the Member for Cardston-Taber-Warner would like to see us go.

Now, I don't really want to get into the debate about whether a preamble is a good thing or a bad thing or archaic or not archaic. Clearly, when you have a piece of legislation, when you have a law, a bill, the whole notion of common law is predicated on the assumption that the law is (a) knowable and (b) is in fact understood and becomes common or becomes common knowledge. So if you have a law that people don't understand, that doesn't make sense to them, it would offend that very basic, fundamental principle of common knowledge or common understanding. So if Bill 13 in its present form is not clear in its intent as to what it would accomplish, then it seems to me that a preamble might help if in fact it could be easily stated. But I'll leave the discussion of the preamble at that.

When you begin to talk about individual rights and protection

of rights, property rights, and you begin to think about the antecedents of our system, of our whole notion of social justice, our understanding of the role of government in society, of the individual in society, and you begin to reflect on the history and you think of Hobbes and you think of Locke, there are many people whose intellect and whose powers of observation and whose analysis are far greater than mine that have been very influential in bringing us to where we are today as a society.

I note that while it was Hobbes that talked about how members of a society handing over some of their individuality to a government helps that society move away from the anarchy of the state of nature, I think Hobbes referred to it as, and gave them relief from the uncertainties and the vicissitudes of that kind of disarray, that thought about the sort of abdication of the pure pursuit of individual rights for the greater good was modified later on by people like John Locke, who did talk about the duty of a government. In fact, it was Locke I believe who said that the

duty of government established by consent of the governed is [at least in part] protection of the person's natural right to property, along with the related rights to life and liberty, which in a civil society means freedom from the insecurity and oppression of arbitrary rule.

So we have this progression from this sense, in a Hobbesian context, that we would just give up a certain part of ourselves to the greater good, to government, through to Locke, who in a very simple way is saying that one of the reasons why we do that is because we would trust that the government wouldn't be oppressive and arbitrary in its use of authority that we as the governed have given the government.

Then we can sort of fast-forward a couple of hundred years to where we begin talking about a Constitution for this country and a Charter of Rights and a Bill of Rights. It was made very expressly clear that what we're talking about are rights that serve us all in a communal way and rights that don't put any one person above anybody else. But never was it contemplated that as we moved in this country towards the establishment of our own Canadian Constitution, we would somehow be turning our back on all of that history and hundreds of years of common law and hundreds of years of precedent. If you look at all of those hundreds of years of precedent in common law, all of which built up this monumental and elaborate force that guides what it is that we do in this Chamber and what judges do when we appoint them to the bench and that governs in fact normal relations in a law-abiding society, never was it contemplated that all of that would somehow be thrown out in a way that would require a government having to be protected from itself in the arbitrary use of its authority when it comes to the seizing of personal property.

The whole notion of the quiet enjoyment of private property, the right of private property is very fundamental. It's fundamental to our economic well-being, and it's fundamental I think to our social structure as well. There's nothing that I have found in a statute of this province, in the *Revised Statutes of Alberta*, or in the *Revised Statutes of Canada*, as I have reviewed them, that indicates to me that we are at risk in this province at this time of losing those rights, which naturally accrue to us, to an arbitrary and capricious government.

8:50

Now, my colleague from Edmonton-Mill Woods was speculating that perhaps something sinister is afoot, that perhaps what's really behind Bill 13 is that the government of Alberta is contemplating bringing into force a law that would be arbitrary and that would seize personal property and that maybe what Bill 13 is is

a warning signal to us all that the government may be contemplating such a move. But I don't read any deep, dark conspiracy into this. I suppose I'll be sad and embarrassed if in fact that proves to be the case, but what I see in Bill 13 is really a very straightforward attempt, particularly on the part of the Member for Cardston-Taber-Warner but generally the government, to say: we respect an individual's right to personal property, to own that personal property without fear of losing that personal property, and if that property is to be lost to the Crown for any legal reason, the Crown would have to compensate the rightful owner. I see it, you know, just that straightforward and just that simple.

The difficulty I have with Bill 13 is that not just does it offend all of that precedent, all of that history that I was talking about, but it doesn't advance the rights at all. There's nothing in Bill 13 that takes us any closer to protecting those rights. There's nothing in this bill that changes the role of the courts. There's nothing in this bill that changes the role of government. There's nothing in this bill that gives myself or yourself, Mr. Chairman, or my children or anyone else in this province any further guarantee in law than they currently have without this bill.

In fact, it may even be that if Bill 13 becomes law, people may look at this and think they have something that they don't. People may misunderstand this. They may not understand the limitations. They may not understand that it only has to do with the rights of the individual vis-à-vis the Crown. They may not understand that it really has no effect on federal statute matters like the gun control bill. They may not understand that it doesn't change the judicial precedents that are established in courts of law. They may not understand that it really doesn't do anything to the Canadian Charter of Rights and Freedoms.

So while on the one hand I understand the intent and respect the intent behind the bill, on the other hand it may work at cross purposes because it may build up expectations. It may create confusion, and it may in fact bring us to a point where we have people believing that they have something they don't have, and what people don't have is the absolute freedom to pursue whatever it is they would choose to pursue to the detriment of all others. They particularly don't have that right when it is something that runs afoul of a law or an enactment of this Legislature or of the Parliament of Canada that has the imprint of support because the law has been passed in a democratic way by a democratically elected government and carries with it all of the prerogative that history would confer upon it.

If Bill 13 emerges from this Assembly through committee and third reading and becomes law, we'll have this very unusual circumstance. We'll have a bill ready for royal proclamation that in essence says nothing beyond its title, and the title doesn't do anything beyond what is already common law and commonly established and held to be true. But the impact of passing that law may send out messages which may be contrary in fact to our common-law traditions and may not serve the purpose that the author of the bill would intend.

Mr. Chairman, if you look specifically at the wording of section 2 and then section 3, I think you're struck by the very contradiction that I'm speaking of. Section 2 reads that the

provisions are of no force or effect unless a process is in place for the determination and payment of compensation for the acquiring of [the property].

Well, that is one of those classic statements that goes without saying. A government does not typically go about the business of exercising its muscle in this country, in this province unless of course it has the legislated authority to do so. Now, we could argue with the legislation, and as the opposition we often do. But

the fact is that we also respect the rule of law, and when a law becomes the law, it is the law until it's changed.

Then if you go on to read section 3, what you're struck by is the immediate wording that section 2, the section I earlier quoted, "does not apply in respect of the following," and then there's a whole list of all of those things that most of us would normally see the red warning lights flashing on: taxes, levies, royalties, personal property that is retained following a conviction for a violation of a provincial law, "proceedings taken under a provincial enactment respecting the payment of taxes, levies, royalties, fines or penalties." Anything under the Civil Enforcement Act is excluded. Anything under the Personal Property Security Act is excluded. Any regulation made under the Civil Enforcement Act or the Personal Property Security Act is excluded. Any "distress, receivership, trusteeship or similar proceedings" is excluded. These exclusions make up the very context – what's a better way of putting it? – if I can weakly paraphrase Marshal McLuhan, the mucilage that binds all of these things together. These exclusions in fact represent most of the means, most of the mechanisms, most of the ways, most of the opportunities in which personal property might be seized, taken by a government or government agent.

So, again, you see an example of that contradiction. We have a bill that talks about being the Personal Property Bill of Rights, but because of the wording of the act itself that title of the bill really is little more than a slogan and doesn't effect what the member would want to effect and what I think most of us in this Chamber believe in, and that is that we all have the right to enjoy personal property. But that is not the same thing, obviously, the same set of legal rights that are contemplated in something like the Canadian Charter of Rights and Freedoms and certainly nothing that is contemplated by the great English philosophers upon which our system is based.

If the member was concerned that having a preamble might be archaic, then he might be equally concerned that I would be referring to Hobbes and Locke as being somehow archaic. But if that would be the argument advanced, then I would suggest that there are several other things we could be more concerned about, Mr. Chairman. This very Chamber could be considered archaic. The form of debate, the symbolism of the Mace, the role of the Sergeant-at-Arms, and the chairman himself could all be considered archaic, but they serve a purpose. They ground us. They root us in what we know to be proper. They provide us touchstones from which to move forward and upon which to build. So I would argue that the fact that things may be historic does not make them at the same time archaic or redundant or not worth recalling. So I think it's important to recall the thoughts of philosophers such as John Locke or Thomas Hobbes. I think it's equally important that we recall that we are here to serve all the people and not just those people who may narrowly benefit from a law.

9:00

I recall when the Minister of Justice, I think it was, was first speaking to Bill 13. I can't recall, though, whether it was inside or outside the Chamber. The Minister of Justice spoke about the importance of this bill as it relates to the federal enacted gun control law. I remember the minister saying that it would send a message to Ottawa that Alberta was sincere in its attempts to enshrine personal property rights in law and that we wouldn't let any overbearing federal government take our assets. But at the same time, I remember the minister being asked: well, how can you say that when you know, Mr. Minister, that this bill can't be

binding on the federal government and, in fact, the federal statute would apply regardless of whether or not Bill 13 ever saw the light of day? I can only paraphrase the Minister of Justice in his response, but I believe his response was basically: well, it would be symbolically important.

Well, if this bill is nothing more than symbolically important, I would argue that it's much more symbolically important for this Legislature to rededicate itself to the principles of fundamental justice and fairness and for this Legislature to acknowledge that our job is to always be mindful of moderating the potential excess of government as it may be applied to any individual, whether it be in the seizing of rights or any other potentially arbitrary action the government may take.

We don't need a Personal Property Bill of Rights to remind us of that. That's in our oath that each of us takes. We don't need a Personal Property Bill of Rights to remind us of that. That is what we do every day when we show up for work in this Chamber. That is what defines us as members of the opposition when we ask the government to be accountable for actions during question period or in fact when members of the government sit in their standing policy committees and review potential areas for legislation. That's what we do, Mr. Chairman. So I would argue that the Alberta Personal Property Bill of Rights has been useful in terms of ensuring that we have a discussion around the importance of government and the role that it plays and the importance of individuals and the role that they play. I would then add to that argument that this bill does nothing but offer hollow promise of any extension beyond the natural rights that people have as a result of fundamental justice.

Passing Bill 13 could prove to be a disservice because of the false promise that it offers. Therefore, I would argue that it does not enjoy the support of this House and that, instead, we make sure that we measure everything we do in this Assembly against the very important notion that the individual must always be respected, and no action of government should be taken without fully understanding and appreciating the impact that action has on any individual citizen.

So, Mr. Chairman, I will listen to other members debate this bill. I hope to hear as well from the sponsor of the bill and perhaps some other government members, because I do think that debate on this should be encouraged, but ultimately that debate should lead to this bill being voted against.

Thank you.

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

MR. WHITE: Thank you, Mr. Chairman. I, too, rise to speak to aptly numbered Bill 13, the Alberta Personal Property Bill of Rights. Yes, it's true that it appears to deal with personal property and purports to do so, but I don't know how property has a bill of rights. A right to own property, I can understand that. A right to maintain property, I can understand that and a right to maintain property free of seizure by one level of government or another. But I have that right now. I don't understand how this bill furthers that cause, quite frankly, and I'm at a loss to understand the drafting style.

I can see the desire from the Member for Cardston-Taber-Warner, and I can understand from where it comes, but we have a society based on English common law, that is very clear that a property acquired legally and held title to, whether it be registered title or title by the doctrine of common possession, allows for all of that.

I'm at a bit of a loss as to how this member could put forward a bill of rights and stand back and watch while another piece of legislation, which is double 13, Bill 26, that was twice the bill and twice as dastardly and which took away some rights of humans, not property but humans, which took the rights to do a lot of things, one to sue the government, which took them away by a notwithstanding clause in federal law as well as a clause that was enacted by the Progressive Conservative government of the year 1972 – both those pieces of legislation are well respected throughout Canada, and I'm at a loss to see why one could say that this bill should take precedence over those two bills that were passed so many years ago in this Legislature.

Now, I have some questions on how this was drafted with the exceptions and all that sort of thing, but it's the fundamental right to hold property that I don't understand. You may remember that I spent a little time as an alderman in the city of Edmonton. Quite frankly, at the municipal level you're always having to acquire property for rights of way, for one thing and another. That is very difficult to do, because it's taking the right of property away from someone. But in law there's a specific set of rules coming from common law that lays out the principles of how one goes about that. If it can't be done through negotiation, then in law there's a very specific manner in which to do that. That's real property also, but it happens to be a property in the way of land holdings, easily definable. This covers all property, so I presume that would be everything from pocket watches to calculators, to handguns, to any number of other pieces of personal property.

Now, I would like the Member for Cardston-Taber-Warner to tell me if the genesis of this act came perhaps from the federal government's unwise, in my personal view, move of trying to overregulate guns in this province. If that's the case, then there are probably a number of other ways that it might have been able to be handled. I quite frankly don't know what they are, but I would like the member opposite to answer the simple question of whether that was perhaps the genesis of this.

The classic error in the application of any law would be that people can't understand it: what it gives them or what it doesn't give them and how it can be challenged. Every law has to have some provision for a way of saying: no, this is not right. I don't know, quite frankly, how one would come about that. I'm at a loss.

I understand that the Crown is bound, and I understand that there are a number of references to the Crown, which, to me, is the federal government. Otherwise, specifically the act would be referring to provincial enactments. It doesn't seem to define that particularly well. So I'm at a bit of a loss on this, and I would like to have some more explanation. I'd like to hear from some of those that are well versed in the application of the law in this area, not necessarily constitutional law but just dealing with real property. Once, by reason of my profession in engineering, I desired to take a real property course at the university, and this gave me some grounding in law but certainly not to where I can understand what this piece of legislation does. I understand its intent, but I certainly can't see it.

9:10

The other thing that bothers me a little bit, getting right down to binding the Crown and the proclamation, is that it basically says:

The Lieutenant Governor in Council may make regulations exempting any matter, provincial enactment or provision of a provincial enactment from the application of section 2.

Section 2 is the guts of the bill. This little piece of regulation says that anything that the Lieutenant Governor in Council wants to do in the way of exclusions in this bill they can do at the drop of a hat, an order in council, an OC, one of half a thousand that are done every year. Well, quite frankly, I don't understand why one would have that provision other than it's a lawyer's way of saying: well, anything that we messed up on anywhere or if anyone makes any challenge to this act, we can quickly fix it up somehow or other. I don't quite frankly understand why that's necessary. I am very happy as an Albertan and I don't feel threatened at all and I don't know anyone who feels threatened that their real property could be confiscated without a determination or method of payment, whether it be the provincial government or whether it be the federal government that acquires this property.

Now, I would say, not wanting to ascribe any motivations to the member: look, if there's something that the member wants to specifically protect, a right to something that is threatened, then let this side know. We would be more than happy to sit down and understand what these threats are, and if there is something that can be enacted in this Legislature or something that we can recommend to the federal legislation, then by all means let's deal with it, because it certainly would be something this side of the House would like to deal with, the protection of rights, as I know certainly that side would also. It's fundamental to our purpose in this Chamber. Now, I don't know why we would have to go beyond that, but I stand to be corrected. I make buildings stand up in my profession; I don't make charters of rights and certainly not charters of rights of property. I would like to know more about from where this member feels this threat is coming.

The last thing I'd like to say is that the provisions in this bill seem to me a very sad use of time in this Legislature. If we are stuck for time and there are some priorities, certainly there could be some other priorities set so that we can deal with some substantive matters. I say to the member that there's ample room and need in this province for a full and complete discussion of taxation, right from the municipal level to the provincial level and some recommendations to the federal income tax. I'm talking about a lot of things that aren't being said in this Legislature that should be.

When we're dealing with items that don't seem to protect anything more than we have now, I say that perhaps there's better use of time. I know there are a number of things on the rights of property as they relate to municipalities that certainly could be discussed, but this bill doesn't seem to attach any significance to any of those concerns. Therefore until members opposite can demonstrate to me that there's something of substance in this act, I'm going to be forced to vote against it.

Thank you, Mr. Chairman.

THE CHAIRMAN: Thank you.

Ready for the question?

The hon. Member for Edmonton-Glengarry.

MR. BONNER: Thank you very much, Mr. Chairman. I rise this evening to speak to Bill 13, the Alberta Personal Property Bill of Rights. I've heard often from a particular member on the other side from Calgary that you plan your work and you work your plan. Well, I don't see much of a plan here in order to plan our work by. It would certainly be very difficult from everything I've read in here to work a plan. So I'm having a great deal of difficulty reading this particular bill and getting something out of it. There are too many things flying by.

Now, when I read that there is a bill of rights, Mr. Chairman,

I think about many things. First of all, a bill of rights should inspire a person. It should make you feel that you have ownership of something; it should make you feel proud. But I don't see any of that in this particular bill of rights when it comes to personal property.

I would also think that when we talk about a bill of rights it would be something that's very aggressive, something that goes after something of substance. Again I have a great deal of difficulty here in finding anything of substance in this particular Personal Property Bill of Rights. It would spell out rights, and this does not spell out rights. As a matter of fact, it has more exemptions than it does inclusions.

When I think about a bill of rights, Mr. Chairman, I think about something that in itself is very noble in its instincts. Yet I have heard many, many people speak here, and absolutely nobody has been able to say that this is a noble bill. When I see something about a bill of rights, I would think it would guarantee me something. Again this particular bill does not guarantee anybody anything except things that are already in place, whether it be by the Crown, whether it be by the Canadian Charter of Rights and Freedoms or whatever.

When I talk about a bill of rights I expect there to be some authority, but I don't see authority written in this bill. Certainly I have to think there's some underlying reason I can't find that anywhere in here, and I can't help but think the government is up to some type of mischief by bringing in a bill of this nature.

It would seem to me that if we're talking about a bill of rights, Mr. Chairman, we want something that is articulated, something that is rationalized, something that can be defended. I would defy any person in this building tonight, any lawyer in this province to defend this piece of information. In fact I use the term information very loosely there, because I can't see too much in here. So, again, I can't see how this bill in any fashion accomplishes the objective that it set out to do.

9:20

We look and we see that the exceptions in this bill allow that property can be taken away by due process of the law. So I don't know how people can think they have a personal property bill of rights when due process of the law can take place anyway. It tells us that Albertans now have protection of personal property, but they don't. They never have.

I heard the hon. Member for Edmonton-Gold Bar stand up here and get through all the information when it comes to personal information such as health care records, whether it be our credit standing, whatever. All of these are personal property, but it doesn't spell out in any fashion whether those types of things are again protected.

I would be much happier with this bill if in any way it paralleled another bill of rights, whether it be the bill of rights that the Canadian Charter of Rights and Freedoms has, but unfortunately this does not do that either. In the long term this does not spell out anything. It does have some inclusions. It does have some exceptions. But again it really doesn't spell out a thing.

What I see here, of course, as I have already stated, is that we are up to some mischief with this bill. The worst scenario, when I look at this, is that there are quite a number of Albertans that are somehow going to get a false sense of security if in fact this bill does get passed. What a mistake we are doing.

Now, certainly one of the primary jobs of all of us here in this Assembly when we see legislation is to try to make it better, but there is no place to start. This would be a very difficult bill to try and improve upon. It is with a great deal of difficulty that I stand

here to speak and have to speak in the fashion I am, but I have no choice with what is in here. I for one would hate to be sponsoring a bill of this nature because I don't really know what it does. In no way do I see that this bill advances a person's rights. It doesn't defend a person's rights. I know that the sponsor of the bill has been asked on numerous occasions if he could give us one concrete example of what this bill might accomplish. Yet in all the sessions that I've been here in the House and in reading *Hansard* I fail to see where there is one concrete example of what this bill might accomplish. When I try to explain to my constituents the many hours that we spend in this Legislature on this particular bill and ask them to read it and ask them to tell me what it accomplishes, I know they will have as much difficulty with this as I have.

I think that when we talk to all Albertans, they have some fundamental idea of what property is and what rights they have to that property. They do realize that under certain situations the Crown has authority over that property, and these are the exemptions that are spelled out here in section 2. We also look at exceptions in section 3 of this particular bill where this bill will not come into effect.

Mr. Chairman, I have to say that since we have had this at second reading and in all the debate I have heard here in Committee of the Whole, I certainly haven't seen anything in here that would lend anything to my supporting this bill at all. With those comments I would like to conclude my statements on Bill 13. Thank you.

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

MR. GIBBONS: Thank you, Mr. Chairman. I rise to speak tonight, and I want to give a few points of what my understanding is of Bill 13, the Alberta Personal Property Bill of Rights. Now that we're in Committee of the Whole, I thought I would get to an understanding of where we have come with this bill, but as I try to comprehend the purpose of the bill, it has not been explained properly as yet. By trying to understand the principles, I have tried to understand what the hon. member across the House is actually trying to put forward when he says that this ensures that the title to tangible personal property in Alberta shall not be taken without reasonable compensation. There seems to have been no intent. It's confusing in its preamble in itself.

Section 1 is around definitions of "personal property" and "provincial enactment." We can read out of the dictionary what the two mean, but what is the actual reason for this?

Section 2 says that if a person owns personal property, no provincial enactment can authorize the Crown to acquire permanent legal title to that property unless there is a process "in place for the determination and payment of compensation for the acquiring of that title." Well, we read through different acts and so on, and we find out that some of this land can be held for a long time. Note that this right is subject to all exceptions, and section 3 is actually stating so. At this point I cannot think of any example this act would apply to, as I cannot think of any legislation in which the province can get permanent legal title to a person's property other than the things that are exceptions in the bill under section 3. Note that if the bill did not apply to something, it does not say that the government of Alberta would have to pay reasonable compensation. It only says that there has to be a process in place to determine and pay compensation.

Under section 3, Mr. Chairman, there are other items in here under exceptions. This bill does not apply to the person's money

if that is taken by way of "taxes, levies or royalties" paid to the Crown. It also has in here that the bill does not apply to personal property that is taken by the Crown from a person if that person is convicted of an offence under provincial enactment if, number one, forfeiture of the property is a penalty under the enactment; number two, if the enactment says it is illegal to possess the property; or, number three, if the enactment requires the person to forfeit that property after they are convicted.

These exceptions refer to convictions under provincial enactment. Imagine, for example, that the province enacted a law that said that it was illegal to possess unregistered firearms. If a person was convicted of breaching that law, then this exception would allow the Crown to take that personal property. What this exception basically means is that the bill does not apply to personal property that is acquired by the Crown if the Crown has taken that person to court and won. For example, if they did not pay taxes or they owed the government money for any other reason, the Crown would get the court judgment and could have the sheriff seize the person's property under the Civil Enforcement Act to satisfy that judgment. This clause indicates that under section 5 regulations can be made to say that this bill does not apply to the enactment. So it's not even necessary to say that a statute is excepted from application from this bill. The government cannot do that in regulations at any time.

Under section 5 I find this in straight contradiction, and that means this directly contradicts section 4. So as we keep reading through this and I keep going back and forth, I wonder what is actually being stated.

As I make my final statement to this bill, Mr. Chairman, this typifies what most Albertans are very leery of: overgoverning, too much government. A simple three-page bill like this one is very dangerous. [interjections] This bill escapes me of what improvements . . .

9:30

THE CHAIRMAN: We appear to have forgotten, and we now have five people standing and talking at the same time. I wonder if we could get back to one person standing and talking at the same time.

MR. GIBBONS: By allowing this bill to go any further, this is a statement that the government is willing to accept very poor legislation. What it's saying to Albertans – and I can't understand what it's saying to Albertans. I did appreciate the opening comments by the hon. Member for Cardston-Taber-Warner. Humbly, if this bill does allow some dialogue to happen, then we have done something tonight, but from what I can see, this bill doesn't accomplish anything that I can comprehend. Albertans' property rights are understood right now, and if something like this is put forward, there's nothing that can be safeguarded from now on.

Mr. Chairman, I take leave at this time. Thank you very much.

[The clauses of Bill 13 agreed to]

[Title and preamble agreed to]

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

HON. MEMBERS: Agreed.

THE CHAIRMAN: Opposed? Carried.

Bill 19
Protection against Family Violence Act

THE CHAIRMAN: Are there any comments, questions, or amendments? The hon. Member for Calgary-Currie.

MRS. BURGNER: Thank you, Mr. Chairman. I'll be brief in the introduction at the committee stage. The bill has been before us for a few weeks, and I think the principles of it have been clearly established, and that is that there is a need to address in law the opportunity to deal with violence that occurs in our families. The sections of the act are laid out in a clear, concise manner.

The fundamental introduction in this bill is the emergency protection order, which is in section 2(1), and it outlines the nature of these orders, when they can be issued and to whom and by whom. We also go through the court proceedings, because in the whole development of this legislation the balance is between the need to address family violence and also the need to provide due process in law for the respondent where these cases have been identified by the police. Sections 3 and 4 in the bill deal with the orders and the court process in section 5 as well.

Mr. Chairman, I am going to be tabling some amendments in order to address some issues with respect to the court process in order to reinforce the individual rights of respondents so that the due process of law is as spoken to. We will also be looking at the provision with respect to providing mandatory therapy, which would not withstand a challenge, so that will be looked at in the amendments. Again, the duration of orders and the confidentiality, sections 8 and 9, are highlighted in the bill. We want very much to protect those who may be more vulnerable, and we have the warrant permitting entry under section 11, which allows for entrance into the house, after an oath has been sworn, for the police to identify whether there is a concern in that situation, and be clear to note that where that occurs, consent has to be given in order for the person to be removed from the home.

We want to identify that there is an immunity available to police officers who choose not to issue an order, and also we tie that to section 14 under the prohibition, which provides for recognition that "no person shall, with malicious intent, make a frivolous or vexatious complaint under this Act," recognizing the Criminal Code, where police feel that a frivolous or vexatious complaint continues to be identified. Then the act specifically deals with regulations and a supplementary one under section 16 under the Maintenance Enforcement Act.

I would like at this point to table the amendments that are introduced by the government, and then we can go through these.

THE CHAIRMAN: It's customary to move amendments as opposed to tabling them.

MRS. BURGNER: I'll move them.

THE CHAIRMAN: Okay. All right. The amendment will be known as A1, and it has the requisite signatures.

MRS. BURGNER: While the amendments are being distributed, we'll be dealing with them as one package of amendments. Again these deal with specifically the fact that in dealing with the court proceedings, it was our intention to provide for as speedy and appropriate a court process as possible, and we also went to strengthen the recognition of family violence in order to give the police a better opportunity to respond and use orders where appropriate.

THE CHAIRMAN: I think most have them now.

MRS. BURGNER: All right. Then I'll continue now with the amendments. The bill is going to be amended as follows. Section 2 will be amended by striking out subsection (1) and substituting the following:

2(1) An order under this section may be granted by a provincial court judge or a designated justice of the peace, on application without notice to the respondent, if the judge or justice of the peace determines

- (a) that family violence has occurred, and
- (b) that, by reason of seriousness or urgency, the order should be granted to ensure the immediate protection of the claimant.

This is a significant component of the amendment, and as I've mentioned, it deals with the importance of recognizing that we need to clarify the nature of the emergency circumstances that may exist.

Section 2 will be amended by adding the following after subsection (5):

(6) An order under this section must indicate the date, time and place at which the order is scheduled for review at a hearing by a justice of the Court of Queen's Bench, which may not be later than 7 working days after the granting of the order.

This is a significant response following a court ruling in Prince Edward Island, where there was challenge to those orders, and there was a concern felt that in order to provide for the opportunity for due process to occur – under our original bill we had asked for a desk review within three working days by a provincial court judge. In this case we have decided that in order to ensure that the respondent has due process of law, when the emergency order is written, the court docket will identify a court time for that respondent.

So the section will be changed to provide that an emergency order must specify that it is reviewable by a Court of Queen's Bench judge at a specified place and time within seven working days of the emergency order. The respondent and the claimant would have the opportunity to submit evidence by way of an affidavit or other sworn evidence, and the judge could revoke the emergency protection order, direct a hearing of oral evidence, confirm the emergency protection order, or grant a Queen's Bench protection order.

The proposed process is more expeditious and ensures that the respondent is given the opportunity for a hearing without being forced to initiate legal proceedings. If necessary, the judge could order an oral hearing, and the oral hearings typically take considerably longer and therefore could not be scheduled within the seven working days of the emergency order. We know that there are certain areas where the court may not be sitting at that time, but we know that we can also use telephone hearings. So this accommodates the concern about not having the court sitting in those jurisdictions at that time.

9:40

In section 5(2)(k) the Queen's Bench protection order for mandatory therapy will be deleted. We will change that and leave in the need for mandatory counseling, because for constitutional reasons the parties cannot be forced to undertake mandatory therapy.

Section 8(4) deals with the term of an emergency order, which will be repealed. It's no longer necessary because of the review process that we've changed.

Section 9(2) provides that a judge may order a private hearing. We have that in the legislation. This clarification is so the judge

may order the exclusion of members of the public other than the other parties. We just wanted to clarify that the judge could determine who was at the hearing, and I know there were some concerns about people being excluded. So it reads now:

(2) The judge may order that all or any member of the public, other than the parties, may be excluded from any hearing under this Act.

When we go to section 15(b), it's struck out and substituted by the following:

(b) respecting the procedures to be followed for applications and other proceedings under this Act.

That has to do with changes in the references to hearings and rehearings and proceedings because of the initial change that we made providing the seven working days emergency order. It consequently is a consequential amendment.

Mr. Chairman, those are the amendments that I'd like to place before the House for consideration, and I look forward to the discussions this evening.

THE CHAIRMAN: The hon. Member for Edmonton-Centre on the amendments.

MS BLAKEMAN: Thank you, Mr. Chairman. I just want to respond briefly to these amendments. I was aware of most of the intent behind these amendments although not the specific wording of them. In my time to have a look at it, it appears to me that most of this is clarification for the purpose of strengthening the legislation and making it clearer to the public and to the users of the legislation exactly what is intended.

I know that in the one-year review of the Saskatchewan legislation, they commented on some question around the emergency and what was serious and what was urgent, and they felt there was need for clarification there. So I'm understanding of the desire to put it into this legislation. I hope, however, that this wouldn't preclude officers from using it if they – I know what happened in Saskatchewan. Often the officers used the legislation in an instance where although they couldn't actually charge someone because there was no physical abuse that had been either witnessed or that was obvious – there were no broken bones for instance. They did make use of the legislation at that point for protection of the parties. I would hope that's understood in this amendment and it wouldn't preclude officers from making use of the legislation in a situation.

Under section 2(6), the seven working days, it makes it longer for someone to get the ex parte order heard. But on the other hand they're basically being told when their day in court is when the order is handed to them, and that probably in the long run protects the individual's rights from abuse in a stronger way than was in the law before. I've no objection to that. My one concern there is that there would be nothing that would be forcing the survivor of the abuse to appear personally in the court but that an advocate for them or a lawyer or someone else could appear for them if they didn't wish to be in that close proximity to someone seven working days after abuse had occurred.

I'm pleased to see that the mandatory therapy is being taken out, because I think that that always runs us into a very precarious position. The counseling is still in there, but I think that the therapy could be challenged – and probably rightly so – so I'm glad to see it removed.

The clarification of the private hearings. I think that will assist the legislation, make it clearer to people what the purpose of that is, that it's to exclude the public from being in on the hearing but not the parties that are directly involved.

The remainder of what is in this amendment is to facilitate the seven-day working order and the changes and effects it had on the legislation.

I appreciate the care and consideration that's been taken by the members opposite to strengthen this legislation and to clarify it. I have no objections to anything that I see in the amendments. With those few brief comments I'm happy to take my seat.

THE CHAIRMAN: The hon. Member for Calgary-Currie.

MRS. BURGNER: Thank you. Before calling the question, I would like to clarify that in the new court proceedings, since sections 3 and 4 are struck out and substituted as noted in the amendment, there is clear indication of the evidence that can be sworn and, in specific response to my colleague, that

at the hearing, the justice of the Court of Queen's Bench may, whether or not the claimant or the respondent is in attendance.

So the hearing has that protection.

With that, Mr. Chairman, I would call the question on the amendment.

[Motion on amendment A1 carried]

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

MS BLAKEMAN: Thank you. I have four amendments that I'd like to put forward this evening, and I'll get them distributed.

THE CHAIRMAN: Hon. member, you may move the first one, which we'll call amendment A2, and then we'll wait and we'll have to identify them. We'll deal with them one at a time?

MS BLAKEMAN: Yeah.

9:50

THE CHAIRMAN: Okay.

MS BLAKEMAN: So as these are being distributed, the first amendment that I'd like to move . . .

THE CHAIRMAN: Maybe if you'll take them back to the hon. member, she could find out which one is number 1, and then we could begin with that. That might be helpful. Hon. member, do you have the originals for the official records? [interjection] Hon. member, if you're ready, the missing one has been found. This is the one that indicates: the following after section 15. It will be called amendment A2.

MS BLAKEMAN: Correct. I'd like to move this amendment at this time, and then I'll speak to it. I'm moving that Bill 19 would be amended by adding the following after section 15, so it would become 15.1:

Within 3 years after the coming into force of this Act a special committee established by the Legislative Assembly must begin a comprehensive review of this Act and must submit to the Legislative Assembly, within one year after beginning the review, a report that includes any amendments recommended by the committee.

My reason for putting forward this amendment is because it is new legislation and it is a new idea that we're dealing with. I think it's important that we have the evaluation and review process entrenched in the legislation to make sure that indeed it does happen. I know that the Saskatchewan legislation included

this, and indeed they found the review was most valuable to their process. Interestingly enough, one of the things they discovered was something they had not anticipated at all, and that specifically was that their record-keeping for the purposes of the documentation involved with this process was not very good. In fact, when they tried to track, they had great difficulty in doing that, so that was one thing they were able to address fairly quickly as a result of the review. But they did find it as soon as they commenced upon a review because they couldn't gather the documentation together.

I don't believe that this amendment would require that the act be opened up again, but I think it is important that the review be held. As part of any endeavour that you launch upon, it's important that there is an evaluation process in it. Otherwise, how do you know if it was effective, if we were doing the right things, if we were doing enough of it, and whether in fact it's working for us or if there are ways to strengthen it or if there are parts of it that don't work at all? I think we've had the benefit of other similar legislation that's been passed in Canada, and certainly the process that this particular legislation has gone through has been long, with much fine-tuning as it has passed through the Liberal hands and into the government hands as it's coming forward in its current incarnation.

[Mr. Herard in the chair]

So I'm not expecting that there would be any great changes that would need to be made, but I think it is important that we make sure that we do it. I realize there is an implementation process that is envisioned by the sponsor of the bill, but I think it's important that the review committee be comprised of Members of the Legislative Assembly and is able to pull upon the expertise of the entire Chamber and also that the report comes back to the Legislative Assembly.

I expect this to keep all of the parties that are involved in this new legislation accountable and give everyone an evaluation process, and that's allowing for the court system to learn from it, for the police system to learn from it, and for the legislators to learn from it. It does keep this Assembly accountable as well. So I hope that the members opposite will give due consideration to this amendment. I think it strengthens what we're all trying to do with this legislation.

With that, I'll conclude my comments. I think there's one of my colleagues that would like to speak to this as well.

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

MS CARLSON: Thank you, Mr. Chairman. I certainly support this amendment. I think that there are lots of precedents in this Legislature to take a look at bringing in a sunset clause in a bill like this: something that's new legislation, that we're taking a look at for the first time, that you have to try on and see how it fits over a time period, adjust it where necessary. A formal review process I think is very important in this instance.

The most important precedent that comes to my mind is the freedom of information and privacy act, where in fact it was a recommendation from the all-party committee to bring in a three-year sunset clause to review the performance of what was going on in terms of FOIP. I think that was very positive, that all-party committee made the recommendation. The government listened to it, liked the recommendation, believed in the strength of it, and

passed it here. It's the same kind of thing that we're asking here.

When you have such an important piece of legislation – and this piece of legislation will have a huge impact on many people's lives over the coming years – I think it's very important to take it seriously in terms of a review at the end of a specified time period. Three years is enough of a time period for things to be under way, for the process to be in place, and for all of the wrinkles to have come to the surface. A three-year sunset clause provides a process where you can iron out those wrinkles and make sure that the new law will run smoothly in the future. It addresses some of the concerns that we have heard from the community, where they say: oh, once this bill comes into action, nothing will ever change it. That's not true in this instance, Mr. Chairman. This is a living and breathing piece of legislation that is brought in to improve the lives particularly of women and children, but there are men affected by it as well.

By having a sunset clause, a formal process where you can evaluate what's gone well and what hasn't gone as well and work from that perspective to improve it rather than bringing in piecemeal changes or regulations over time, I think we have a strong piece of legislation here that will really speak to the people, address those issues, and provide the kind of legislation that this government can be proud of for many years.

So I would urge all people to consider this amendment seriously and to support it.

Thank you.

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

MRS. BURGNER: Thank you, Mr. Chairman. I recognize the accountability issue that has been brought forward by the hon. member with this amendment, and clearly we are treading in a very, very complex process. Developing the legislation was one thing, and then making it work in the diverse areas of the community is another.

Mr. Chairman, I bring to the attention of this House, as I've mentioned before in other discussion about the bill, that a very appropriate implementation strategy has got to be developed in order to take this legislation into the community and make it as effective as it possibly can be.

I have the commitments from the Minister of Justice, who has the responsibility for the act, in collaboration with the Minister of Family and Social Services, where in many respects with this particular piece of legislation, you know, the rubber hits the road, that we will be bringing forward an implementation strategy that respects the diversity of the issue in each community. For that reason I'm not comfortable accepting a fixation in law of a three-year review, simply because the implementation strategy may of its own discourse, as it goes to the community, come to certain situations, whether we're dealing with aboriginal issues with respect to violence, whether we're talking about cultural issues, whether we're talking about resources, or whether we're talking about changes to the court process or the policing community. I would not feel comfortable, given the diversity of implementation, restricting us to a review within three years.

Having said that, I do believe that there will be an implementation recommendation that identifies an appropriate review, and I would much prefer to have that come forward as a recommendation from the community rather than being imposed on them at the outset.

So I'm not recommending support of this amendment.

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

MR. SAPERS: Thank you, Mr. Chairman. I want to make just a very, very brief intervention at this point as we're discussing the amendment. I know that the Member for Calgary-Currie has done just yeoman duty in terms of getting the bill to this stage in the Assembly. My colleague from Edmonton-Centre has worked closely in our caucus to make sure that everybody in the Official Opposition fully appreciates the scope and the intent of this bill, and we want quick and ready passage of this bill.

10:00

The amendment before us is one asking for a legislative review. I'd like to support the need for a legislative review as a Member of this Legislative Assembly. I appreciate directly what the Member for Calgary-Currie was just saying: that there will be a detailed implementation scheme put into place, that that plan for implementation may vary by community, and that in fact Bill 19 has to be made community sensitive and community friendly. What may be the exact best route to take in downtown Edmonton or in Edmonton-Glenora may be not at all suitable in Grande Prairie or Medicine Hat or, for that matter, in John D'Or Prairie or elsewhere in the province.

So I do appreciate when the member says that we need to make sure this is sensitive to those various communities that exist, but a fixed date for a review is just a target to ensure that we go back and touch all the parts of this bill and examine them for fit. In no way would the reviews prohibit those who are responsible for implementing the statute from doing so with sensitivity and with creativity along the way. In fact, the three-year review might be the best opportunity to go back and check to see whether or not there are things that one community or jurisdiction in this province could learn from another.

While I respect that the Member for Calgary-Currie wants to make sure we don't do anything that would hamstring the implementation of this bill or that would hang it up or that would force an unwarranted intrusion of the Assembly on the implementation of this and into the administration of justice, on the other hand I would implore her and all other members in this House to understand that the review really wouldn't be doing that. The review is simply a mechanism of making sure that this Assembly continues to do everything it can do as we move to limit and then hopefully eradicate the plague of domestic violence that exists.

So I hope the Member for Calgary-Currie will reconsider her opposition to this amendment, and I hope the other members in this Assembly who are listening to the debate would do so as well and would find it possible to support this amendment.

[Motion on amendment A2 lost]

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

MS BLAKEMAN: Thank you. I'd like to move on to the next amendment I'd like to bring before this esteemed chamber, which we'll be calling amendment A3. I'll just give the pages time to . . . [interjection] I appreciate the enthusiasm of the hon. member, but let's get the amendment out. I'll give them time to distribute it.

THE ACTING CHAIRMAN: Hon. member, could you help us with that amendment so we can find the original? What is it about?

MS BLAKEMAN: Amending section 1(d)(i).

THE ACTING CHAIRMAN: Thank you.
We'll call this amendment A3.

MS BLAKEMAN: Thank you, Mr. Chairman. Assuming that most people have received this amendment now, I'd like to move amendment A3: that Bill 19 be amended in section 1(d)(i) by striking out "a man and a woman" and substituting "persons". [some applause] Thank you.

While I know there are strong feelings on both sides of the House about this, I think it's important that I bring forward this amendment and that it receive due consideration in this Chamber. It is covering what is known as same-sex couples under the legislation and would be including protection to them under this legislation. The fact of the matter is that we do have same-sex couples in Alberta, and I don't believe in excluding people from protection, especially excluding an identifiable group of people from protection.

I know that as I've been working on this bill, certainly one of the places where this came up most often was with the police, who were concerned about how they were supposed to deal with the situation where they were called to a domestic dispute and it turned out to be a domestic dispute between same-sex partners. Were they just supposed to leave? Or if there were children involved, could they leave the children there but remove everybody else? It didn't help them much. Certainly the Edmonton Police Service and the Calgary Police Service recognize that same-sex couples do exist, and they have found ways of dealing with that. They felt that this was going to be an impediment to them and difficult for them to deal with in that it specifically includes one identifiable group of people for which they could not make use of this legislation.

I think the idea, the intent, the genesis behind this bill is to deal with people in an intimate relationship who unfortunately do become involved in domestic violence. I would have to question what reasons specifically the government has for excluding a specific group of people from the protection of legislation, particularly where the protection of the legislation is dealing with domestic violence. I wouldn't want to think that the government would be condoning violence against a particular group of people, which it does if it cannot offer protection to that group of people.

I know this is a difficult subject for many people, and I appreciate there are many different philosophies involved in that. But I still urge the Assembly to consider including same-sex couples in domestic relationships under this legislation in that I think that in Alberta we want to offer protection to all possible people where the situation arises and not single out certain groups of people because of their relationships with others.

I would move that this amendment be put forward, and I ask for your support with it.

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

MS CARLSON: Thank you, Mr. Chairman. I have no problem supporting this amendment. Violence is violence regardless of whether it's a woman being violent towards a man, a man being violent towards a woman, a man to a man or a woman to a woman or adults to children. Regardless of the genders involved, violence is abhorrent. It is something that this bill works to address and problem-solve around, and it only makes good sense

to change "a man and a woman" and substitute "persons" in this particular instance.

I think that this is not a context in which gender should be an issue. The issue is violence and eradicating it or, when we have to, addressing it in whatever means necessary. I think that when people are voting on this amendment, that's the key point to remember: this is a genderless issue; it is simply about violence.

Thank you.

[Motion on amendment A3 lost]

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

10:10

MS BLAKEMAN: Thank you. I'd now like to move amendment A4, I guess it would be. I've given it to the pages. For the purposes of the table, this is the amendment that's actually put forward by my colleague for Edmonton-Norwood, but I'll move it on her behalf. That's amending section 1(e).

On behalf of my colleague for Edmonton-Norwood, then, I would like to move amendment A4, that Bill 19 be amended in section 1(e) by striking out

such force as is necessary in the circumstances as a means of correcting a child under the care of the parent or person; and substituting

force by way of correction toward a child who is under the care of the parent or person if the force does not exceed what is reasonable under the circumstances.

This wording matches the definition that is accepted in the Criminal Code. It is an accepted definition. I think there's certainly been a lot of controversy and a lot of discussion in the media and elsewhere recently about parental discipline of their children, and I don't think we want anything to be misconstrued or misunderstood in this act. This is attempted as a clarification of what is intended to be accepted.

Talking about necessary force allows an argument from people that whatever force they chose to use, they felt it was necessary in order to accomplish punishment of a child, which I don't think is where we want to go. I think we want to be talking about the reasonable discipline by a parent of a child. I think most people would rather be guided by the concept of reasonable rather than necessary.

So this is really a housekeeping amendment, if I may put it that way. It is meant to clarify an understanding of what's intended by the legislation. I hope it's met with favour by my colleagues on the opposite side. It's certainly meant to be helpful to the legislation, and I hope we can find some support on the other side.

With those brief words, I'll let my colleague speak.
Thank you.

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

MS CARLSON: Thank you, Mr. Chairman. I support this amendment. I think that stating "reasonable" is getting closer to no force, which is what I think we should be dealing with when we're talking about children. I've always seen force being used against children as a measure of adults expressing their anger towards the children rather than actually correcting any kind of behaviour, and I think there are more appropriate ways for adults to share their anger with children than to use force. So I think this amendment is a step in the right direction.

There's no doubt that many children are raised without ever having any force used against them and turn out to be outstanding young people. I would use my own two children as an example. They're nearly 15 and 13 at this point in time, and I have never raised a hand to them and have never needed to. I think there are many examples like that where force is not necessary to raise children, and certainly "reasonable" is one step closer to where we need to be on this. So I'm hoping there will be lots of support on the other side for this amendment.

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

MRS. BURGNER: Yes, Mr. Chairman. I'm pleased to support this amendment, and I urge my colleagues to do so as well. This is part of the issue that I spoke to earlier about balancing rights. Clearly, when this legislation was first being discussed, the responsibilities of the parents and how they exercise discipline over their children was something that needed to be clarified, and the amendment that's brought forward does provide language that is more conducive to a responsible action on behalf of parents. So I urge the support of this amendment.

[Motion on amendment A4 carried]

MS BLAKEMAN: The last amendment that I would like to present tonight I'll just get distributed. For the purposes of the people at the table, this is amending section 1(d)(iii).

[Mr. Tannas in the chair]

THE CHAIRMAN: This amendment as moved by the hon. Member for Edmonton-Centre, that Bill 19 be amended in section 1(d)(iii), will be known as amendment A5.

Hon. Member for Edmonton-Centre, you've moved this amendment, have you?

MS BLAKEMAN: No. I'm about to do that.

THE CHAIRMAN: Okay. Please do.

MS BLAKEMAN: I'd like to move amendment A5, that Bill 19 be amended in section 1(d)(iii) as follows: (a) by striking out "or" before "adoption" and substituting ",", and (b) by adding "or guardianship order under the Domestic Relations Act" after "adoption." I think all of us have tried hard in working on this bill to be as inclusive as possible of anyone that we would find in a domestic relationship, and certainly the terms of people that are covered under the act has been expanded since it first came forward.

10:20

This particular area was brought forward to me by some family law lawyers who pointed out a situation, for example, where you have a single parent with a child who'd taken in a border or a roommate to help defray the costs and that person had been in the household for an extended period of time and may in fact have been appointed as a legal guardian or a godparent to a child. Without including this specifically in the legislation, that relationship would not be covered, and again we'd have problems when the police came, if they were called into that situation. Without it being spelled out in the legislation and nothing being read into it, the police are in the position of saying: "I'm sorry; we have to

leave. We can't do anything with this, because you're not one of the designated areas that is covered here." We are covering "persons who reside together and are related . . . by blood, marriage or adoption," so this is adding the guardianship relationship that we do find occasionally and, for all I know, more frequently these days.

I think it's important that we work hard to be inclusive of those affected particularly where children are concerned, because those children are dependent on the adults around them and dependent on those legal relationships with the adults around them. We have managed to cover other possible sort of parent/child relationships in the natural parent/child relationship or an adoptive one. I'm just looking to cover one area that has been missed in the legislation.

I think at this point what I'd like to do is adjourn the debate, and we can return to further discussion of this at another time. So I move to adjourn the debate.

THE CHAIRMAN: The hon. Member for Edmonton-Centre has moved that we adjourn debate on Bill 19. All those in support of this motion, please say aye.

HON. MEMBERS: Aye.

THE CHAIRMAN: Opposed, please say no. Carried.
The hon. Deputy Government House Leader.

MR. HANCOCK: Yes, Mr. Chairman. I would move that we rise and report progress on Bill 19.

[Motion carried]

THE CHAIRMAN: The hon. Deputy Government House Leader.

MR. HANCOCK: Thank you, Mr. Chairman. I would move that we 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 under consideration certain bills. The committee reports the following bill: Bill 13. The committee reports progress on the following bill: Bill 19. Mr. Speaker, I wish to table copies of all amendments considered by the Committee of the Whole on this date for the official records of the Assembly.

THE DEPUTY SPEAKER: Does the Assembly concur in this report?

HON. MEMBERS: Agreed.

THE DEPUTY SPEAKER: Opposed? So ordered.

[At 10:26 p.m. the Assembly adjourned to Tuesday at 1:30 p.m.]

