Legislative Assembly of Alberta

Title: **Wednesday, April 14, 1999** 8:00 p.m.

Date: 99/04/14

head: Committee of Supply
[Mr. Tannas in the chair]

THE CHAIRMAN: Good evening. I wonder if we could find our places. I'd like to call the meeting to order.

head: Main Estimates 1999-2000

Offices of the Legislative Assembly

THE CHAIRMAN: Are you ready for the vote?

HON. MEMBERS: Agreed.

THE CHAIRMAN: Opposed? Okay.

Agreed to:
Support to the Legislative Assembly
Operating Expense $23,546,020

THE CHAIRMAN: Shall this vote be reported?

HON. MEMBERS: Agreed.

THE CHAIRMAN: Opposed? Carried.

Agreed to:
Office of the Auditor General
Operating Expense and Capital Investment $12,936,093

THE CHAIRMAN: Shall the vote be reported?

HON. MEMBERS: Agreed.

THE CHAIRMAN: Opposed. Carried.

Agreed to:
Office of the Ombudsman
Operating Expense $1,587,000

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

HON. MEMBERS: Agreed.

THE CHAIRMAN: Opposed? Carried.

Agreed to:
Office of the Chief Electoral Officer
Operating Expense and Capital Investment $1,208,955

THE CHAIRMAN: Shall this vote be reported? Are you agreed?

HON. MEMBERS: Agreed.

THE CHAIRMAN: Opposed? Carried.

Agreed to:
Office of the Ethics Commissioner
Operating Expense $196,480

THE CHAIRMAN: Shall this vote be reported?

HON. MEMBERS: Agreed.

THE CHAIRMAN: Opposed? Carried.

Agreed to:
Office of the Information and Privacy Commissioner
Operating Expense $1,777,020

THE CHAIRMAN: Shall this vote be reported?

HON. MEMBERS: Agreed.

THE CHAIRMAN: Opposed? Carried.

Public Works, Supply and Services

THE CHAIRMAN: We'll continue presumably with the 20-20-5 arrangement. Okay. We'll start off with the minister followed by the critic. The hon. Minister of Public Works, Supply and Services.

MR. WOLOSHYN: Thank you very much, Mr. Chairman. I'm pleased to appear before the Committee of Supply this evening to report on our '99-2000 estimates and the '99-2002 business plan for Public Works, Supply and Services.

Mr. Chairman, on the evening of March 29 I presented the estimates to subcommittee C of the Committee of Supply. I must say that there was a considerable amount of discussion and interest expressed by the members of the subcommittee in my ministry's estimates and business plan, which in my opinion is a very good sign. It means that Public Works, Supply and Services is doing exciting and meaningful things for this province.

Though I was able to respond to many of the members' questions during the session, there were a few questions I didn't have sufficient time to respond to. What I'd like to do this evening is give some general answers on questions of general interest on some of the outstanding ones, and I've got written responses prepared for the critic, which I'll send over right after addressing the other ones.

One of the questions asked about in general terms was the Beijing plan, and that's the first one I'd like to update the committee on. What is happening is that Economic Development is in the process of establishing an Alberta trade office in Beijing, China, which will be located in the Canadian embassy. As is typical with all foreign offices, Public Works funds the office, the rent, the tenant improvements, and the furnishings as well as the residential lease costs of the posted managing director.

Another question was with reference to the Northern Alberta Jubilee Auditorium. Mr. Chairman, the ongoing work in that facility basically includes replacement of stage lighting and stage rigging repairs, both of which will be completed this current budget year.

There were also questions raised regarding the seniors' lodge program. That's a program which I personally am particularly proud of, because it's the hard work of Alberta seniors that has made this province what it is today, and for that we owe them a debt of gratitude. This program includes, Mr. Chairman, 111 lodges containing approximately 5,600 units. This includes 10 lodges totaling 660 units in Edmonton and 13 lodges totaling 801 units in Calgary.

With respect to Bow Valley, Mr. Chairman, Public Works has budgeted $700,000 in this year's budget for the Bow Valley centre decommissioning project. This project is obviously related to the demolition and removal of the General hospital: the buildings, the

footings, the capping off of all services, and the restoration of the site. In this current budget year we'll be carrying out debris removal and site grading and drainage, and the project is scheduled for completion and passing over to the city of Calgary this May.

With respect to the business plan and the performance measures therein, a few questions were raised regarding those. With respect to our building condition measure it was thought that our targets might be overly ambitious, but, Mr. Chairman, we're committed to having the initial evaluations completed on all government-owned buildings over 1,000 square metres in area by the end of 2001. We are confident that we'll achieve this target through the use of the necessary private-sector consulting firms. We've done similar kinds of evaluations, as you know, on health facilities.

It was also noted that there have been some fluctuations reported in the results of our procurement administrative cost measures, and as noted in our business plan the results for that measure in '97-98 were better than anticipated due to a higher number of large dollar value, contracted acquisitions. Despite these fluctuations, I feel that the information provided by that measure is of great value to us in assessing the effectiveness of the procurement services that Public Works provides right across government.

I was also asked whether our customer satisfaction surveys were distributed to public or government users of our services. Mr. Chairman, Public Works supports the program delivery of other ministries across government. Therefore the users of our services are other government departments and associated boards and agencies. For this reason we primarily survey representatives from within the Alberta government.

8:10

Another major initiative that raised the interest of the committee was the construction and upgrading of health facilities and why funds allocated to projects under that program are classified as operating expenditures rather than capital investment. I'd like to respond to that interest by saying that ministries record capital investment when land or facilities are purchased or upgraded, and these assets are reported in the government's financial statements. Health facilities are included in the assets in the financial statements of regional health authorities, which are not part of the government's consolidated reporting entity. For this reason, expenditures incurred by Public Works for the construction and upgrading of these facilities are recorded as grants to the regional health authorities. Simply because they are not a part of our own capital, it goes over there.

There was also a question regarding the increase in the 1999-2000 estimate for dedicated revenue compared to the '98-99 forecast. Dedicated revenue represents revenue as collected from our customers to offset some costs incurred by Public Works in providing directly related services. Following a recommendation made by the Auditor General and a continual browbeating by the Provincial Treasurer with unrelenting pain on this minister, the Public Works revolving fund was closed and its activities merged with the general revenue fund. [interjections] Who cares. I'll keep the fund then. [interjections] I've got the revolving fund back. I just said that Public Works is going to be the only department in government that's permitted to maintain a revolving fund ad infinitum.

Anyway, revenues associated with the former revolving fund are included in dedicated revenue under program 1, interministry services, and program 3, information technology. Dedicated revenue under program 2, infrastructure maintenance and development, includes revenues collected from property rentals and funds paid by seniors' lodge foundations to reimburse the government for additional work undertaken at their request. Very frequently in the lodge upgrading program the lodges have a desire to expand. They provide their own funds. We supervise the work for them, and this is where we get reimbursed for that effort that doesn't come under the program.

One area that I'd like to draw particular attention to is related to our water management infrastructure project. This is our work on the fish exclusion and fish passage projects. This was not a project that generated specific questions, Mr. Chairman, but I feel that the project exemplifies what I said earlier when I said that PWSS is doing some very exciting things for this province. I thought I would bring this project to the attention of the members as they consider our estimates tonight.

Although Environmental Protection operates water management infrastructure in the province, Public Works is responsible for constructing new structures, and we are also responsible for any major rehabilitation work required on the projects. As such, the requirement to implement modifications to these structures to accommodate fisheries falls to Public Works. Our main goal is to enhance and preserve fish stocks in the province. Each year thousands of fish are swept out of Alberta rivers and into the irrigation canal system, where many of them perish when the system is drained. This depletes the natural stocks of the rivers, and this is a matter of growing public concern. In fact, groups like Trout Unlimited have also become involved in this very severe fish crisis.

The federal Fisheries Act requires that water intakes have a fish exclusion device if the Minister of Fisheries and Oceans Canada deems it necessary for the public interest. New diversion canals and water intakes are routinely required to have fish exclusion. To date Fisheries and Oceans has refrained from requiring exclusion structures on many of the existing water management projects, recognizing the high cost of the installation and management. Up until now it hasn't been certain that devices which will operate properly can be built for a reasonable cost. However, new technology through the initiatives of Public Works, Supply and Services has opened up new possibilities in this area. With this new technology may come a new requirement from Fisheries and Oceans for the addition of fish exclusion devices at existing diversion sites, particularly if major rehabilitation is being undertaken.

We are very excited about the possibilities this new technology has opened up for us in the area, and we have constructed -- and I want everybody to pay attention to this -- a prototype fish screen for a project currently under construction; namely, the Pine Coulee project near Stavely. A fish exclusion device was a requirement of the project authorization under the Canada Fisheries Act. We believe this technology can become a standard for implementation on other diversion sites in the province. The prototype, which we call a high-speed vertical screen, costs about one-third of a traditional fish screen. A traditional screen at Pine Coulee would have been approximately $1.2 million. Our prototype cost $450,000.

It has been laboratory tested, and if monitoring confirms the screen to be successful, it will radically change how we do this type of conservation work in the future. The same technology could be applied to other diversion structures with similar cost savings. This has implications not only here in Alberta but, if successful, right across Canada and North America. Keeping this in mind, we are currently planning three other fisheries projects: the Carseland-Bow River headworks fish exclusion, the Lethbridge Northern headworks fish exclusion, and the Lethbridge weir fish passage. We are striving to conserve and increase the sports fisheries potential in southern Alberta.

In closing, Mr. Chairman, I'd like to request the committee's support for Public Works, Supply and Services' 1999-2000 estimates. Like I said, with the information I'll be sending across to the

Member for Edmonton-Meadowlark to pass on to our critic, I think I will have answered all the questions which were presented to us.

Thank you very much, Mr. Chairman.

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

DR. MASSEY: Thank you, Mr. Chairman. I'm pleased to have an opportunity to raise some questions about the estimates for the Department of Public Works, Supply and Services. I listened with interest and read in the business plans something that has caused me to question not Public Works, Supply and Services but something else that's going on in terms of the procurement of services and supplies, and that's through school districts.

It comes out of a criticism from superintendents of schools that money and time and effort are being wasted with the move toward school-based budgeting, that across the province there has been a fragmentation now, where a lot of the ordering and a lot of the supplies are not even purchased on a district level, that that's being done at a school level. I wondered if there was ever any consultation with the departments of Education and Public Works in terms of procurement strategies? Has there ever been any attempt to transfer what the people in Public Works, Supply and Services know about procurement of supplies and services and to make application of that knowledge to schools and school districts? It seems to me that this is a department that has a lot of specialized knowledge and experience in that area that would be extremely useful to schools and school districts. I know there is some co-operation by school districts, but the kind of strategies that are used by this department I think would benefit everyone, particularly with the new concern being raised as a result of the move to school-based budgeting.

I noted that the Auditor General made several criticisms of the Public Works department and, in particular, zeroed in on the department's performance measures and recommended that they find better ways to demonstrate cost-effectiveness. I think, as the minister has indicated, some of that has been incorporated in this year's business plans, but if I read the performance measures as they now exist in the documents we have, a number of the concerns of the Auditor General have yet to be addressed by Public Works.

8:20

A couple of major questions. What other performance measures is the department considering? Given the scope of their work, the Auditor General recommended that departments like Public Works should consider other measures and even more challenging measures, although they should be realistic. I wondered just what measures have been considered or maybe are in the process of being developed by the department.

A second major recommendation from the Auditor General for all departments was that there be some attempt at longer term thinking. The Auditor General indicated that the three-year business plans are fine and suit the purpose for which they were intended, but there are some limitations. One of those limitations is that they don't focus on and don't promote long-term thinking and long-term planning on the part of departments. So my question to the minister would be: how has the department responded to that suggestion by the Auditor General that longer term plans be considered?

I'm also looking at the performance measures. I think the Auditor General looked fairly critically at the business plans in his last report and took the opportunity to devote six, seven pages in the work under Executive Council to address the performance measures and to make some specific suggestions for the improvement of those performance measures. I think some of his observations are ones that might be applied here.

One of the things the Auditor General indicated was that performance measures can be selected for a variety of reasons. Hopefully they would focus on the effectiveness and the efficiency of a department and its operations, but he also indicated that performance measures can be used as window dressing. They may be used to make a particular operation look good, and he cautioned against that.

Following his caution he asked that the surveys and the conduct of surveys be scrutinized and that people who are reading the business plans and the plans that we have that accompany the estimates be given more information about the surveys: how the surveys were conducted, the reliability of the surveys. Specifically he focused in on client satisfaction surveys, which are crucial to the Department of Public Works, Supply and Services, and indicated that they had to be written very carefully to supply consistent and reliable results. I wondered what moves the department has made in terms of trying to supply more information to the reader, in terms of supplying somewhere in the business plan the kind of information that was recommended by the Auditor General.

In many places the population is defined. It's a government body. It's the government itself that Public Works is serving. But it's not always clear to the reader exactly who is involved in the group they have surveyed. I think the recommendation that the "population must be [carefully] defined" and that that definition should appear somewhere in the business plan or in some document that accompanies the business plan is one that's worth looking at.

A second recommendation: "survey samples should be representative of those who actually use the services." I don't think it's always clear in the performance measures in Public Works that that is the case.

MR. WOLOSHYN: Have faith.

DR. MASSEY: "Have faith," the minister says. Well, I guess if I had faith, a lot of things would change.

One further recommendation that the Auditor General made is that the "reliability of the survey should be determined in advance." Again, that should be indicated. I've commented on previous occasions that the business plans have come a long way since the first plans that we saw, and some of the performance measures have become quite sophisticated. I think the recommendations that the reliability has to be reported and that the response rates have to be reported and have to be high enough that we can have confidence that what purports to be measured is actually being measured are recommendations worthy of pursuit.

On page 28 of the Auditor General's report under the Executive Council he makes five specific recommendations that should apply to all of the performance measures as they are reported. I think they're worth revisiting by those who are charged with designing performance measures and carrying out those measures and then reporting on the success or the lack of success.

The Auditor General, if I could just dwell on his recommendations for a few more minutes, made some specific recommendations. Again, some of them are indicated here. Some have been addressed here, and some only in part. He indicated that the "capital project administrative costs per square metre of constructed space, or per $1 million of construction" should be reported and that the "operating costs in leased space" should be included in the business plans. We have some information, but it's incomplete.

The third recommendation in terms of the department is that "property management costs per square metre for contracted property managers compared with costs for property managed directly by PWSS" should be reported.

A fourth recommendation. "Computer processing services price

index, using a historical base for comparison" should be included.

He indicated that the "Alberta Government Network voice and data telecommunication costs compared to the costs of equivalent services without using a dedicated network" should find their way into the department's measurements. So there are some specific recommendations that were made. Some in part, I think, have been addressed and others to a lesser degree. For some of the measures, I suspect that getting reliable information is more difficult than for others, but I think if the business plans are to continue to become more sophisticated and to become more useful, his recommendations are worthy of revisiting and being acted upon.

8:30

Just a couple more comments, Mr. Chairman, about the department. That's with regard to the location -- and I'm sure it was raised before -- of particular facilities and how those decisions are arrived at. What kind of input do local communities have in the location or the dislocation of government facilities? I've had association with a couple of small towns in the province and worries and concerns about government facilities in those communities. I'm not clear as to what process is followed when a facility is located or if a facility is going to be taken out of a community. I assume that most of it is done through the municipal council or the town council, but I'm not clear. If there are guidelines or there's a set way of operating in terms of those facilities, I would appreciate having some further information.

So with those remarks, Mr. Chairman, I'd conclude. Thank you very much.

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

MS LEIBOVICI: Thank you, Mr. Chairman. I'm just wondering: how much time is there left? About five? Okay. I just want to not go over my time. I have some questions that I would like to put forward to the minister and also would like to thank him actually for his responses, both verbally and written, that he's provided to the members of the Official Opposition.

In looking at the document that outlines the government and ministry business plans, under the core businesses, provision of government accommodation, there's a description that indicates that Public Works, Supply and Services is responsible for "operating and maintaining facilities owned by the Province" and "negotiating leases and managing leased space." With reference to that particular core business, I'll be asking some questions. If the minister does not have the responses to them, I would then respectfully request that he forward them to the appropriate department, which might be the Department of Economic Development and Tourism.

My questions are with regards to the information centres across the province. Some, it's my understanding, are maintained and operated by the government. I believe there are eight in particular that are considered gateway information centres. There are others that are tendered, and organizations or chambers of commerce or individuals are welcome to bid on those particular information centres. So my first set of questions is around the information centres that are the ones that are owned and operated by the government. In particular, what I would like to know is which centres they are and where they're located, how those decisions were made, and an explanation as well as to the reasons for the town of Jasper not being considered one of those gateways.

Is there a review process in place that determines if the current designated centres are appropriate or whether there are requirements for new centres or a change in the designated centres? What are the statistics that the government has collected with regards to off-season? Are any of these designated centres year-round? Of course, for the ones that are seasonal -- and I would assume the season would run from April to May to September, October, somewhere in there -- what are the statistics of the number of visits to the information centres by location? As well, what is the operating cost, and what is the number of personnel during the season, the time periods that those visitor information centres are open?

[Dr. Massey in the chair]

With regards to the ones that are tendered, it would be useful information to know what the number of those are across the province, what the tendering process is, and who in fact has received tenders. By who, I mean category of who; I don't really need to know the individual's name or the organization's name. But perhaps it's possible to categorize that this is a private individual, the number of these that are run by chambers of commerce, et cetera, et cetera. In particular, I know that when I was in the Valleyview area, I was asked -- and perhaps it's been resolved at this point -- whether or not the Valleyview Chamber of Commerce was going to be successful in their bid for operating the information centre there.

I have a general comment to make, as I have made in other sessions regarding the budget, with regards to the use of lottery funds for capital projects and the fact that those lottery funds are not a stable form of funding and it may be difficult in fact, especially for the regional health authorities, to be able to integrate the use of those funds in their budget process.

I do have one last question. When there is a change in the name of an institution, such as the Edmonton institution that was run by the Mental Health Advisory Board -- that board's name has now changed -- I would like to know who is responsible for paying for those name changes and how much that costs the government.

Thank you very much.

THE ACTING CHAIRMAN: After considering the business plan and proposed estimates for the Department of Public Works, Supply and Services, are you ready for the vote?

SOME HON. MEMBERS: Agreed.

THE ACTING CHAIRMAN: Opposed?

SOME HON. MEMBERS: No.

THE ACTING CHAIRMAN: Carried.

Agreed to:
Operating Expense and Capital Investment $544,015,000

THE ACTING CHAIRMAN: Shall the vote be reported?

SOME HON. MEMBERS: Agreed.

THE ACTING CHAIRMAN: Opposed?

SOME HON. MEMBERS: No.

THE ACTING CHAIRMAN: Carried.

The hon. Government House Leader.

MR. HANCOCK: Thank you, Mr. Chairman. I would move that the committee do now rise and report.

[Motion carried]

8:40

THE ACTING CHAIRMAN: Carried.

[Dr. Massey in the chair]

THE ACTING SPEAKER: The hon. Member for Highwood.

MR. TANNAS: Thank you, Mr. Speaker. The Committee of Supply has had under consideration certain resolutions, reports as follows, and requests leave to sit again.

Resolved that sums not exceeding the following be granted to Her Majesty for the fiscal year ending March 31, 2000, for the Legislative Assembly and for the purposes indicated: support for the Legislative Assembly, $23,546,020, operating expenditure; for the office of the Auditor General, $12,936,093, operating expenditure and capital investment; for the office of the Ombudsman, $1,587,000, operating expenditure; for the office of the Chief Electoral Officer, $1,208,955, operating expenditure; for the office of the Ethics Commissioner, $196,480, operating expenditure; for the office of the Information and Privacy Commissioner, $1,777,020, operating expenditure.

Mr. Speaker, the Committee of Supply has had under consideration certain resolutions, reports as follows, and requests leave to sit again.

Resolved that a sum not exceeding the following be granted to Her Majesty for the fiscal year ending March 31, 2000, for the Department of Public Works, Supply and Services for the purposes indicated: $544,015,000, operating expenditure and capital investment.

THE ACTING SPEAKER: Does the Assembly concur in the report?

SOME HON. MEMBERS: Agreed.

THE ACTING SPEAKER: Opposed?

SOME HON. MEMBERS: No.

THE ACTING SPEAKER: So carried.

head: Government Bills and Orders
head: Second Reading

Bill 26
Family Law Statutes Amendment Act, 1999

THE ACTING SPEAKER: The hon. Member for Red Deer-South.

MR. DOERKSEN: Thank you, Mr. Speaker. It's my privilege to move second reading of Bill 26, the Family Law Statutes Amendment Act, 1999.

I do have some comments to make about the bill, Mr. Speaker. This bill is a result of the MLA review on the maintenance enforcement program and child access, which of course I was a member of, and I was very pleased to sit on that particular task force, because I happen to believe very strongly in the family as a fundamental unit of our society.

Mr. Speaker, when I introduced the bill in first reading, I made this comment. I said that this bill "reinforces the notion that kids need love and attention from both their mother and their father." I noticed an interesting article in the *Edmonton Journal* today which was written by His Grace Bishop F.B. Henry of Calgary, and I'd like to quote just a comment he made in that article which I kind of liked. He said:

> The human race survives only in its children; and its children can flourish fully only in the family centred on husband and wife. Civilization depends on the begetting, nourishing and educating of its children. But for this to occur, children need both a father and a mother.

Mr. Speaker, I believe that very strongly. It is a regrettable fact of life that some families break apart, and when they do, I also believe very strongly that parents, both mom and dad, have to stay involved with their children. I believe that continuing to have both mom and dad involved as concerned and caring parents is in the best interests of the children.

As we conducted our MLA review, we heard from parents, usually dads but moms as well, who told us that they had a court order for access that was not being obeyed and that despite their best efforts at enforcing the order, it had been months and sometimes years since these parents had had any meaningful contact with their children. We were told of the pain suffered by these parents. We could only guess at what the children were feeling. Many of these parents were frustrated with the legal system to such an extent they were almost contemptuous of it. I expect all members have constituents who have experienced this kind of problem.

As a result, one of the recommendations made by the MLA review committee was that the government "codify remedies and sanctions available to the courts for breaches of custody and access." Bill 26 responds to that recommendation, and I believe in that particular report it's recommendation 12.

Members should not look at this bill as a solution to every problem associated with custody and access. Other recommendations of the MLA review suggested changes on how custody and access orders are made in the first place and suggested consolidating family law and family courts in Alberta. These are important recommendations which also have a part to play in addressing family law problems. Those recommendations would make fundamental changes to family law in Alberta, and the government is committed to continuing to evaluate those recommendations.

This bill also addresses in part a number of the other recommendations in the access portion of that MLA review, and I refer to recommendation 1 where we indicated that "the federal and provincial government amend legislation to provide a statutory right for children to the continued significant and substantial involvement of both parents in their lives." One of the messages with Bill 26, Mr. Speaker, is that in fact we are saying it is an important element that kids do have the contact of both their mother and their father.

It also addresses in part recommendation 5, where it talks about legislation defining "the best interest test with greater certainty." Mr. Speaker, that is an issue we will have to continue to grapple with, but certainly in this bill we are saying that kids need access to their mother and their father and grandparents as well, I might add.

Also recommendation 15 in that report talks about the committee endorsing the Parenting After Separation course and recommending that "the requirement for attendance or re-attendance at the . . . course become a remedy available to the court in enforcement proceedings." Mr. Speaker, that was one of the most consistent recommendations we had from the presenters to our committee, the value of that particular program, and you will note on the last page of Bill 26 whereby we have now given or will give the provincial courts that ability to make that order, which they previously have not had the ability to make.

In Bill 26 we are not proposing fundamental changes to family law. We are trying to make the existing system work better. Bill 26 represents what the government thinks should be done now to make it easier to enforce an existing access order. It does three important

things. First of all, it gives enforcement jurisdiction to the Provincial Court. Parents have told us that by the time they get to the stage of access enforcement, they have often run out of money for lawyers. Because Provincial Court is an easier court to access without a lawyer, Bill 26 gives enforcement jurisdiction to both Provincial Court and the Court of Queen's Bench. This is a new jurisdiction for Provincial Court. It will complement the existing jurisdiction of the Court of Queen's Bench. In other words, the Court of Queen's Bench will keep the jurisdiction it already has. It will also be able to use the tools provided by Bill 26. Provincial Court will have a new jurisdiction to enforce Divorce Act access orders as well as orders made under provincial legislation.

8:50

The second one is that Bill 26 lists the remedies available to parents trying to enforce an access order, and it tells parents who are considering disobeying an access order the consequences that could be expected. This will be especially helpful to parents who are trying to deal with access enforcement without the help of a lawyer.

Third, Mr. Speaker, it makes police assistance easier to obtain in appropriate situations and cases.

There are a number of provisions in the bill that I do want to point out to the members, and I'm going to go into some detail with respect to the bill itself. Under the first section you will note that we're amending section 56 of the Domestic Relations Act. Section 2 amends section 32 of the Provincial Court Act to allow a court making a custody order to require a minimum 30 days' notice to the access parent if the custodial parent is going to move the child's residence. This does not involve access enforcement directly but gives the access parent the chance to go to court and object to a move if it will cause problems with access. This provision is modeled after a similar provision in the Divorce Act.

Under section 61.1 we list a number of definitions. The definitions speak for themselves, but I want to note the definitions of "custodial parent" and "non-custodial parent" extend further than actual parents. If a grandparent has an access order, the grandparent could also use this enforcement legislation.

Under section 61.2 members should note that Bill 26 only applies to orders which are specific enough to be enforced. In other words, you can't enforce agreements or nonspecific orders. Agreements can be a problem because of the issues surrounding interpretation and formalities. Nonspecific orders can be a problem because before a court can enforce a nonspecific order, it would have to interpret it. The action of interpreting such an order would move the court from enforcing the order to varying it, and Provincial Court cannot vary a Divorce Act order. Restricting Bill 26 to orders for specific access periods keeps the focus of the legislation on access.

Note also that Bill 26 does not assist with breaches that have occurred before the legislation comes into force except that a history of past breaches can be used when applying for a police assistance order.

Section 61.21 makes it clear that this is enforcement legislation only, and this legislation doesn't give jurisdiction to vary access orders. However, neither does this legislation take away a court's ability based on any other legislation to vary an order. For example, only the Court of Queen's Bench can vary a Divorce Act custody order. Bill 26 does not take that power away from the Court of Queen's Bench, nor does it try to give such a power to the Provincial Court. This is enforcement legislation.

Section 61.3(1) is an important section of this bill, Mr. Speaker, because it's this section that lists the remedies that will be available to the court. We have tried to give as full a range of remedies as possible without straying into varying rather than enforcing orders. Members should note we have placed some restrictions on the availability of these remedies. An order or decision must take into consideration the best interests of the child. Before the court can order the most serious sanctions of fines, imprisonment, or police assistance, the court must be satisfied that no lesser remedy would work. Before the court can order police assistance, the court must be satisfied that access will be denied.

Where the court decides that denial of access was excusable, it can decline to make an access enforcement order or it can make one of the orders listed in subsection (7). Although the MLA review had recommended codifying defences as well as remedies, the government has decided that this should be left to the discretion of the court to determine if circumstances of the particular case are excusable or not.

Section 61.31 is another interesting section of the bill, Mr. Speaker. Although access parents are entitled to exercise access if there is an access order, there is no legal requirement that they do. We cannot force parents to exercise access, but what we can do is make access parents accountable for expenses of the other parent incurred as a result of the failure to exercise access without reasonable notice. This could cover a situation, for example, where the custodial parent has paid for a trip to some remote location like, say, Vancouver for the weekend because the access parent has promised to exercise access and take the children for a weekend. If the access parent fails to do that, the custodial parent could ask for reimbursement for the lost expenses. That section goes as far to implement recommendation 14 of the MLA review as we believe we can go. Simply put -- and I feel very strongly about this -- if the noncustodial parent has fought to have access to the child, they should make every effort to make sure they follow up on that ability to do so.

Section 61.4. For the most part these are procedural provisions, although subsection (5) would allow a court to prohibit a person from making application without leave of the court where a frivolous or vexatious application has been made.

Again, Mr. Speaker, I would draw the members' attention to section 61.6, which talks about the police assistance provision, again a new provision that we are introducing. We have tried to keep a balance between requiring the police to attend and leaving the police officer on the spot as much discretion as possible as to the action he takes. In consultations we did with the police, the police were very concerned that we not impair their discretion, so we have tried to accommodate that concern. Members should note in subsection (1) that the parent will have to produce a certified copy of the access enforcement order to the police. If the police officer decides he needs to enter the residence by force, he will be able to apply to a justice of the peace by telephone to obtain authorization. We restricted the hours he can do this to between 8 a.m. and 9 p.m., and we have provided a good faith relief from liability in subsection (6).

Members should note that we have specifically preserved the police officer's ability to exercise discretion. In subsection (2) of 61.7 we require the officer to complete a report, and we make the report itself admissible in evidence in subsection (4), and we require court approval for the attendance of a police officer who has completed a report in subsection (5).

Mr. Speaker, the reason I'm going into length on this particular section about the police assistance is that these are often very volatile situations, and we want to make sure that the police officer has discretion to make sure we keep emotions in check and we again end up doing what's in the best interests of the kid.

Section 61.9 is a regulation section. I would like the members to note in particular subsection (c). In the course of our consultation the Court of Queen's Bench expressed concern about the effect of Bill 26 on its case management system. This is a system where very

contested cases are assigned to one judge who hears every application. This is effective because the judge is familiar with the case and has a good understanding of where the truth lies in a particular application. The merits of the case management system would be defeated by allowing this type of case to automatically go to another court for enforcement, so we anticipate using a regulation to place some restriction on the movement of this type of case. Similarly we may wish to restrict the Provincial Court's ability to award expenses to a small claims limit. Again, we would use regulations to place that kind of restriction on a case going into Provincial Court.

In conclusion of my comments, Mr. Speaker, I would ask that members recognize that Bill 26 is not going to solve all the family law problems surrounding custody and access. It deals very specifically with improving access to the courts for enforcement and improving the court's ability to deal with enforcement.

I believe that Bill 26 is legislation which will help parents enforce access orders and that will be in the best interests of the child, and I hope that Bill 26 will have the support of all members of this Legislature. It's been a long time coming, Mr. Speaker, and it's time we moved ahead on this particular issue.

Thank you very much.

9:00

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

MR. SAPERS: Thank you very much, Mr. Speaker. I want to thank the Member for Red Deer-South as well for taking the time to give us that rather thorough introduction to the legislation.

I want to comment at the outset on I guess the admiration that I have for the member and his colleagues on the MLA review committee for doing a very difficult job. I think it's fair to say that every one of us has a file full of concerns and complaints and problems that have been brought to us from our constituents in regard to family law matters. These are often the most heart-wrenching, frustrating, difficult issues for us to resolve. Sometimes there is no answer, and often if there is an answer, it means that somebody is left happy and somebody else is left manifestly unhappy. The solutions to these problems are never going to be found simply in the application of law, but we do know that a better job can be done. In some respects Bill 26 may be a step towards doing a better job.

That's not to say that the bill is without its troubles, and as we proceed in debate, particularly when we get into committee, we'll have more of an opportunity to explore some of the difficulties and perhaps address them through some amendments and remedies that we may be able to propose.

The whole area of family law, maintenance enforcement, access, and custody is very rife with contradictions, because you're dealing with people whose family circumstances have already been cast into turmoil or perhaps disarray, and we're now trying to provide an overlay, a framework for an orderly dispute resolution. Often the emotion gets in the way. This is a failing of our process.

The MLA review committee I think went to great pains to try to be sensitive to that reality. I was struck when the member said that Bill 26, the Family Law Statutes Amendment Act, comes about primarily as a result of the work of the MLA review committee. It's interesting to me that while the bill makes broad reference to some of the recommendations, in my analysis I haven't been able to match recommendations to legislative proposal outcome. Even with the very first recommendation, which calls for provincial and federal government legislation to be amended to provide a statutory right for children to have substantial involvement of both parents, I note that in Bill 26 there is no substantive provision to correspond to this recommendation. The amendments required would come to the Domestic Relations Act, the Child Welfare Act, the Provincial Court Act.

Now, there is a proposed section in the bill -- and the member referred to it -- which may in fact even contradict the report of the MLA committee. This may be one of those areas where we're going to have to nail down the wording, perhaps even entertain some amendments, because the proposed section 61.4(1) mentions "the best interests of the child," but it doesn't particularly talk about the guaranteed involvement of the parents. Anyway, we'll have to pursue that.

Some other general thoughts that I have about Bill 26. I'm trying to work out in my own mind how mediation is addressed in the bill. I've long been a proponent of alternative dispute resolution mechanisms and believe very strongly that court, being as costly and as cumbersome and often as slow and technical as it is, should only be used when that kind of process is the last untried route. It seems to me that if we can do things to demystify, to deprofessionalize to some extent more humanized dispute resolution, the better served all parties will be. I've often thought of mediation not as something that should follow court action but as something that can come in place of it. I note that Bill 26 really contemplates that application to court would have to come first and then mediation would follow, so you still have a very legalistic, very court-driven process. That concerns me, and maybe we can discuss that a little bit further in committee as well.

I also have some questions about the creation of this enforcement officer. In fact, probably one of the biggest concerns I have around the bill is relying on police personnel to become access enforcement officers. That's not because I have any qualms about the professionalism of policemen and policewomen in this province, but it's simply because the jobs they have are so different from the job of family therapists. It's so different from the job of child welfare workers. It's so different from the job of many other people that we would think of first when it comes to solving disputes between men and women involving their children. So I really wonder about burdening police with this role on the one hand and on the other hand expecting police to be able to move in and out of this role of enforcement officer quickly and without overlap with their other responsibilities, which may have to do with criminal investigation or some other kind of enforcement role that we rely on them for.

[The Deputy Speaker in the chair]

So I need to hear much more about the government's thinking behind creating this category of peace officer called an enforcement officer and relying on the sworn uniformed police personnel in this province to a large extent to play that role. There may in fact be some other ways to fulfill that role that would better serve us all.

Another general area of concern I have is when it comes to access to the legal process. Once a dispute has escalated to the point where it is inevitably going to end up in court, we have created a whole series of problems, many of them financial, in terms of accessing court. All you have to do is take a look at the rather static level of funding that legal aid has received in this province to understand the difficulties. As the population increases, as increased levels of litigation are entered into, as the higher levels of court receive jurisdiction for these kinds of disputes, the more reliant we are on lawyers acting as agents of those involved. Many of the men and women involved in family law matters of course will be relying on legal aid, and with legal aid funding being static and with increased demand, it doesn't take much to figure out that there's going to be

a real crunch there. People are going to be underrepresented or not represented at all, or they in fact are going to end up going directly into the poorhouse as a result of having to access the court process.

So while I appreciate some of the movement in Bill 26 in terms of ensuring that there is a consistent legal framework, I'm very, very skeptical about how well served the population of men and women I've come to know who have come to me with their family law problems will be, because in fact they don't see that they have the same access to justice as somebody who may have deeper pockets. That is a concern that I don't think is properly addressed.

9:10

Also, Mr. Speaker, the bill is curious to me in another respect, and the Member for Red Deer-South talked about this. He talked about how maybe part of this concern will be addressed in regulation. The concern is that we can have a substantive access order granted in Court of Queen's Bench, but the access enforcement order will be something that's proceeded with through Provincial Court, so you have two court jurisdictions. The member said: well, maybe we'll address something in regulation so there can be some consistency.

This is troubling. First of all, we don't know what the regulation is; we haven't seen it. You can rest assured there will be an amendment to refer regulations attendant to this bill to the Standing Committee on Law and Regulations. You know, I'm not naive enough to think that the government will accept that amendment, but I'd like to hope that before any such regulation is proclaimed that is to deal with this issue, it is widely and broadly circulated for input and for discussion.

What we could be creating here is not streamlining the process, not making access to justice more readily and easily gained but in fact complicating things by layering one court jurisdiction on top of another by having family matters now being tied up in court for the access order on the one hand and having to go to Provincial Court for the enforcement order. I don't think the way to deal with that necessarily is through regulation. Of course, the regulation could change from time to time. I don't think that's the way to do family law amendment. I think we have a special obligation to make this the most straightforward and the most transparent area of law on the books. Because literally this affects people where they live, how they live. This is something that should not be taken lightly. So I appreciate that the Member for Red Deer-South is listening -- and I was listening carefully as well -- to his discussion about how this may be addressed in regulation, but I think we have to keep our thinking caps on about that one, because I don't think that'll do the trick.

There's another area that I'm a little concerned would be left to regulation, and I don't know what the form of this regulation may be. In the MLA report I think the third recommendation is that there be a standard format for parenting plans to be developed. Not a bad idea. Presumably this will be prescribed by regulation made under section 32(1.3) of the Provincial Court Act. Now, I believe that having the format determined by regulation is appropriate given the nature of what the form may be. But if we've got a substantial recommendation, something that was thought to be so important that it was actually the third recommendation out of the MLA review, I'm wondering why we don't see something directly in Bill 26 that deals with it. Unless I've missed something in the bill. If I have, I would love to be corrected.

There's another section, the fourth recommendation in fact, which talks about federal and provincial legislation providing that one of the factors to be considered by the courts in making custody and access orders is the child's right to maintain relationships with siblings and extended family members and that the legislation provide a mechanism for enforcing such a right. I heard the member talk about, in fact, the importance of grandparents, but Bill 26 does not enact this recommendation. Again, the closest it comes in my reading is to speak of the "best interests of the child," and we don't have a best interests definition. We don't have a crystal-clear best interests definition. If we're going to rely on this phrase, "best interests of the child," I think we need to put some meat on those bones. Perhaps other colleagues would say: "Well, that's too intrusive. We can't bind the hands of court, or we can't in this Legislature try to anticipate all of those factors that would be in the best interests of the child," but if we can't go that far, I think we can at least do better than what's proposed.

The fifth recommendation of the MLA review committee is also not directly enacted in Bill 26, and that is a recommendation that calls for this definition of "best interest." As the Member for Red Deer-South was a participant in the committee, I think he knows firsthand the scope of concerns that Albertans have brought forward concerning what is best interest. We've had debates in this Assembly, Mr. Speaker, concerning things like discipline of children and the Young Offenders Act, and there's a wide variety of opinion amongst the 83 men and women in the Assembly given what might be the best interests of the child. Given how broad that opinion is, I think it behooves us to try to provide the courts with just a little more clarity as to what our intent is as we create this new law for the people of Alberta.

The MLA committee report also called for an amendment

> to replace references to custody and access with language reflecting residence and the ways in which the continuing responsibilities of both parents are to be exercised.

Bill 26 does not enact this recommendation, and I would like some explanation as to why. There's certainly direction given in the legislation about other factors to be considered by court. Why isn't residence one of them? Maybe the member -- and I'm clearly anticipating, Mr. Speaker -- will inform us that this is going to be part of the language in the regulation, but again I would have difficulty with that because I don't think that provides Albertans with any degree of certainty as to what they can expect coming from court.

The committee report also talked at some length -- and I think it ended up in at least two recommendations but particularly recommendation 7 -- about mediation and making sure that resources are "provided to ensure that access to mediation facilities are available to assist in the resolution of family law disputes at any stage" of the proceeding. Bill 26, of course, is silent, absolutely silent about resources, and if there has been one fundamental flaw in many of the family law reforms over the years, not just in this jurisdiction but others, it is that the reform goes ahead divorced from, not to use a pun, separate from any commitment of resources. Unless we can go back to our constituencies and say, "Yes, the political will exists not just to talk about mediation but to pay for mediation, to fund it, to make sure that people have access to those resources," then I think it's a fairly hollow change.

I note that the bill doesn't make mediation compulsory, and we can have another whole debate about that, but the very fact that mediation exists as a possibility suggests to me that we do have a responsibility to ensure that adequate resources are in place so that all Albertans regardless of their economic circumstances can access this kind of service.

Mr. Speaker, the MLA committee and in fact a motion passed in this House and I believe the Alberta Law Reform Institute and others have explored and called for the creation of a unified family court. Earlier I spoke of the difficulty we may be creating by having one kind of access order pursued in the Court of Queen's Bench and the access enforcement order follow through in Provincial Court.

Maybe one way of dealing with this that would be better than by regulation would be to finally follow up on the recommendations that we have a unified family court.

9:20

Of course this also is a resource issue, and I'm glad that the Provincial Treasurer is with us, because while we're talking about a resource issue, maybe I can help add my voice to what I know is going to be a robust discussion at the cabinet table about making sure that adequate resources are put towards these family law matters. It's not something that we have particularly distinguished ourselves in in this province, but I should add that there aren't many jurisdictions that are doing much better than Alberta either. I know that the government likes to be at the head of the pack on such things. It would be nice to see Alberta claim some bragging rights by being at the head of this pack as well.

Mr. Speaker, many of the rest of my comments I think I can hold onto until we get to committee. I'd like to conclude my remarks by saying that I've anticipated this legislation I guess my whole time here in this Legislature. One of the very first constituents I met with after being elected in 1993 was a man who was very upset with the fact that in spite of his record of payment on his maintenance order, he was being denied and he felt wrongly and unfairly denied access to his children in violation of a court order. As I got involved in working with this constituent to resolve his concerns, I found that there was nothing black and white about any of it. While he may have believed word for word what it was that he was presenting to me, it turned out that his version of events was slightly at variance with his ex-wife's version of events, and her version of the truth unfortunately didn't square entirely with the court record either.

So while I'm not saying that Bill 26 or any legislation that we may produce is going to resolve that, it certainly is comforting to me to see some movement, and if we can make Bill 26 a better bill and create better law for the people of this province through this debate process and through some amendments that I hope the government will have an open mind about, so be it. If Bill 26 turns out to be a false start, Mr. Speaker, I hope that the will exists to start over quickly and create a law that will help resolve some of those difficulties that our constituents find themselves in. When families are in turmoil, I think the last thing we should do as members of the Legislature is create more obstacles to them getting on with their lives. We should be doing everything we can to make sure that the process is open, accessible, understandable, and helpful.

Thanks, Mr. Speaker.

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

MS LEIBOVICI: Thank you, Mr. Speaker. I rise tonight to also address Bill 26, the Family Law Statutes Amendment Act, 1999, and to follow up on the opening remarks from the Member for Edmonton-Glenora. I, too, as most Members of this Legislative Assembly I'm sure, have had to deal with the issues of access as well as maintenance enforcement, and generally those situations are very difficult situations.

Constituents come to the office. They are upset. They have been denied access to their children or in fact are in a position where they feel that they cannot or do not wish to provide access for their ex-partner for a whole variety of reasons, some of which include worry about the safety of the child, some of which are part and parcel of the difficult separations that occurred and the hard feelings that result as a function of that, some of that because of a situation that develops where the noncustodial parent refuses to provide maintenance payments to the custodial parent. So you get a tug-of-war where in fact the children are the ones that are caught in the middle.

The Member for Red Deer-South did indicate that this was a bit of a companion bill to the Maintenance Enforcement Amendment Act, 1999, that was brought forward earlier during this legislative session. It is probably wise to try and separate the two issues because though they tend to at times be intertwined, the actual outcomes and the enforcement orders can in fact be separated and should in fact be separated.

The review that was done in the last year or so, the review of the maintenance enforcement program and child access act, has led to two bills in this Legislative Assembly. There are some questions that I have with regards to this particular bill and whether in fact it fully follows the spirit of the recommendations that were brought forward as a result of the MLA review of the maintenance enforcement program and child access. It would be helpful in determining the impact and whether or not these recommendations were followed if there was in fact a comparison chart that the Member for Red Deer-South could potentially provide to us to see what the recommendations were, which ones were denied, if they were, and which ones in fact were implemented and how that implementation occurred. If that has been provided to the critic for Justice, then I do not have a copy of that. My guess is that we do not have that comparison, and it would in fact be helpful.

There are a number of issues that I believe need to be addressed in looking at this particular bill and the rationale for the particular bill. One is the concept that mediation flows from the court process and is not an alternative to it. That seems to come across within Bill 26, where mediation is an outcome of a court directive as opposed to something that occurs prior to the situation getting to the point where the courts have to become involved.

There is also a concern that I have with regards to the cost of some of the remedies that might in fact be recommended, remedies with regards to parenting courses and any other payments that may be ordered under the access enforcement order. How are those payments decided and what happens if in fact there's not the ability to pay?

When we look at the issue of who is a enforcement officer, when I look at section 61.1(1)(h)(ii), the definition of enforcement officer is "a person appointed for the purposes of section 156 of the National Defence Act." I find it curious that the peace officer who's talked about is the one that is appointed under the National Defence Act. There are other pieces of legislation that appoint peace officers. I'm not sure if the intent of that particular section is to deal with the ability to enter the bases where the armed forces are or if there is in fact some other rationale for that being the case.

9:30

When we look at the whole concept of police officers being involved in the access process, I think we need to ask ourselves if in fact that is the most appropriate professional group to go to first in ensuring that an access enforcement order is to be carried out. We know that in times of stress, a direct approach where force may become an issue may not be the best approach. I have some question as to whether that will be considered to be the first line of professional group that will be required to in fact carry out an enforcement order.

There is also under the section that defines enforcement orders: "a person or category of persons prescribed by the regulations." That in fact is very broad. If that is not a peace officer, I guess the question is: who in fact is that? We know that if we look at legally what a person can be described as, in fact it's my understanding that a person can be an incorporated company. Is the intent, therefore,

of the government to have access orders enforced by some privatized corporation, some privatized group who will make a profit from going to homes and taking children from their homes and bringing them to the noncustodial parent? I'd like to know to have a measure of comfort why the word "person" was chosen as opposed to "individual," which is very clear in the legal framework, and whether the wording is broad on purpose so that in fact we can have incorporated companies becoming involved in this very delicate area.

I guess the other consideration -- and I'm jumping back to police officers being identified as one of the main professional groups that would be involved in this process -- is that without additional dollars being provided by the Department of Justice to municipalities in order to have their police officers become involved with this, it could in fact become quite time-consuming and quite costly. Police time would have to be spent filling in reports, as that is one of the requirements within the legislation, and potentially attending court, which usually means that some provision has to be made for overtime for the officers as well. So not only is the use of the police officer questionable and should perhaps be the last resort when trying to enforce an access order, but also it is an area that is costly.

I wonder whether the police departments across the province and police associations have in fact been consulted as to the kind of involvement they see with regards to the enforcement of access orders. We know that a domestic dispute is probably one of the most dangerous disputes for officers to attend.

When we look at the court orders themselves, there may be some difficulty with regards to the type of court order that is contemplated within this legislation. There are two different types of orders, it's my understanding. One is a substantive access order, and the other is an access enforcement order. They are two very different kinds of orders that may in fact run parallel to each other and be contrary to each other. You could have an application being made for an access enforcement order and at the same time an application being made for an access order. That would involve two different courts, the Court of Queen's Bench as well as the Provincial Court.

As you can see, the situation could get a little dicey, to say the least, where it would be difficult to know which order would have precedence over the other, and it could be costly to either one or the other of the ex-partners that are involved in determining access to the children. Again, my colleague from Edmonton-Glenora had talked about this, and we did have a bill on the Order Paper by the Member for Edmonton-Norwood which put forward the notion of the unified family court. It's my understanding that the Member for Calgary-Lougheed had a motion as well, Motion 505, that was passed unanimously, that dealt with this issue. Yet when we come to this piece of legislation, we seem to still be following a process that is not as forward thinking as it could be with regards to the issue of the unified family court.

The other concern that I have is with regards to the concept of denial of access. One of the reasons that is outlined as being included in the denial of access is the failure of a person to return a child after having exercised the right of access under an access order. It is not clear, I believe, whether not returning a child means not returning a child for a whole day, not returning a child for an hour past what the access order is, whether there has to be a pattern developed with regards to not returning a child. At what point can that particular section be brought to court and asked to be enforced? The reason I ask this is that in my constituency office there have been instances where individuals become very upset -- and, again, it is contrary to the court orders -- if the child is returned five or 10 minutes late. Without passing judgment on whether or not that's correct but as an example, would that in fact be able to trigger the bringing of this particular case by the custodial parent to try and deny access to the noncustodial parent?

There's also a question I have with regards to the enforcement officer -- I guess that's where a lot of my concerns do lie -- having the ability to decline to enforce an access enforcement order if he or she believes the best interests of the child would not be served to do so. I'm wondering whether there is any particular kind of training that will be provided to the enforcement officers. Those enforcement officers, whether they be police officers, whether they be peace officers, whether they be corporations: what in fact are going to be the determinants of providing or of having and allowing the enforcement officer to not enforce? In the most extreme situations, of course, it's most understandable. But at what point does the discretion -- what will help guide that discretion to not serve the access enforcement order?

9:40

So that is another question I have with regards to trying to understand the intent of ensuring that when enforcement orders are in fact being enacted, the safety of the child is paramount, the best interests of the child are considered to be paramount. How in fact does this bill ensure that that is the case, given some of the concerns I've outlined?

To just reiterate, those concerns are with regards to: who are the appropriate personnel to enforce an access order? How does an individual who's enforcing the access order in effect decide whether or not they are going to carry out that access order? What kind of training will those individuals receive in order to make this kind of determination as well as in order to ensure they are able to enforce the order in the safest way possible for the child as well as for themselves? Why in fact is mediation not a precursor, in a sense, to the court process or an attempt to mediate as opposed to flowing from the court process? Why were the public law remedies not looked at more closely as opposed to the private law remedies, which can be more expensive and more difficult to deal with? What is the actual precedence that will occur if in fact you have a substantive access order proceeding at the same time as an access enforcement order? Which in fact will have precedence? At a minimum the bill should state that.

THE DEPUTY SPEAKER: The hon. Government House Leader.

Point of Order
Speaking Time

MR. HANCOCK: A point of order, Mr. Speaker. Pursuant to Standing Order 29 I believe the time limit for debate is 20 minutes, and if I'm not incorrect, the speaker has gone on for more than 20 minutes. In speaking to that I would anticipate . . .

AN HON. MEMBER: It went just like that.

MR. HANCOCK: Well, if I'm correct in that assertion, then I'd like to speak to the point of order.

THE DEPUTY SPEAKER: The hon. Government House Leader is quite right to refer to Standing Order 29, but if you read 29(c): "a member other than the mover, speaking in debate on a Bill proposing substantive amendment to more than one statute . . ." This is a statutes amendment, so there are presumably two or more statutes and would therefore qualify for the 30-minute rule.

MR. HANCOCK: Mr. Speaker, I'd indicated that if I was correct in asserting that she had gone past the 20 minutes, I'd like to speak to

the point of order. In speaking to the point of order . . . [interjection] There is a point of order. The point of order is that I would make the assertion that the 20-minute rule should apply. Simply, the name "statutes" doesn't necessarily refer to substantive amendments. The Family Law Statutes Amendment Act deals primarily with substantive amendments to the Domestic Relations Act, but the other act which is referred to in the bill, the Provincial Court Act -- there is one section being amended, and it's really a subsequent amendment in nature. It's a consequential amendment, really, not a substantive amendment, to the Provincial Court Act; therefore, the 20-minute rule should apply in this case. Just the fact that the name of the act reflects statutes doesn't automatically take it into the jurisdiction of 29(c).

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

MR. SAPERS: Thanks, Mr. Speaker. It may come as no surprise to you that I disagree with the submission of the hon. Government House Leader. This isn't the only bill on the Order Paper for this evening, in fact, that we believe proposes substantive amendments to more than one bill.

Now, beauty is in the eye of the beholder and, I guess, so is substance. The domestic relations legislation of this province has been a matter of some considerable debate and controversy in this Assembly and outside this Assembly. Bill 26 is the first real comprehensive attempt at resolving some of the controversy and I believe is substantive. What the Government House Leader would advise us is really just consequential I believe is very germane, in fact central to the operationalization of some of the other amendments contained in Bill 26. It's very clear in my reading as well as in the reading of some of the practitioners of family law I've had a chance to discuss this bill with that it is substantive.

While I know that the government from time to time is frustrated with the speaking proclivity of members of the Official Opposition, I would suggest that this bill of all bills is one that merits the most careful and thorough debate, and I would hope the government would not pursue really this procedural argument about whether this bill is made up of substantive amendments or not. I would hate to think that the government doesn't think this is a substantial area of law.

So, Mr. Speaker, clearly the 30-minute speaking rule applies. Bill 26 is an omnibus bill. Earlier in this legislative session we had the discussion about omnibus bills. The government has behaved itself much better in terms of omnibus legislation, but I think Bill 26 in this form is totally appropriate, and the amendments changing more than one statute are substantial and therefore do merit debate pursuant to 29(c).

Thank you.

THE DEPUTY SPEAKER: Certainly there seems to be agreement that Bill 26 is substantive in the sense that the Domestic Relations Act is substantially amended by this. The question arises as to whether or not the Provincial Court Act is consequential or substantial. The chair is trying to see, by reading it quickly, how it is that it's, as the Government House Leader has suggested, consequential. It seems at first blush that it is in fact substantial, that this isn't following out of the other. If the chair is going to rule that, as it seems clear to me, then I think that would end the debate for the moment. [interjection] I just made the rulings, hon. member.

Now, the hon. Member for Edmonton-Meadowlark to continue.

9:50 **Debate Continued**

MS LEIBOVICI: Thank you, Mr. Speaker. It's ironic. I was actually just about finishing, and I almost feel like I should go for another 10 minutes now. But as I was winding up, I was just reiterating the need for there to be, at minimum, an understanding as to whether the access enforcement order would have precedence over the substantive enforcement order or vice versa and that this pointed to the need for a unified family court, which, it's my understanding, is supported by most members in this Legislative Assembly, but in fact we do not see that within the legislation. In order to understand the principle of the legislation, it would be very helpful to know why or what the government's thinking is towards the unified family court and if they in fact have plans to bring that concept in at some point in time, hopefully earlier as opposed to later.

There is one other point that I would like to address, and that is the issue of contempt. When an access order is not met, why is that not considered an issue of contempt, an issue of defying a court order? This may be a bit of a naive question, but I think it would help to understand, again, the implementation of the new process or perhaps how we can build this new process on the current reality. Why do we have to create a new type of legal action and remedy when in fact there is a remedy currently in place?

Those are some of the thoughts I have. It would have been better, I think, for the government to have brought in, as opposed to all these bits and pieces of legislation dealing with family law and trying to in a sense update but not really modernize, which is I think what needs to happen, laws that have been in this province with regards to family law -- we need more than just the little fix. We need to look at the whole issue and deal with it as a whole as opposed to piece by piece. I hope, however, that if this legislation is to pass, it will serve the best interests of the child -- that has to be paramount in all we do -- it will ensure the safety of children in this province, and it will make it easier for individuals who have trouble accessing their children, because that should be, as well, the primary motivation behind this legislation.

With that, I'd like to adjourn debate on Bill 26. Thank you.

THE DEPUTY SPEAKER: The hon. Member for Edmonton-Meadowlark has moved that we adjourn debate at this time. All those in support of this motion, please say aye.

HON. MEMBERS: Aye.

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

Point of Order
Explanation of Speaker's Ruling

MR. HANCOCK: Mr. Speaker, on another point of order. Under section 13(2) of the Standing Orders I'd ask that you provide reasons for your decision with respect to the time limit on 29. I would ask that you not provide those reasons now but that you provide them at a later date and allow time for submissions to be made on the issue of what is substantive. This is an important question for the House. There are a number of bills it could affect, and I would argue that the question about the nature of a substantive amendment to bills is an important one and should be done with appropriate reflection and submissions from both House leaders on the point.

THE DEPUTY SPEAKER: The chair will take the point. I was prepared to give at least a reason now, but your invitation to do this at a later time is welcome. We will provide you with the appropriate answer as to why this, and perhaps if you want us to review others,

you can reflect on what we say on this in light of the other bills that contain amendments to various statutes, which of course is provided for under Standing Order 29.

Bill 31
Agricultural Dispositions Statutes Amendment Act, 1999

THE DEPUTY SPEAKER: The hon. Member for Drayton Valley-Calmar.

MR. THURBER: Thank you, Mr. Speaker. I'm pleased to move second reading of Bill 31, the Agricultural Dispositions Statutes Amendment Act, 1999.

Approximately 6 percent of Alberta's land base, or just over 10 million acres, is classified as public land in the white or settled area. Although public land is scattered throughout the settled area of the province, the majority of it is concentrated in the northern one-third and the southern one-third of the province.

Throughout the public discussion on the agriculture lease review, we heard that the preservation of natural resources and the environment were the key concerns in managing public land in this white area. With this in mind we considered how this should best be accomplished. Numerous views were expressed by recreationalists, professional environmentalists, and ranchers.

One rancher in southwestern Alberta, Mr. Francis Gardner, who ranches in that area and was a recipient of the Alberta Cattle Commission's environmental stewardship award, summed it up best when he talked to the committee regarding ranching on public land in southwestern Alberta. He states:

> The native grass ecosystem, of which the leased lands are a part, are the only natural system that has the capacity to co-exist with man, and survive. Lease agreements provide a positive feedback loop that acts to support the long term well being of the resource and in economic terms that is rare. Combine that fact with the presence of Chinook winds, winter grazing and the self renewing ground cover, we stand on a world class collectors item. Let's value these lands for the diversity and elasticity they represent, and see them as the foundation of all the wonderful complexity we rely on.

Mr. Speaker, Bill 31 will continue the protection of these unique lands and build upon the successes we have had in the past. I believe this legislation is important, and I want to touch just for a few moments on some of the history that evolves out of the public lands in Alberta.

Public lands legislation has evolved over time since the demise of the buffalo by the 1880s. Now, I'm not going to take you step by step every year, but I want to give you some background for those of my colleagues who aren't familiar with this. In the 1880s there was an introduction of cattle to the land to be called Alberta. The federal government issued leases to ranchers as early as 1881. These leases were initially closed leases, which protected the leaseholders from encroachment by settlers.

Mr. Speaker, my colleagues here in the Assembly may be surprised to know that just five short years after leases being made available by the federal government in 1886, leases of those who were not deemed to be stocking their land sufficiently were canceled. It was also announced and put into practice that no future leases would prohibit settlement. This was a major victory for the settlers and squatters whose numbers were increasing rapidly. It is important to note here that these decisions were made by the federal government of the day without any consultation with the leaseholders, very unlike the process we have used for this legislation.

In 1892 the lease policy had to be re-examined again due to the government having to provide land grants to the railway for the Calgary to Edmonton rail line. Leases that had been closed to settlement were canceled one by one. In an attempt to compensate the ranchers, the government of the day offered them an option to purchase one-tenth of their lease for $1.25 an acre, and I'm sure there are a lot of people who would be interested in that in today's world.

Mr. Speaker, in 1930, of course, the province was given the administration of natural resources, which included public land. The drought of the 1930s brought devastation to Alberta's agricultural industry. Our existing grazing fee system was initiated in 1945 as a result of the short grass report published in 1941. Changes in legislation continued through the 1950s, the 1960s, and the 1970s with the refinement of the assignment procedures and assignment fees and other legislation. As times and situations changed, Alberta has always been willing to change with them. This has applied to the management of public land in the settled part of the province. As change has occurred to the management of public land, the protection of the natural resources has always been a key element of any change.

10:00

The management of public land has been a topic for debate for many years. Back about 12 years ago, in 1987, a task force on grazing lease conversion, chaired by Jack Campbell, then the MLA for Rocky Mountain House, held public meetings to hear concerns regarding the proposed grazing lease conversion policy, which had been announced in 1985. The task force recommendation that the policy be rescinded was done later that year. This was strictly on a conversion to private sector of the lease lands.

However, in part of their report they also commented on other issues which had not been part of their mandate. These issues were heard by the task force during their consultation process. Issues such as public access, surface compensation, and rental rates were commented on by the public and leaseholders. So these issues, Mr. Speaker, have been around for some time. This debate has continued in the media, in the courtrooms, and in the coffee shops for at least the last 12 years.

This agricultural lease review was initiated by the province to specifically hear Albertans' views on public lands issues in the settled areas. This bill amends a number of existing pieces of legislation, with most of the changes being made to the Public Lands Act, issues such as what would constitute reasonable access and what the definition of operational concerns and damages for industrial activities should be. These will all be addressed through further public consultation with the stakeholders. A dispute resolution process for disagreements arising from these issues will also be a key topic to be discussed with the stakeholders. The results of these stakeholder discussions will form the basis for regulations which will be developed.

Mr. Speaker, public land in the settled areas of the province is a public heritage. This bill is the result of a two-year consultation process. The Agricultural Lease Review Committee held 23 public meetings in 20 locations across the province. We received hundreds of verbal and written submissions in the fall of 1997. Often the written submissions were different than the verbal submissions from people attending the same meeting. In some cases neighbours disagreed with neighbours. Although they attended the same public meeting, they decided to write to the committee because they realized that they had to live in the same community with their neighbours.

Mr. Speaker, based on those written and verbal submissions, we issued our interim report in May of 1998. Public comments on the report were received until the end of September of last year. The committee discussed their final recommendations with the agricul-

ture and rural development standing policy committee as well as cabinet and caucus, resulting in the release of the government's final report in November of 1998. This act that we have here before us now reflects the provisions of that Agricultural Lease Review Report.

One of the guiding principles referred to in the Ag lease review report was that public lands are viewed by Albertans as a valuable asset to the province and are legacies for all Albertans. The management of these lands must sustain this legacy and also maintain a positive impact on the environment. Today public land leased for grazing remains largely ecologically intact, supporting rich native plant communities and providing habitat for fish and wildlife species as well as being valued for many other natural resources. The common vision of Albertans for public lands seems solidly behind maintaining the largely unaltered landscapes for a variety of private and public values.

This bill provides the necessary direction to ensure that the public land under agricultural disposition continues to be sustainably used and protected well into the next millennium. The legislation also balances the need of agricultural disposition holders with the desires of recreation users. It does another thing as well: it ensures that public land leasing arrangements are more equitable with private land leasing arrangements. Since the province is the landowner of public land in the right of all Albertans, we were told by our colleagues and those making submissions that the province should act like a landowner. This means that leasing arrangements should be more comparable to the private sector.

One of the concepts contained in the legislation is that of recreational access to public land that is already under an agricultural disposition, the key focus on that recreational access being "reasonable." The legislation requires that the agricultural disposition holder allow some form of "reasonable access." The government will be consulting with stakeholder groups over the next few months on the definition of reasonable access, which will be part of the regulations. This definition must ensure that access is reasonable from the perspective of the disposition holder as well as the recreational user and ultimately will not damage the environment or the natural resource.

It will be key to define and make clear for all those involved what unreasonable access is as well. In this legislation we will be providing a legal mechanism under the Public Lands Act for agricultural disposition holders to deal with unreasonable access. Prior to this legislation there was no legal way for agricultural disposition holders to deal with abuse of the area by recreational users who have no respect for that environment. As with many other segments of society, these people form the minority of recreational users but cause a great deal of concern for those disposition holders.

This legislation provides the agricultural disposition holder the avenue through the courts to deal with unreasonable access. In these cases, if the court finds the recreational user guilty, the court may impose a fine of up to a thousand dollars as compared to what it used to be, a hundred dollars. The legislation also allows the minister to deal with an agricultural disposition holder who continually refuses to allow reasonable access by imposing a fine.

During our consultation process we heard concerns about liability. The concerns were heard all across Alberta. One common theme became apparent, and that was that agricultural disposition holders and recreational users agreed that recreational users of the agricultural dispositions should be responsible for their actions. The current Occupiers' Liability Act provides for two levels of duty of care for occupiers, that being the leaseholder. There are two boxes that duty of care must fall into: the duty of care owed to a visitor or the duty of care owed to a trespasser. In this act we are proposing that the duty of care the agricultural disposition holder would have to recreational users, even if they are invited onto the property and given permission, would be as if that person were a trespasser.

Agricultural dispositions must still not create dangers for recreational users, but this provision will provide for some of the concern that agricultural disposition holders have with allowing recreational use of the land and is consistent with the philosophy that the recreational user should be responsible for their actions on somebody else's property. In developing this provision, we considered using a permission or waiver of liability slip rather than changing the Occupiers' Liability Act. However, a waiver of liability slip is already provided for in the Occupiers' Liability Act. A permission or waiver of liability slip, which would not be mandatory, will be made available in an expanded Use Respect program. As you can appreciate, Mr. Speaker, logistics of using these slips could be very onerous as some leases are many, many miles from the leaseholder's residence. Therefore, we need to have a clear intention in our legislation and develop informative, useful programs, such as the Use Respect program, for implementation.

This bill will also make changes to the Municipal Government Act. It will provide for the payment of taxes on agricultural dispositions by the province as the owner in the form of a payment in lieu of taxes. The province currently pays the taxes on all government buildings and property and on public land used for provincial grazing reserves. It's the landowner, Mr. Speaker, who should be paying the taxes, as it is in all other cases.

This act will change the definition of occupant under the Surface Rights Act to exclude the agricultural disposition holders for all new industrial activities. Existing industrial activities will continue in the current arrangement for 10 years after the proclamation of this legislation. Suggestions have been made for a longer or shorter grandfathering period. However, 10 years is the normal term of a grazing lease. For all new industrial dispositions the changes in the Public Lands Act will withdraw those sites, the industrial sites, from the agricultural disposition and ensure that industrial users will address the operational concerns of the agricultural disposition holder and pay for damages during that industrial activity.

Mr. Speaker, we will be consulting again with the stakeholders on the definition of both operational concerns and damages over the next few months. These definitions will be put into the regulations. The province will charge a new rental fee for those industrial sites that will be developed, and those will be placed in regulations. We will also be consulting with the stakeholders on the type of arbitration or mediation process which needs to be available in the case where disputes arise between the disposition holder and the industrial operator. A proper due process will be developed. Our consultation will identify the best process to meet the concerns of fairness and timing for the parties involved.

10:10

This bill, Mr. Speaker, would allow some of the new funds received from rental of oil and gas sites to be used to improve the public land resource for use by livestock, wildlife, and people. This funding would be available for use on all public land in the settled part of Alberta to partially fund resource enhancement, resolve multiple-use conflicts, improve education to all parties, increase research on emerging issues, and increase monitoring of dispositions.

This bill will also update the existing provisions the minister has for enforcement of the act and its regulations on dispositions. The enforcement order provision clarifies what can be done by the minister to support the legislation. The Eurig case in Ontario may have a significant implication for some of our fees. To meet these

requirements, we have included a rounded-off schedule of the current assignment fees in this bill.

This bill will also level the playing field for individuals and corporations who hold grazing leases and licences by requiring both to pay an assignment fee. In the past, Mr. Speaker, there was a loophole for some corporate share transfers. This will be closed. Family or estate transfers of individuals or corporations will remain as a nominal flat fee, as it is now. This will continue the government's support for family operations operating on public land.

Mr. Speaker, this act will also amend the Stray Animals Act to ensure that the withdrawal of industrial sites from an agricultural disposition will not increase the liability of the disposition holder regarding livestock on industrial access roads. This has been a concern to grazing leaseholders, and we've recognized that.

I would like to take some time to just address some comments that have been made by the media. We met with Albertans in public meetings and read the written comments that were made directly to us. We heard from Albertans with many different backgrounds. We heard from rural Albertans who do not have public land agriculture dispositions as well as ranchers and farmers who depend on public land for their living. We also heard from urban people who are concerned with the use of public land, many of whom recognize the good stewardship that ranchers have provided in the past. Input to our committee was not a rural/urban split or a recreation/rancher split. We heard from caring Albertans from all walks of life, and we reflected that as much as possible in the reports that were made.

We accept the frustration that some people had when their suggestions were not fully accepted. A few grazing leaseholders have indicated they feel betrayed, and I'm sorry they do. However, we believe these changes will make the use of public land in the settled areas sustainable well into the next millennium. Mr. Speaker, my committee and I have done our best with our review, and the government will continue to work with stakeholders to finalize some significant issues that must be resolved.

So you can see, Mr. Speaker, that lease land has had a long and turbulent history in this province. It is important that Bill 31 receive the support of this Assembly. Its goal is to protect the public land in the white area of the province into the new millennium and beyond. We heard many times during our consultations of the need to protect the resource for future generations of not only ranchers but hikers, hunters, and environmentalists. Again, I urge this Assembly to support Bill 31.

Mr. Speaker, at this point in time I move that we adjourn debate.

THE DEPUTY SPEAKER: The hon. Member for Drayton Valley-Calmar has moved that we adjourn debate. All those in support of this motion, please say aye.

SOME HON. MEMBERS: Aye.

THE DEPUTY SPEAKER: Those opposed, please say no.

SOME HON. MEMBERS: No.

THE DEPUTY SPEAKER: Carried.

[At 10:15 p.m. the Assembly adjourned to Thursday at 1:30 p.m.]