Legislative Assembly of Alberta

Title: **Tuesday, May 11, 1999** 8:00 p.m.

Date: 99/05/11
[The Deputy Speaker in the chair]

head: Government Bills and Orders
head: Second Reading

Bill 31
Agricultural Dispositions Statutes Amendment Act, 1999

THE DEPUTY SPEAKER: The hon. Member for Edmonton-Centre had been recognized when the House adjourned, so you have first chance. The hon. Member for Edmonton-Centre.

MS BLAKEMAN: Thank you. I'm very pleased to rise in second debate on Bill 31. There are just a couple of points that I'd like to make. There are really two points that seem to be rising from this bill. One of them is the question of access to the property, and one of them is the idea of the contract. Those are the two issues, plus I think there's an overriding issue about perception of fairness that I would like to raise.

I'm interested in the full debate of this, so while I may well bring things forward that some people might take offence at, please let me reassure you at the beginning that I'm doing it in order to open the debate on this issue. I think as legislators we have a responsibility to be crafting legislation that is for the best for all of Alberta. I think that on some of the rural issues and some of the urban issues there's a tendency to pit one against the other, and that isn't what we need to be doing as leaders in this Assembly. We need to be looking at what is the best for all of Alberta.

The issue around access is an interesting one because there is this white zone in which these grazing leases are found. This is public land. It's Crown land. It's owned by every person in Alberta. Because of that, I feel strongly that we need to have public access to this land. I noticed that the Member for Cypress-Medicine Hat became engaged in this debate, and I'm very pleased to see him engaged in this debate. [interjection] No. I am. We don't often get an enthusiasm that's displayed from the hon. member, so I'm very pleased to see when someone feels strongly enough about something to enter into the debate. I think in the end that's the best thing for all of Alberta, so I appreciate the comments that he made, although I disagree with him, but that's what this public debate is for.

When we look at how much land is really covered by grazing leases and by this white zone, we're talking about, as far as I can figure, 3 percent of the land in Alberta. Well, what's 3 percent? Is that a big deal? Nah. So I went for comparison to other protected lands that we're looking at or in the process of protecting in Alberta and noticed the commitment to the Environmental Protection special places. I was able to determine that actually in Alberta, as we know, we're trying to protect I think it's 12 or 13 percent of the land. The national parks, which include Wood Buffalo, Waterton, Jasper, Banff – and I'm missing one – that's already 8 percent of the land here, so Alberta's trying to put aside another 5 percent, of which they've accomplished about half. So what's 3 percent of the land? Well, really it comes out to about the size of Jasper and Banff national parks, which is a significant amount of land that is owned by Albertans, and I think Albertans should have access to it.

Now, we have the grazing leases that have been in existence in this province for in some cases a significant period of time, several generations of family ranching in southern Alberta. I think what started out as a good mechanical way of being able to support the cattle industry and the cattle ranchers – over time things became assumed, then they became tradition, and now they've become entrenched. Now we're in a position where we need to revisit that.

This is where I come to the question of fairness as I see it. One of the difficult points for me to try and debate back with my own constituents in Edmonton-Centre is that perception of fairness. It pains me when I have people say: you know, those farmers, those rural people get all these advantages, especially southern people for some reason. I'm not saying that I believe this or support it. I'm talking about a perception that exists that I think we need to deal with, and that is a perception of fairness.

So we have the device of the grazing leases in this province, and over time, as I said, a number of other things have come into play; that is, two things. One is the ability of the leaseholder to sublease to someone else for an additional amount of money above and beyond what that person is paying back to the government for the original lease. I don't know that that was particularly foreseen, but that is certainly perceived by, well, people in Edmonton-Centre – let me start from there – as an unfairness. As well, there is the ability to completely sell that lease to another party, again for additional amounts of money that were not foreseen in the original agreement between the leaseholder and the government, which is negotiating the lease. Again, that is seen as an unfairness.

Now, the Member for Cypress-Medicine Hat had said that there really weren't that many leases, that it wasn't covering that much land, and people on average were making a couple of hundred dollars a year I think. I'm sorry; I haven't seen the Blues, so I will certainly stand corrected on that.

But when I look at the amount of money that is being brought in, about $40 million a year in compensation, and we look at the number of leaseholders, 5,700 grazing leases in the white area, I think we have to do the math. We're talking more than a couple of hundred bucks. And when I look at the different average per acre lease amounts that have been put forward by the interested stakeholder groups, I see that Alberta Grazing Leaseholders is claiming that grazing leaseholders with oil and gas wells on the land are averaging $1,100 per acre in compensation. The *Western Producer*, December '98, is mentioning about $4,000 per average lease. Those are differing figures, and somewhere else I've seen $7,000 to $8,000. That's a significant amount of money.

I wanted to raise that issue because that is money, I think it could be argued, that should be going back to the province, into the general revenue fund. In other words, if I owned a property and I leased it to someone else under the same sort of agreement – let's say I leased it to them for $100 a month – that person could then turn around and under a similar agreement lease it to somebody else for $150 a month. They would pocket the $50, so they're now making money on this deal. They could even, if they were approached to sell the lease, sort of figure out what they'd be making every year. Let's say they had a 20-year lease and half of that was gone. How much money would they make over the remaining 10 years? They could say: "Okay. Fine. I'll sell it to you for $6,000." The person says, "I'll give you $5,000," and the deal is struck. They pocket that money.

I think that's where a great deal of the perception of an inequity, an unfairness, an imbalance comes into play here. It's one that I'm hoping will engage the members opposite so that we could have an open debate about this, because certainly some people perceive that as money that should be going into general revenue.

8:10

Now, the issue of access. As I said, I personally feel very strongly

that these lands should be open to the public. We have leaseholders, and they have certain responsibilities. They have perhaps buildings on the land; they have cattle on the land. They need to be able to make sure that their property is not going to be damaged. I think it would be – and the word "reasonable" becomes very important here because it's in the legislation. But we don't get a good indication of what that reasonable means because the hon. Member for Cypress-Medicine Hat's version of reasonable access might be very different from this member from Edmonton-Centre's version of reasonable. As a matter of fact, I know that we would differ on this because I've heard the member say that he believes no member of the public should be given access to the leasehold land, and I believe it should be much more reasonable access than that.

I could understand and I could accept reasonable if someone said: "It's calving season. The cattle are all over the range. I really don't want people on this land when that activity is taking place because there is a great potential for danger both to the citizen and to the cows and the calves." Okay; I could accept that as reasonable; I would understand that as reasonable. But to say, "No, you can't come on here at all, never," then this isn't really public land anymore; is it?

When I think of some of the youngsters that I know and one of the sons of one of the hon. members here, I know that he would be interested in seeing some of that land. I don't think he's been in southern Alberta. He might well like to get on some of those leases and go for a hike, ride a horse, some of those activities. He hasn't done that. As a citizen of Alberta, as an owner of this Crown land, to say, because someone else has the lease to it, that no, you can't come on it – remember, this is not an insignificant amount of land that we are talking about here. So I think the very loose definition of reasonable causes me great concern here.

The other point I wanted to make is the idea of the contract. As I said in my preamble to this, we have had an arrangement that turned into an agreement which has now got traditions stored in it, and some people are feeling fairly protective of that. When we have a situation where a leaseholder can go to a bank and have that leasehold used as collateral on a mortgage against something or a loan against machinery, that leasehold is very important to that leaseholder. It's a contract, and they are able to do it.

What's being proposed here is sort of 10 years and you're out; that's my perception of it. To me that's breaking a contract. I was lucky enough to have some background in administrative law. Contracts are the centre of that. You make that agreement, and you stick to it until the contract runs out and then renegotiate it. So much of our law and our understanding even of common law is based on: you don't break that contract once it's there.

Now, I agree that it could be argued that as time has gone by, the contract in fact has had other things added into it that weren't exactly written out. This thing about how you can lease it to somebody else or you can even sell the lease and all that kind of thing: yeah, that probably wasn't envisioned in the original contract, true. Nonetheless, it is a contract. People have made decisions in their life based on that information, based on that agreement.

It disturbs me that the government would consider, in effect, breaking those contracts with the passing of this bill. I think there needs to be some agreement reached. I listened very attentively when the Member for Lethbridge-East was suggesting that there were other ways to make that adjustment without putting through this legislation. I would be more interested in pursuing that. I think we really tear at the fabric of democracy and of this province when we look to breaking contracts, especially through legislation. I find that an unacceptable use of the power of this Assembly.

I don't know if this is a strong example of that, but when I look at the pain and the mistrust and certainly the turmoil that's been wrought in a few other examples where the government changed the contract in the middle of it, which I think we all pay for, it should give us pause. A brief example of that is the 5 percent rollback that happened in '92-93. In a number of cases that was a broken contract – you could call it that – in that people had an agreement that they were going to be paid X amount, and they said: nope, that's it; we're going back; 5 percent off right now. That was a breaking of the contract in many people's minds and I think in a few cases in actuality when we look at public servants, nurses, and teachers. If I'm not correct on that, somebody will be sure to jump up and correct me, and I look forward to that debate. But look at what that has wrought in this province. It is a breaking of the faith with people, so I have a great deal of problems with the breaking of that contract.

Let me take a step back from all of that. I am grappling with: how do we come to terms with what is the best for all of Alberta? What decisions do we make in this Assembly as leaders? I was pleased to hear the Member for Cypress-Medicine Hat use the words steward and stewardship, which are words that I have used often in this Assembly to describe part of what I feel is our duty here. Our duty of care is stewardship over the land in Alberta, and we need to be very cautious.

I have great unease about this bill, yet it is attempting to address a problem that I feel very strongly needs to be addressed. I would like to be able to go into debates with the citizens of Edmonton-Centre and be able to defend the policies that we had, that they were not unfairly favouring rural areas or unfairly favouring urban areas, because I don't think that kind of adversarial approach helps us, particularly when we're talking about land resources in Alberta, which is one thing that we all share together. No matter where you're born, no matter where you live, we all share in that ownership of the land of Alberta and the resources.

I don't want to see that pitting. I would like to see this problem addressed. I would like to be able to go back to the people in Edmonton-Centre and say: we have worked this out; we have done our best; we have looked out for all people in Alberta. But I am not able to do that with this legislation, and I am, as you can tell, struggling to support it. I don't think I can bring myself to support it – but I will listen to the rest of the debate with great interest – because of those two major tenets, which are so important to me and in many cases important to the people that I represent, and that is the issue of contract and the issue of public access.

I appreciate that I have been able to contribute to the debate. I hope it has been helpful, perhaps set the cat among the pigeons a bit. The debate should happen, and I appreciate having the opportunity. With those few words, I will take my seat and allow my colleagues to continue on with the debate.

Thank you very much, Mr. Speaker.

THE DEPUTY SPEAKER: Would the Assembly agree to briefly revert to Introduction of Guests?

HON. MEMBERS: Agreed.

THE DEPUTY SPEAKER: Opposed?

8:20

head: Introduction of Guests

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

MR. BONNER: Thank you very much, Mr. Speaker. It's indeed my

pleasure this evening to introduce to you and through you to all members of the Assembly members of the 99th Collingwood Cub pack. They are seated in the public gallery this evening. They are accompanied by Baloo Lloyd Truscott, Akela Eric Hudson, and Cub pack members Daniel Cunningham, Brian Truscott, Wendy Hudson, James Judge, Jesse Gros-Louis, and Sunny Chan. Mr. Speaker, with your permission I would ask that they now stand and receive the traditional warm welcome of the House.

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Bill 31
Agricultural Dispositions Statutes Amendment Act, 1999
(continued)

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

MS OLSEN: I, too, am pleased to be able to get up and speak to this particular issue. The areas of concern that I have are with the liability issues and with a contract. I'm going to start with my concerns about liability. I think it's a fairly significant issue when you're changing legislation. You have public land, you have an agricultural disposition holder, a lessor, and you have the public. The public wants access to public land, and you have concerns from the oil and gas industry or concerns from ranchers about other people being on the land. I think the liability issue is one that has to be very, very clear.

I, too, am pleased to hear that the Member for Cypress-Medicine Hat was speaking to this bill, and I'm speaking against it, as he is, but for totally different reasons. My reasons that I'm speaking against it are, I believe, significant.

I'm going to just move forward with Occupiers' Liability and the trespassing issue. The liability issue has been one reason why leaseholders were reluctant to allow public access to Crown grazing leases. In this new act it makes it clear that liability is limited, as it would be if someone were to trespass. Ranchers will in the future not be liable for those who have recreational access to agricultural dispositions, so we think. This should reduce the opposition to public access.

However, in the big picture we're not sure that that is going to be achieved. If we look at what the Occupiers' Liability Act says, it says the changes will be one in respect of a visitor; it's presumably added. It makes it clear the distinction between a visitor and a trespasser on the lands. The Occupiers' Liability Act suggests that visitor includes

> (ii) a person who is lawfully present on premises by virtue of an express or implied term of a contract, [and/or]
> (iii) any other person whose presence on premises is lawful.

This also suggests that the lessee does have some liability with respect to visitors.

> An occupier of premises owes a duty to every visitor on his premises to take such care as in all the circumstances of the case is reasonable to see that the visitor will be reasonably safe in using the premises for the purposes for which he is invited or permitted by the occupier to be there or is permitted by law to be there.

When we talk about this section, we talk about duties, and under the Occupiers' Liability Act there is a duty of care to visitors. When common duty applies is defined in the Occupiers' Liability Act. Section 6 of the Occupiers' Liability Act states:

> The common duty of care applies in relation to
> (a) the condition of the premises,
> (b) activities on the premises, and
> (c) the conduct of third parties on the premises.

We move on further and we can move into the Petty Trespass Act. This particular Occupiers' Liability Act says that it's clear that a member of the public who enters an agricultural disposition does so at their own risk, although they are not legally trespassers, and here's where it's not very clear to Albertans. It says that they're not legally trespassers – that's according to the Petty Trespass Act – but they are to be treated as trespassers with respect to the Occupiers' Liability Act. This is very vague. This is a huge concern. Under section 12 in the Occupiers' Liability Act "an occupier does not owe a duty of care to a trespasser on his premises" unless injury or death "results from the occupier's wilful or reckless conduct" or the trespasser is a child.

I want to draw your attention to the Agricultural Lease Review Report that was put out, and in that report it identifies under section 3.3 the terms "common duty of care" and "liability", and it also addresses under the Action title:

> Any recreational user wishing to access public land held under an agricultural lease must seek permission of the leaseholder. The leaseholder would allow reasonable access, but may deny access based on considerations such as the protection of the land base, protection of the grass resource, and the protection of personal property (including livestock) from the risk of damage resulting from the proposed activity or season of use.

My question is – and I'm not satisfied that we can leave this up to regulations – where is it defined what the risk activity is? This is very broad, so it doesn't allow, in my view, for amiable relationships in some instances between public users and the ranchers or industry folks. I'm concerned because we don't have the risk activity defined. I think that framework should be set out.

We're not serving Albertans when we don't define what some of that activity is going to be, and quite frankly it needs to be in the legislation, Mr. Speaker. Regulations are not good enough, not here where this area is so cloudy. I would suggest that the whole notion of asking someone to sign off on a legal document with a leaseholder is in fact not appropriate. I think there are people who may want access to land and for some specific reason or another don't understand the contents or the context of the waiver that they're being asked to sign. I think that prejudices them. Should they have to go out and hire a lawyer to ensure that the activity that they're going to be pursuing is legal and it's not a risk activity and it's something that can be supported in a court of law?

There's the fine print that we have to be cautious of, and as we know, in many written documents the devil is in the detail, and if somebody doesn't understand the detail, then they're put at risk when they sign off on a liability waiver to a leaseholder. I'm very concerned about that. We have to be very, very careful, and I don't see that here. I really don't, and that, I suppose, is one of my biggest concerns. I'm not satisfied that we've defined trespasser, visitor, liability, risk activity, those kinds of things. I would hope that we could work through that as this bill goes through the House, but I am concerned.

8:30

Another one of the issues – and I know the hon. Member for Edmonton-Centre spoke to it – is the issue of contracts and the grandfathering aspect of some of these contracts. We know that many ranchers, leaseholders here have financial obligations associated with the specific grazing lease that they hold, and I'm concerned. Is 10 years long enough? Why is it 10 years? Is that because all of those leases right now would come due in under 10 years, or do we have some of those leases that in fact would go 15 years? How long are the financial obligations? How long do those obligations tie up the property?

That is public property. It amazes me, I guess, as we've moved

on, why financial institutions would use that as a collateral for any farming loans or bank loans, mortgages, because it's not property owned by the leaser. I think that that's part of what's created this problem. We're looking for balance here, and I don't see that balance. I think the hon. Member for Edmonton-Centre said it very well. You know, we're pitting groups against each other. We're pitting urbanites versus country folks, and now we're pitting the public versus the leaseholders. Also in this we have the leaseholders and the industry interests at odds. I don't think we've addressed this issue as clearly as possible.

When I think about it, you know, I'm wondering who holds these leases. Are they primarily the large corporate ranchers in the province, the corporate entities, or are they small family ranch operators that use this in a very viable way? In my view we know that both are large contributors to the agricultural industry in this province. However, some people have a different advantage than others. So the corporate holder of a grazing lease may in fact have a shorter time associated to the mortgage on which it's being used as collateral, as opposed to, say, a small family rancher who is using it as collateral just to keep the business going. I think those are conflicting as well, albeit they both contribute to the economy in the agricultural industry equally.

But where's the balance there? Does the small family rancher have to take out a longer term mortgage or loan on whatever they do as opposed to a large corporate rancher? Does this grandfathering clause put them at that disadvantage as a result of that?

I think it's very wrong for the government to change the rules of the game when those rules are there, those contracts have been signed. We're to understand that anything after 10 years is going to fall under the new guidelines. I think that is unfair. I think that when the financial obligation has expired, that's when the leaseholder renews his contract with the government, and that's when this particular act kicks in with the new terms and conditions. I see that as being a very unfair way of doing business, and in fact it says to me that the government wants to use the big baseball bat whenever it chooses and that we're going to be the big guy wielding the bat and that you will do and comply as we say. I think that that is an inappropriate way to conduct contractual business.

These are laws; this is the rule of law. This is the business and these are the terms and conditions that the government had agreed to, and I wonder why they want to carry the baseball bat at this point. I know it's a fine balance, but somewhere down the road the decision has to be made that, yes, those particular contracts that expire after the grandfathering should in fact be renewed at the end of the financial obligation. I just don't understand the rationale behind that at all, and I hope that the minister can at some point enlighten us on that aspect of it.

The other issue that concerns me is that the minister can determine classes of agricultural disposition and the conditions for access. Again we get into this whole notion of government by regulation, and it's up to the minister to determine what those conditions are. Well, I think that framework needs to be set out. It may seem onerous to do that, but if you're going to use the legislative tool, then you need to define exactly what it is you're doing with the legislation. I don't see that happening here.

I don't feel comfortable, and it's not because of the minister, because I respect him. But you know what? As time goes on and maybe different ministers come in, maybe the rules will change again, and I think that's unfair. I think that if you're going to change the rules, then those rules come to this Legislature, and they get debated here. They don't get dealt with by the minister of the day through regulation. Again, it's government choosing when they want to use the legislative baseball bat and when they want to use regulations, and then the public has no idea, no record of what's happening. That's been a long-standing concern of mine and something that I have addressed everywhere in every piece of legislation that comes forward.

I guess, Mr. Speaker, it goes back to: do we want to convene the Committee on Law and Regulations so that we can all have a crack at it, so we can build and compile the best legislation for Albertans, so you have more interests in a room discussing the bill, more folks with different views and different opinions bringing something constructive to the table? That can happen. It's happened with different members of this caucus working with members of the government caucus where in fact we've had great success in bringing different issues to the table. I just have to look back at the amendments that have been accepted in this Legislature on different bills.

I think that is a co-operative way to work. I think that is the way Albertans expect us to work, and I would like to see us discuss any regulations in the Law and Regulations Committee, because I think that's an important part of our job in this Legislature. We're here for a reason, Mr. Speaker. We're in this Legislature for a reason. You know, I'm happy to be here, and I'm happy to spend time discussing those particular issues.

I wanted to put forward a couple of issues in terms of the review process. We know that there was a strong negative reaction to this report from the Alberta Grazing Leaseholders Association. One of the highlights of their objections is that they objected to proposals to change the system with respect to surface rights on Crown grazing leases. That's an issue that the hon. Member for Lethbridge-East talked about today. Again I see that we changed rules. Why are we changing the rules? We're not sure. We see that under the Surface Rights Act changes in this section are the exclusions. The definition of occupant excludes the holder of an agricultural disposition.

8:40

We also talked about grandfathering and that it should be able to continue to the end of the financial commitments. Right now the Surface Rights Board can adjudicate with respect to the amount of compensation that is payable for damages. That exists now. The leaseholder will continue to have access to the Surface Rights Board for resolving disputes for the 10-year period during which current compensation rules are grandfathered. However, after that period – and this is another issue for me – the dispute resolution mechanism will no longer apply. Well, I look in this particular Agricultural Lease Review Report, and it says that "there will not be an appeal process for the agricultural leaseholder for the access decision made by the province."

Mr. Speaker, we in this House have discussed many times appeal processes, fairness, having an appeal process available to specific groups that have a need. In this particular act that we're dealing with, we would look at agricultural leaseholders. Why, in heaven's name, would we not have an appeal process?

Alternative dispute resolutions are something that we deal with. I brought some questions up about civil claims and how successful alternative dispute resolution has been in that particular part of our justice system, reducing time to trials from 19 weeks to 10 weeks, using in this case professionally trained volunteer mediators to adjudicate and to sit and mediate with parties in civil claims. I think that we're not serving anybody well. Again, back to the whole process of what's fair.

Well, to do away with that process and opt for "an arbitration process . . . to address disputes that may arise between [leaseholders] and the energy company over damages and operational concerns" – I think that arbitration has a much different context and connotation. I like the word "mediation" where somebody can sit down and

people can actually have a trained mediator. Right now they're using volunteers. I don't know how long that will go on. We see a proliferation in the number of professionally trained mediators now. I think that for the minister's purposes that would be an ideal route to go. It's says to me that we really do want to ensure that people are satisfied.

Arbitration is fine, but as you look through the process, it's one of the processes that is looked upon as sort of the negative as opposed to the positive. I would like to see more of an up-front mediation process utilized in this environment. So I think that that's a concern. You know that you're going to get those disagreements between the industry and the agricultural folks. So you've got to have that process. Otherwise I see that as pitting one of the keystone industries against another. So you're pitting agriculture, which is a huge part of our economic environment in this province, against another large economic driver in this province, and I think we need to see that those two folks are working together.

You know, at this time I think it would be appropriate to draw to the attention of the minister the issues up in the northeast part of the province, where we've got some of those real concerns between industry and landowners and industry and environmentalists, and we don't seem to have been able to achieve a balance. I think that we need to be able to have processes in place where we can do that. So I would just really urge the minister to consider a different process here.

Let's not forget that when we make changes – we're all creatures of habit; we like to have things the way they used to be. They can't always be that way, however. We have to acknowledge, when we're changing these things, that we can't throw the baby out with the bath water. You know, it has to be a very constructive, systematic change. As I said, I think it's something that we haven't done justice to in this particular piece of legislation.

It's interesting to note that we have a number of different acts being changed in this bill, which of course allows me to speak for 30 minutes. But this isn't my specific field of expertise, and I don't know if I can make it for 30.

The issue of stray animals: just concerns I have. What we've said in terms of amending the Stray Animals Act is that livestock on an agricultural disposition will not be trespassing – livestock will not be trespassing; now we want to cloud an issue about trespassing – if they enter land that is withdrawn from the disposition for industrial or commercial purposes and it is normal for the area used for the surface rights access to be fenced off to prevent livestock coming into contact with harmful substances. [interjection] Cows can't trespass; people can. The holder of the grazing lease will not be accused of trespass if the animals get onto the withdrawn property. This is all very interesting, because we know that cows, horses, sheep – I don't know; whatever else you raise down there – dogs, cats, antelope in the southeast – you know, you're not going to get a wildlife officer out with his lights and sirens going to give a ticket out here.

But Mr. Speaker . . .

Speaker's Ruling
Decorum

THE DEPUTY SPEAKER: Hon. member, in searching around for the different types of livestock that are on grazing reserves, I think a number of other people have been all too helpful in suggesting the vast numbers of different kinds of creatures that may be raised thereon. I wonder if we could just get back to one person speaking on Bill 31, that being the Member for Edmonton-Norwood.

Debate Continued

MS OLSEN: Thank you. So we have all these animals, and we're just going to assume that the owner of that particular livestock, those animals, also cannot be accused of trespassing.

The issue here is that we've said that the property should be fenced off. Fair enough. I think that it's incumbent upon industry, where they have well sites and those kinds of things on these grazing leases, to ensure that there is adequate security. I talked to the minister of transportation earlier in the budget debate in relation to the vital points program. What types of security do we really need out in these environments? Having had the opportunity to work for one of the large oil and gas companies in this province doing risk assessments for them and loss prevention analysis, the whole idea of liability comes into play. Even on a small parcel of land or a grazing lease I think it's very important that industry set the standards for safety and security.

I'm not talking about just having cows and horses roll onto somebody's industrial property or lease but preventing vandalism, certainly, for those people who are on grazing leases to ensure that they have limited ability – so we don't want to create opportunities for them to get into these fenced areas and fenced compounds.

8:50

There are all sorts of different security strategies you can employ. I think that's something that also has to be addressed in all of this. Industry used to do a great job about it, but you know, the first to go in some of these places are the corporate security consultants. So we know that there's a problem to keep up those particular concerns. Again, the liability issue, the types and standards set out in relation to security and safety: I'm confused, I think as many Albertans would be, as to how we were going to address the issue of trespasser, visitor, invited person, and those kinds of things.

It looks like my time is coming to a close. So I would like to just say to the minister: believe it or not, some of us who are residing in the city do have some roots out there in the rural parts of the province. We do, Mr. Speaker. We enjoy public access to different lands, and we enjoy going out hiking and cycling and all of those kinds of things.

I think there's a balance. I don't think we've quite achieved it here. I do think it's achievable – I really do – but I don't think we've done it yet. With that, Mr. Speaker, I will take my seat, with 19 seconds left to go.

THE DEPUTY SPEAKER: The hon. Member for Edmonton-Mill Woods.

DR. MASSEY: Thank you, Mr. Speaker. I'm pleased to be able to make a few comments about Bill 31, the Agricultural Dispositions Statutes Amendment Act, 1999, and at second reading to spend a few minutes talking about the principles of the bill.

When the bill was introduced, I listened with some interest to the kinds of concerns that were raised by the mover. I also was interested in the Ag Lease Review Committee report. It seems to me that there were a number of very sound principles that came out of that report and influenced the legislation that we have before us.

I've gone through and tried to take from the report some of the more important principles. I think one of the overriding ones is that Alberta's public lands – the grasslands and the forests and the wetlands – are really valued by Albertans for, first of all, their very positive effect on the environment; secondly, the links that they forge to the past and the history of our province; and thirdly, for their ecological uniqueness. It's imbedded in that principle that we find the sort of emotion that's attached to public lands, whether you're a user of those public lands, whether you visit them occasionally, or whether you don't use them at all. When you talk about our

public lands or when you raise the notion of public lands, it evokes in Albertans an emotional feeling for the landscape that is ours. It's part, I think, of what makes us unique as Canadians.

A second principle – and I think it's been explored well – is that public lands should benefit all Albertans. Though there may be people involved in leasing public lands and using public lands, the underlying principle that those public lands should somehow or other benefit all of us and not a selected number of Albertans is an important principle that undergirds the legislation.

A third principle, an important one because I think it tries to define very carefully the role of leaseholders, is that leaseholders are stewards in the very best sense of the word, of being a steward, and that is someone who is entrusted with the management of a resource, entrusted to manage that resource wisely and in the interests of all. That, I think, is an important definition for those people that are involved in leasing land and also for those people who may view leaseholders from a perspective other than one that is that of an interested steward. So stewardship is an important theme in the legislation.

One of the other principles is that legislation should be clear, that it should be provided to the stewards and the public. I think that's really, again, an extremely important principle and one that's sometimes hard to carry out. How do you make a bill like this and its provisions public and widely distributed? I suspect there are ways to do it, but it's something that hasn't been done in the past. It goes back and has implications for the language in the legislation, the claim that language, particularly in bills like this, should be plain English, should be the kind of language that everyday Albertans may understand and doesn't put the provisions of the act into the domain of those that are directly involved with leasing or directly involved with concerns of public lands. It should be in everyday language.

A fifth principle that seems to undergird the act is that the public lands of Alberta should be enjoyed by as many citizens as possible, that wide participation in the use of public lands by the citizens of our province should be encouraged, that those public lands are there for all of us, that they belong to all of us, and that in order to preserve them and for the population at large to appreciate them, we should have as much participation and enjoyment of those public lands as we possibly can.

Another principle is that access to public lands is a privilege and not a right. I think that that's a principle that was embedded in the Ag Lease Review Committee report that we see reflected in the legislation, that the public lands, in terms of the wise stewardship of those lands, if they are to be wisely managed, can't be managed with a view that would make the use of them a right that someone could claim without the accompanying responsibility to use them in the best interests of all Albertans.

A further principle is that the grazing of livestock is essential in maintaining the biodiversity and productivity of grasslands within the white area. So the actual use of the lands by those leaseholders has a role to play in keeping with grassland productivity and preserving the biological diversity of our province.

The last principle – and there are others, but these seemed obvious in first reading the legislation – is that Alberta's public lands, in particular grazing lease lands, are a provincial resource that need long-term care and protection. It goes back to the notion of stewardship but this time stewardship by the population at large, that we have a responsibility as citizens to make sure that those lease lands are protected and cared for and will be there for future generations to take advantage of and to enjoy and to protect.

So those are some of the underlying principles, Mr. Speaker, that seem to be reflected in the act, and it seems that those principles arose out of a number of issues that were posed or that this act raises. There are a number of those issues. Access to public land is a huge issue. We should have access. How should that access be controlled? Who should do the controlling? All those issues around access. Again, they're sometimes more emotional than they are rational, the reaction to the use of or nonaccess to public lands.

9:00

There are all the questions of liability. If there is going to be access to public lands that are leased, where does liability rest for users who somehow or other might be injured or for any kind of disruption of the land by users?

There are all the questions that surround, in particular in our province, industrial use access and surface compensation. There's development on that land. Who rightfully deserves to be compensated for that interruption of activities that occurs through industrial or commercial development?

The problems of environmental protection, again, go back to the principles that seem to be very concerned with environmental protection: preserving the biodiversity of the province, making sure that the resource is there for future generations. So a whole host of problems that have become even more, I think, accentuated in the last month or so as we've debated Bill 15.

A whole set of issues surrounding the rental rates and the payment of municipal taxes. How are those issues resolved in terms of leaseholders? How should those rates be determined? Who should be involved in determining those rates?

Another set of issues surrounding the grazing dispositions: the assignments and the tenure on those dispositions. Again, this is of great import. We've heard from individuals involved in those dispositions and of their legitimate concerns for their future and their economic well-being along with their concerns for the preservation and the conservation of the lands they are stewards of.

There's controversy around the whole name of public land. What do we mean by public land?

A number of other issues have arisen. The whole notion of public involvement in an act such as this. How extensive should that involvement have been? Then some very specific issues surrounding wildlife management, access for trappers, municipal needs, and grazing zone boundaries. So a whole host of smaller issues.

A number of the underlying principles in the act I think are ones that many Albertans would applaud. The action that arises out of supporting those principles I think has been questioned by various stakeholders in the province. It's that balance between the interests of those stakeholders and the wider public interest reflected in these principles that I think is an important part of what we have to help try to determine as we consider Bill 31.

With those comments, Mr. Speaker, I'd conclude my discussion at second reading.

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

MR. THURBER: Well, thank you, Mr. Speaker. I've listened with great interest to the comments that have been made here by my colleagues and the colleagues across the way. I've found them very, very interesting and some of them very informative and for the most part very positive.

I think we have to know, Mr. Speaker, that one of the key aspects anytime we're dealing with legislation that deals with the land in this province is that it has to be very positive. It has to be there to protect the resource and to protect the environment, first of all, and then you look at the rest of it. The ranchers that have grazed this land in the white zone, in some cases for a hundred years, as has been men-

tioned before, have done an excellent job of retaining this resource and in most cases have enhanced the productivity of this grassland and provided better habitat for the wildlife.

I just want to touch for a minute or two on the process. As I mentioned before, we have to go back out to the stakeholders to define what is reasonable access and what is unreasonable access, because who would know better than the people who are actually involved in that, in allowing access or refusing access. We have to go back out to the stakeholders on the regulation-making part of it to determine what are actually operational concerns, what are damages. We need the parties at the table that are going to be doing this and are going to be personally involved in it. There will be due process. If there's a disagreement between the ranchers and the resource company on matters of operational concerns and damages, there will be due process there for them to sit down at the table and have it arbitrated or have dispute resolution of some form or another. Again, we want to talk to the stakeholders on this to make sure in the end run that we have something that everybody can live with.

Taxes were mentioned a couple of times, paying the taxes. Every MD in this province already gets a payment in lieu of taxes for any property that's owned by the province. This is just one other aspect, one of the few areas left. The government does pay taxes now on grazing reserves directly to the municipality. It's not going to occasion a large bureaucracy to do this. It's all there. The lease fees will be adjusted to reflect the taxes at this time. The leaseholders still in a municipality can have a look at the assessment, and they're still allowed to appeal that assessment if they want to.

The 10-year grandfather clause that some of you talked about. Certainly the leases now are on a 10-year basis, and the lending institutions we talked to felt that was a fair period of time to do that.

Somebody mentioned compensation to the leaseholder. Certainly the Crown shouldn't pay that, but whatever other user is going to use some of that property should be paying whatever is needed to be paid to the disposition holder.

As long as we can continue the consultation – we've been out there for two years to try and develop the legislation. It'll take probably the better part of another year of consultation to have draft regulations to go back out for one last kick at it.

With those few remarks, Mr. Speaker, I look forward to the debate in the Committee of the Whole, where I will be bringing forward an amendment to further clarify the intent of the bill.

With that, Mr. Speaker, I would like to move second reading of Bill 31 and urge everybody to vote for it.

[Motion carried; Bill 31 read a second time]

Bill 35
Government Fees and Charges Review Act

[Adjourned debate May 5: Mr. Gibbons]

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

MRS. SLOAN: Thank you, Mr. Speaker. I'm pleased this evening to rise and provide my thoughts and . . . [interjection]

MR. HANCOCK: Mr. Speaker, if wonder if it would be possible to seek the permission of the House to revert to Bill 32 rather than proceeding with this bill at this time in order to allow Edmonton-Rutherford to speak so that he might be able to have an earlier evening.

9:10

THE DEPUTY SPEAKER: Having heard the proposal by the hon. Government House Leader, all those in support of this proposal, please say aye.

SOME HON. MEMBERS: Aye.

THE DEPUTY SPEAKER: Opposed?

SOME HON. MEMBERS: No.

THE DEPUTY SPEAKER: You have your permission, hon. Government House Leader.

Bill 32
Assured Income for the Severely Handicapped Amendment Act, 1999

[Debate adjourned May 10: Mr. Dickson speaking]

MR. DICKSON: Mr. Speaker, just finishing off, I'd left off with most of my analysis. I know my colleague for Edmonton-Rutherford has got a lot to say about this bill, so I'd just make the observation that there were some things such as section 5.1 that I'd had some difficulty with in terms of the experience we've seen in advanced education, some of the concerns in terms of structured settlements. Section 11 I'm concerned with in respect to regulations.

So those are the points I had wanted to make with respect to Bill 32, and I'm looking forward to the comments that the Member for Edmonton-Rutherford is going to make and the next stage of the bill.

Thank you very much, Mr. Speaker.

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

MR. WICKMAN: Thank you, Mr. Speaker. As I speak to Bill 32, I just want to back up a good number of years and talk about some of the original philosophy that led to programs like the AISH program, which of course accounts for Bill 32 being in front of us. Now, AISH was not always part of the various programs that were being offered by the provincial government. It goes back to the 1970s, and in the 1970s a number of disabled persons decided it was time to become very, very active in leading their own lifestyles, in creating change that they felt would benefit them. So at that time it was proposed that a committee be set up, and it was done through the Premier of the day, Peter Lougheed. This task force was set up, and on the task force were five MLAs, including the Deputy Premier at the time, Hugh Horner; Bert Hohol, the minister of manpower; Neil Crawford, the minister of social services, as it was called at that time; a representative from the Social Credit Party, who was Ray Speaker; and Grant Notley, the lone New Democrat member at that particular time.

The function of the committee was to hear presentations that were made by what was then called the Alberta Committee of Action Groups for the Disabled. It was very, very effective in the sense that a presentation was made. In addition to those five MLAs, there were also five disabled persons on that particular committee. I had the privilege of being the chairman of that joint committee because our philosophy was very much that we were capable of leading ourselves, and we knew the directions we wanted to head.

Now, of the various programs that were implemented at that time as a result of the joint committee, I could list quite a few of them: the Aids to Daily Living, the home adaptation program, voters' rights by

proxy, and changes to the building code to provide for accessibility and such. But one of the most important ones that we proposed at that time was what we called actually a guaranteed income for those persons with disabilities.

The purpose of the guaranteed income was not to put disabled persons on a pension plan and say: okay, that's it for life; now you're set. It was to provide a form of security, but at the same time we urged the government to implement other programs so persons with disabilities could be part of the mainstream of society, which over a period of time did happen. It advanced tremendously, and we've seen the significant achievements that have been made and the accomplishments of people like Rick Hansen. Back in the early '70s we couldn't possibly even comprehend that type of achievement by anybody, let alone a person that had to use a wheelchair.

Now, when the initial reforms came forward by the Minister of Family and Social Services, I was shocked at them. It was such a step backwards, and the reaction in the community was very, very intense. We saw the rally at Grant MacEwan College where 500 mainly disabled persons came out to protest and said: you can't destroy a program that we fought so hard to get in the '70s. The same thing happened in Calgary. We saw all kinds of letters come from agencies and such urging the minister to take a second look at it, and the minister did take a second look at it. As a result of that second look, we now have Bill 32 in front of us.

Now, there are some positives, and I believe in giving credit where credit is due. Of all the programs that are similar to this program in Canada, I will go on record as saying that Alberta probably has the best one. However, it is not to say that it's modeled necessarily to perfection but modeled in such a way to gain the maximum benefit for those recipients who because of circumstances are forced to live with AISH benefits. It's not comparable to a social services program or social assistance in the sense that AISH is aimed at those persons that are deemed unemployable.

That's not to say that the possibility of them ever working again is not there, because it is there, if the AISH legislation is incorporated properly with the accompanying regulations that have to go with it. In other words, you have to see a bill that is fashioned in such a way it gives that protection but at the same time provides incentives in the bill to encourage persons with disabilities to take a chance in life, to maybe give up the AISH benefits for a six-month period and go teach at Grant MacEwan College, like a friend of mine did. As it is, it turned out to be very successful. He started teaching one course; now he's teaching two courses. He hasn't had to go back on AISH because he took that chance. It was a very tough decision for him to make because he knew that when he made it, his chance of getting back onto AISH, had he failed, would be very, very difficult.

Now, that's one of the points, of course, that is addressed in Bill 32 that I like, the re-entry. If one does venture out there and tries to seek gainful employment, there is that comfort level knowing that if it does fail because of circumstances beyond their capability, they have something to fall back on, and that's the re-entry into the AISH program. That's why it's so important that when regulations are put into effect that accompany this bill, the minister doesn't tamper with that underlying philosophy, that has been stated by various people in this particular caucus and somewhat by the minister himself. So that's very, very positive: the access, the re-entry.

Secondly, the extended medical benefits. The extended medical benefits, again, allow one – and those medical benefits that accompany AISH are very, very important. In a lot of cases they can surpass the amounts of money that AISH costs many times over. If a person gets themselves in that situation where they earn just above an AISH level and they lose their AISH and lose their extended medical benefits, then that's a real detriment to them leaving the AISH thing. So there's another example of where an incentive has to be provided to encourage that person to get off the AISH program, not just to save the government $855 a month but for the person's well-being, to allow him to participate in the mainstream of society. Those two are good.

That increase that we talked about, to $855 a month, that I hope goes into effect October 1. Now, the increase, if I recall correctly, is $32 a month. To us it doesn't seem like a big deal, $32 a month. But let me give you one example of one AISH recipient that I had to go to bat for. She had received a CPP back payment, and then she used it to pay bills and such. Of course AISH says: well, that's not allowed; we're going to deduct $50 a month until it's paid for. Deducting $50 a month left her with a disposable income of $8 a month. I was able to step in and negotiate a new deal on her behalf, that instead of $50 a month she paid back $25 a month, which gave her a disposable income of $33 a month, that she was overjoyed about.

Now, suddenly with the possibility of this increment that would see her have an increase of $32 a month, that virtually doubles her disposable income. To her it's wealth; to us it's insignificant in terms of our overall financial position. It's difficult for us to picture ourselves in that particular situation as to how important it is to those people. The opportunity for them to go out there and earn more money than they could, prior to Bill 32 or the regulations, before they're penalized, again that's an incentive.

I also like the recognition of the extended family, that a person with dependents requires more dollars to exist, to live on than a single person. So those are the positives.

9:20

Now, there are some negatives to that bill. It would be interesting if one could sit across from the Minister of Family and Social Services and say: "Okay. Let's negotiate some amendments here that will make the bill much better. We'll make it much more likable to those persons out there and at the same time benefit the government as well as the recipient."

One, of course, is the cost of living. We see this $32 a month increase, but how many years have gone by since there has been an increase? How many more years do they have to look down the road before they see another increase? Meanwhile everything continues to rise. In our situation we addressed that problem quite correctly – members of city council in Edmonton should possibly do the same thing – and that's to tie it into something so that every year there's an automatic increase that reflects somewhat a standard in the cost of living or the average increase in wages, whatever the case may be. That should be built into this legislation, that every year it is automatically reviewed and is increased to recognize that there is an increase in the cost of living. That would give the AISH recipient additional comfort, knowing that if their utility bill goes up, there's going to be some additional benefit to handle that particular aspect of it.

Secondly, the asset testing. Now, I realize that with the hundred thousand dollar limit, compared to what other provinces are doing, other provinces would say: hey, that's great, a hundred thousand dollar asset level for testing. However, let's not just jump at that so quickly, because there are a lot of factors there that the minister didn't take into consideration when he talks about the asset testing. I would like to see the asset testing just taken out of the bill, period.

When we talk in terms of the so-called seven millionaires, quite frankly it's a red herring. When I saw the list coming from the minister describing the background, that two of them managed properties worth over a million dollars, to me, if those persons

manage properties worth over a million dollars, obviously they're getting rental income and such. To me they would be gainfully employed, and they wouldn't be getting AISH to begin with, because AISH is meant for people who can't get gainful employment. Somebody managing a million dollars' worth of assets is gainfully employed, is better off than I am, better off than the minister is, quite frankly. So these seven millionaires are a red herring.

At the same time, though, by implementing the asset testing too quickly, without really looking at the full implications of it, it could hurt a lot of people that are concerned, that have a nest egg. The parents are concerned that when they die and they're not there to look after that individual, what's going to happen? What's going to happen if the government comes along and cuts off AISH? What do they have to fall back on? It's sort of a nest egg that we all would like to have in life.

Now, I hope the minister does have the opportunity to read *Hansard*. If something does happen and for whatever reason this bill is parked for a period of time – and I hope it isn't parked in that sense. I hope there are some amendments that are recognized as being worthy to incorporate in the bill and that the bill is passed. I would hope that the minister would use his discretion under regulations and go ahead and implement certain portions of it; for example, the increase. There's no reason to hold back the increase beyond October 1. The extended medical benefits, as far as I'm concerned, could be done by regulation.

There are a number of these positive elements that could be done by regulation, that could go ahead right now, October 1 at the latest, and if the bill were parked to readdress certain aspects of it like the asset testing or the consideration of a built-in cost of living, that would be fine, Mr. Speaker. But for the bill to be parked by the government intentionally and at the same time knowing that it would prolong the benefits that the AISH recipients have now basically grown accustomed to and recognize as being there – as far as they're concerned, it's a given. To not proceed now is taking away something that government created the expectation was going to be there.

So as I sum up, Mr. Speaker, when we look back at the initial reforms brought forward by the minister, certainly they were a tremendous mistake, and they proceeded too quickly without thought. But there was a positive in it. It demonstrated that disabled persons weren't going to sit back and allow government to push them, weren't going to allow government to push them along. They spoke out. That is a warning, a message to government: be just a little careful when you tread on programs that were put into place to provide us a certain dignity, a certain lifestyle, and just don't jump so hastily on those that you think aren't in a position to defend themselves or fight for themselves.

They clearly demonstrated at that rally at Grant MacEwan, at the rally in Calgary, that if need be, they were prepared to go out on crutches, go out in wheelchairs. There were seeing-eye dogs, whatever. They made their way down to Grant MacEwan because they wanted to be heard, and those of you that may have been there, that had the opportunity to listen, would have heard those persons so disillusioned that they were taking shots at all of us. They weren't just saying government members; they were saying that politicians per se tend to look after themselves and forget about the more disadvantaged in life that aren't in a position to do it.

So we as an opposition in particular have an obligation. When we see this type of thing happening, we have an obligation to step up, go to bat, and do what we can to ensure that these people are not mistreated or denied a lifestyle of dignity and of some sense of security. We're simply a voice for the community, in this particular case for hundreds in the community that needed someone to channel their concerns to government, and we were able to do that. I think this caucus can take some pride in being able to do it, but I do also give credit to the minister that he did listen to those concerns. He did amend his initial reforms, and I did tell him during the budget debate, afterwards downstairs having coffee, that he'd come a long way in addressing the original concerns.

So, Mr. Speaker, I'm of two minds here. There have to be some amendments proposed, and the Member for Edmonton-Riverview will bring forward those amendments. I would hope that the government listens to those amendments. They're not going to incorporate all of them, but I would hope they would listen to some of them and say that some of them are going to make Bill 32 better than it is. I want to see Bill 32 pass, but I want to see Bill 32 pass being in as fine a form as possible, that it gives the greatest benefit to those people that Bill 32 is coming forward for, and that's Albertans with disabilities.

Those are the recipients of the AISH program, that count on the AISH program but at the same time recognize there is more to the mainstream of life than simply $855 a month from the provincial government. They stress that as they receive these dollars, this form of security, at the same time they want government making moves in the right direction to open doors for them so that they can get retrained, so that they can try and get some types of employment, so that they've got transportation, so that they have accessible housing, so that they have basically in the community what individuals in this Legislative Assembly may take for granted, and that's just the full, equal opportunity to participate in the mainstream of society.

On that note I'll conclude my remarks, Mr. Speaker, and I thank you. I thank the government members for advancing this bill forward to give me the opportunity to have my 19 and a half minutes.

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

MS OLSEN: Thank you, Mr. Speaker. I hope the government takes the words of the hon. Member for Edmonton-Rutherford to heart. I think it's very important that we recognize there are some good things about this bill, but there are also some other issues that we have been addressing.

You know, one of the big objectives of this bill is to amend the AISH Act in order to allow for asset testing, the consideration of family size in the determination of benefits, and for participation in employment initiatives. Often when we think of people with disabilities, we focus our mind on physical disabilities, and we forget that developmental disabilities and learning disabilities also fall into that category. It may be easier for some people with certain disabilities to be gainfully employed full-time and not have to worry about the AISH program, as opposed to others who certainly need a valued program such as assured income for the severely handicapped. So in defining disability, I think we have to look to environments greater than this one.

If we look at the World Health Organization, it defines impairment as any loss or abnormality of psychological, physical, or anatomical structure or function, and I think that that's a good place for us to start.

9:30

It further states that when an impairment prohibits a person from accomplishing a task required for personal independence, for example walking, that's something that requires personal independence, Mr. Speaker, and disability is created when that specific function is removed from an individual. The World Health Organization defines a disability as any restriction or lack resulting from an

impairment of an ability to perform an activity in the manner or within the range considered normal for a human being. So we know now that the World Health Organization has been definitive, and they've defined a disability.

[Mr. Herard in the chair]

In my office, Mr. Speaker, I would suggest that most of the AISH recipients that come to me for help suffer from developmental, learning, or mental disabilities. Mental disabilities include schizophrenic and paranoid disorders, mood and anxiety disorders, substance abuse disorders – and I'm going to go back to substance abuse disorders – and brain injury and some seizure disorders. People with mental disabilities often experience cyclical periods of ability and disability. They face a number of barriers to employment, including stigmatization, unfamiliarity with mainstream life roles, and employer discrimination.

I'm even going to talk about the government as an employer. How does the government, when it has people employed with disabilities, respond to some of these issues? I would suggest that I have had some indication in my office that the government as an employer of people with disabilities hasn't got a great track record. So I think that when you're looking at AISH, when you're looking at people with disabilities . . . [interjections] I see, Mr. Speaker, that some people are very sensitive about that, but the reality is that we have to learn to work with and deal with those folks who have disabilities. [interjections]

THE ACTING SPEAKER: Come on. Through the chair, please.

MS OLSEN: I'm speaking to the chair. They don't need to be speaking, Mr. Speaker. [interjections] It's getting noisy, and it's really hard for me to concentrate.

THE ACTING SPEAKER: Excuse me. I don't know if anybody misunderstood what I said. I was telling both sides of the House to speak through the Speaker, and that's all.

Thank you.

MS OLSEN: Okay. We're going to move on, Mr. Speaker. We're going to move on, because I only have 15 minutes left, and I really want to talk about some of these issues.

We have the four categories of disabilities. We have mental disabilities. I'd kind of like to focus in on this, because I really feel that my constituents when I get complaints – we do have a number of folks who in one week or two weeks they're doing well, and in other weeks they're not doing well. They need to come in for assistance. Even the reassurance from the staff in my office, who deal very well with some of these folks, is helpful. But I'll tell you that when the leaked report, Mr. Speaker, hit the airwaves, my constituency office, as did others in this city, received a tremendous number of calls from concerned individuals.

I'm concerned that we have a government going down one road, and only because of public attention brought forward through leaked documents does the government backpedal. I think the words were flip-flop, flip-flop. I think that a journalist, a columnist used those words. So it's only because it was brought out in public that this government even changed the direction it was going. I have concerns about a government that would victimize some of the most vulnerable people in society.

I think that, one, we need to look at, yes, what is the government doing with its own employees and what kind of a track record do they have? Two, do we only have this government backtracking or flip-flopping when something as distasteful as the proposed amendments were brought forward? Fortunately the people in the community, the people who are on AISH and their families – and fortunately with the support of this caucus some serious discussion happened.

Okay, so the minister then says: well, I'm going to consult. But you know what? He consulted after his decision was already made. Yes, you know, for a government that says that they believe in public consultation, they did it backwards. They felt the backlash of the community first, and then they decided, "Oh, we better consult, because we need to make sure we're not going to look like the big bad guys," which they did look like, wielding a big bad axe.

I know that there are some problems, but let's talk about the reason for this amendment. The reason for this amendment is asset testing, asset testing, Mr. Speaker, based on the number of seven, I believe it was, AISH millionaires, those millionaires who had trust funds set up for them. The government then decided that we should do some asset testing. Well, most of the people in my community that are on AISH don't have a million bucks. In fact I would think you would be hard pressed to find anybody in my community, certainly including myself, that comes anywhere close to having a million bucks.

So now we know that we have a handful of people who are purportedly holding nest eggs of a million bucks. Okay? So now this is what we're going to base our asset testing on. Because, boy, oh boy, these people do exist; we're going to show Albertans that we're not going to stand for this; we're not going to stand for people who are vulnerable in this province having any money or anything else of value to them or anything to look after them. So the government decides that they're just going to wield the big axe, but they got caught. Quite frankly, thank goodness they got caught. [interjections]

I don't know but I think the hon. minister of advanced education is wearing his cranky pants tonight. I don't know. I doesn't speak well for this gentleman who should be looking after some of the employment programs and some of the education programs, Mr. Speaker. I don't know. It doesn't speak well for him.

Let's talk about some of these folks who are deemed unemployable, and many of those folks that fit the particular profile in the past, Mr. Speaker, may not fit the profile now, and that concerns me. It isn't just good enough to say: you know, we can save a pile of dough by getting people back to work. I'll tell you what. You know, in times gone by the government said, "We're going to get all those welfare people off welfare, and we're going to save a pile of dough. We're going to take the most vulnerable people, and we're going to make them work." Well, you know what? A lot of those people had substance abuse problems. If I look at the definition in here of what a disability is it includes somebody with a substance abuse problem.

I can tell you stories, Mr. Speaker, about people with substance abuse problems going back to school under a government program. You see, we took them off welfare, and then we said: we're going to put you in an employment training program. And we put them on an employment training program, and we said: you will go to school. And you know what? [interjections] You know, I find the attitude of the members across there very despicable because it's pretty self-righteous behaviour.

9:40

Do you know what happened to those people? They failed. A lot of those folks with substance abuse problems that were forced back into schools, that were forced to sit in a classroom failed miserably. You know why? Because we did it backwards again. We didn't address the substance abuse problem, Mr. Speaker. We just said:

you're going to go to school, and you're going to learn, and you're going to retrain. But we didn't address the real problem before we really set out to look at some rehabilitative programs for them and put them in a different learning environment. No, we didn't do that.

I'm a little concerned that we're going to have AISH recipients suffering from the same kind of backwards planning, if you will, that the government used with welfare recipients. I think, Mr. Speaker, that we have to look at this bill and look at the intent of this bill. We talk about employment programs. You know, most people on AISH if they can work, they want to work. There is no question in my mind. I have some of the outstanding artists who suffer from schizophrenia come into my office and show their art work. They should be in art school. They should be furthering their career or using those skills, but you know what? They can't. They can't because they fluctuate between being stable and not being stable.

So, granted, this new program will allow people on and off without the bureaucracy getting in the way. That remains to be seen. But I'm concerned. When's the government going to say: "Okay. Look; you've been on and off AISH seven times this year. We're not going to do that again." Because you know what? It's probably pretty expensive administratively, Mr. Speaker, to bring somebody on and off AISH seven or eight times in a year. So when is the government going to put up that roadblock and say: okay; you can only come on and off two or three times.

You see, when it comes to vulnerable people in this society, when it comes to vulnerable people in this province, I don't trust this government. I don't trust that the government will do the right thing with the right intent and do it for the right reason. So I'm concerned when I see dramatic changes like this and I see the recipients becoming victims, victimized by the very people who are supposed to help them. That's because we as a society are supposed to help the most vulnerable. That's our job in this Legislature, and that's part of what we need to do as responsible citizens, and that's what we need to do as responsible legislators.

So, Mr. Speaker, I think it's important to put this in context. We know that the hon. Member for Edmonton-Rutherford has brought up some very good points. He said that re-entry is a great idea, and he likes that. I agree with him. We're asking the most vulnerable people to participate in this program. We want to get their confidence, but I'm concerned that at some point this government is going to put up a limit as to how many times you can re-enter. So we need to be careful, we need to be vigilant, and we need to watch that that doesn't happen. Because you know what? It's the bottom line with this government. It's the bottom line. If this is going to be too costly administratively, when is it going to stop? I'm just raising that as a point. Okay?

I also want to talk about what happens to some of the mental health recipients, some of the people with schizophrenia and some of the folks that have been diagnosed as paranoid. You know happens? We've said that we're going to put more of our mental health recipients out into the community, that we're going to get these folks functioning in the community, but sometimes we cross the line, and we say: did we release somebody that we really should have kept hospitalized, that we really should have looked after?

You know what happens in the wintertime? Those folks that don't take their medicine, those folks who have nobody else to help them through their day, those folks who don't get assistance from health workers at home, those mental health programs that have been cut, all of those kinds of things: those people end up in trouble. You know what? They end up outside in the downtown, in the inner city. They end up beaten up, and they end up dead. They end up dead because somebody robs them for their AISH cheque, and they can't look after themselves.

I had a case like that, Mr. Speaker. It was very, very sad. A fellow with Huntington's chorea was beaten up so badly and put in the hospital. He was robbed for his AISH money. He was robbed downtown for his AISH money. He lived in a dinky little apartment with nobody to look after him. He was a street person, and he often would go to the Boyle Street medical centre or the Boyle Street co-op for assistance. He couldn't get assistance that night. Somebody took the boots to him. Three weeks later that man died. They killed him. He died without us knowing who he really was. He was a victim. He had suffered a mental health disease, and he was somebody that nobody else gave a damn for in the inner city. I don't want to see that happen again. [interjection] No, I don't want to see that happen again at all.

I'm concerned that we as Albertans have to be sure, when we pass legislation, that we're passing the best legislation for the people who need it, that they're going to be adequately funded, that the job training that they get is going to fit their needs, that they're not forced into a situation that's not going to work for them and that's going to end up costing the government more money in the end.

Quite frankly, I always think of the guy who was a drug addict that I arrested about three or four times. He had his wall plastered with different certificates, and he said: you know, they made me go to all these programs. This guy was taken off welfare. He said: I never passed any of them, but I had to go a certain number of times to get my certificates. So he did that, but he was never going to be reintegrated into society because we weren't helping him with his addiction problem.

I think that, yes, there are some issues here that are outstanding: the re-entry. I'm concerned about the asset testing. That's one of the issues that is much bigger, but I also think that we'd better have legislation that looks after the most vulnerable people and that we put them in a position that those that can help themselves can in fact do that and that we don't discount those that can't.

Thank you.

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

MR. SAPERS: Thank you, Mr. Speaker. I've been waiting my turn to talk about Bill 32, which is an amendment to the Assured Income for the Severely Handicapped Act. One of the reasons that I've been looking forward actually to the debate on this bill started when that report was first published – I think it was in the *Edmonton Journal* – about some changes that the government was proposing for AISH. At the time I was absolutely horrified when I saw that these plans had been put together and that they were going to be brought to cabinet. There was a fairly robust first denial and then defence and then finally, ultimately, a capitulation that in fact these were wrong-minded, ill-conceived, hurtful, and some would even say cruel proposals.

So when the government announced at the beginning of this session that there was going to be an AISH reform bill put before the Assembly, I thought for certain that it would be a bill that was going to try to reclaim all that ground, you know, rebuild the lost goodwill. I have to tell you that I'm somewhat disappointed. Now, that's not to say that the government commitment to increase the monthly stipend is not a good thing. In fact it's a long time coming. It's also not to say that the government didn't retreat from some of the more draconian proposals that had originally been put on the table.

It seems to me that the government didn't carefully listen to what Albertans were telling them and didn't carefully listen to their own Premier's council. I say that primarily because the government is sticking to its position that there are wealthy men and women – and

they're not coming right out and saying this, Mr. Speaker – who are somehow fraudulently collecting AISH benefits and ripping off the taxpayer because they're millionaires.

9:50

This whole notion that we've got this class of fraudulent rip-off artists involved in AISH I find, frankly, a little insulting. Having worked in human services for many years I can tell you that, yes, there is some abuse in our social service systems. I can also tell you that that abuse is infinitesimal compared to the amount of good that is done, and the abuse is usually easily ferreted out and ended. So to create a climate where people will be looking askance at those Albertans that by policy we have said should be entitled to an assured income, to be able to then cast a shadow of doubt over all of those Albertans I think is something this government should apologize for.

MR. DUNFORD: I'm sorry.

MR. SAPERS: Well, the minister of advanced education has started the apologies rolling. I will be looking forward to the apologies from all members of Executive Council as we move down the bench.

THE ACTING SPEAKER: As long as they do it through the chair.

MR. SAPERS: Through the chair. It's a burden on your shoulders, Mr. Speaker.

Now, the asset testing continues to be a problem. Let me refer to the government's own Premier's Council on the Status of Persons with Disabilities. In their status report dated February 1999 there is an article written by Elaine Chapelle, who is the executive director, titled The AISH Review. There are some interesting findings published by the council when it comes to the AISH review. I'll just refer to a couple of these findings.

First and foremost, the council says "that AISH must be an Individualized Income Replacement Program based on disability." Individualized; don't treat these Albertans as a group, as a class, as a category, or as a population to be managed. Treat these Albertans with the dignity that they deserve, the respect that they deserve, and treat them first and foremost as individuals.

Mr. Speaker, the article goes on to spell out some other rather interesting conclusions. It says "that the entire assessment process for employability needs to be reviewed." It also says "that benefits should be "more responsive to family size" in order to more clearly spell out the implications on the individual with a disability."

The last conclusion that I want to refer to is:

> Supports the review of the AISH program; however, considering assets in determining eligibility may severely compromise the original intent of AISH as an income replacement program.

The Premier's council's own words.

Why would the government disregard that input from its own council, chaired by the spanking new Member for Clover Bar-Fort Saskatchewan, and move on to include asset testing in a bill after creating this climate of fear and suspicion around those who are receiving an AISH pension?

They clearly had a media strategy, Mr. Speaker, they being the government. They clearly had a media strategy to do that. The Minister of Family and Social Services mentioned not once, not twice, but a triple play of mentioning these AISH millionaires in the House. I would say that he struck out, but he probably thinks it was a hat trick. Then he and his minions went and spun their story to the press, and there were at least half a dozen news articles with glaring headlines: government reveals AISH millionaires. The reality is that we still don't know the details.

As a Member of this Legislative Assembly, I would have expected the government to have put forward the information in a way that I can assess so that I could determine, first of all, whether or not these so-called AISH millionaires truly exist. If so, were they millionaires before or after they became eligible for AISH? On what basis were they counted as millionaires? Is it like the ranchers and farmers all over Alberta, who are asset rich and cash flow poor? Is what we're saying that you deserve a disability payment only when you are destitute and you have to bankrupt your entire family and get rid of assets that may have taken generations to amass? Is that the message that the government is saying? Well, of course we can't know because the government won't tell us. I know that that must make you furious, as it does me, because you're a fairminded man, Mr. Speaker.

Now, I will say that the government, in pursuing this fear mongering strategy – you know, it's one of the rules of propaganda: cloud the issue. One of the first rules of propaganda . . . [interjection] He's right, Mr. Speaker. I know he was making those remarks through the chair, so I'll answer him through the chair. The minister of federal and aboriginal affairs is absolutely right that I know propaganda. I did my term with agitprop. I don't know what he did with his youth.

So, Mr. Speaker, one of the first rules is to cloud the issue. When you're going to do something difficult and distasteful, create a strawman. Cloud the issue. So if you're going to do something distasteful like asset test, then cloud the issue by saying that there are AISH millionaires. Get everybody off pursuing the wrong scent. Of course this government are past masters at clouding the issue.

The government did a survey on AISH, and they got back about 800 responses. They got back some interesting responses. Mr. Speaker, they got back some responses that said – let me see; I've got a copy of their discussion paper here. It says, "Your feedback is important." It says: what we heard was that "existing AISH benefits are not always adequate." Well, Albertans were right, of course. It says that "people with disabilities want to volunteer or work if they can." Well, of course they do, and that's the antithesis to this whole fraud argument.

You know, the government spin masters would have Albertans believe that people who claim AISH are scheming and conniving and trying to cheat people. Of course, what their own survey found is that people with disabilities want to work. People with disabilities want to volunteer. People with disabilities, Mr. Speaker, are no different from you or me or our family members or our neighbours or our constituents. Of course, that's not what the government's propaganda machine would have you believe.

They also say that what they heard was that

> most people agreed in principle that a wealthy person should not collect AISH, but many people also believed that AISH clients and their families should be able to save for their future. Many people were opposed to asset testing but many others supported it."

Now, this is sort of the second rule of propaganda, Mr. Speaker. When the facts aren't with you, confuse them. So here we have a statement that says that many people called it black and many people called it white. So the government doesn't then say: oh well, then it must be gray. What the government says is: so we're going to asset test. We don't know how many the "many" is. We don't know how many of the 800 or so said one thing or the other. They won't give you those breakdowns. We don't know how many of those were multiple responses. We don't know how many of those came from organized groups. We don't know how many of those came from individuals.

[The Deputy Speaker in the chair]

So, Mr. Speaker, the government's own survey doesn't give us a lot of conclusions about asset testing, but we do know that at least

they acknowledge that there is some opposition to asset testing.

Now, the Official Opposition . . . [interjections]

THE DEPUTY SPEAKER: The hon. Member for Edmonton-Glenora has the floor. Will you please use it.

10:00

MR. SAPERS: Thanks. I thought Calgary-North Hill was going to rise on a point of order, Mr. Speaker. That's why I paused. But he didn't, so I'll continue.

Now, as I was saying, my colleague for Edmonton-Riverview decided to take the initiative, take the bull by the horns and consult with Albertans directly as well, and constructed a fair, honest, open-ended survey document with 11 survey questions, made available to anybody who wanted it, made available broadly, not made available to select groups, not trying to be orchestrated. My colleague received back about 500 responses, almost 600.

Now, I'm sorry that I can't account for why the government got back 800 and the opposition got back about 600. It could have something to do with the way there's a disproportionate allocation of resources for doing public consultations. You know, the government departments can use the entire budget of the Public Affairs Bureau at their disposal, and of course individual members of the opposition have to live within the constraints of constituency office budgets, et cetera. But that notwithstanding, Albertans were so eager to participate in an honest consultation about AISH that they sought out this survey that was put together by my colleague for Edmonton-Riverview, and we did get back those quality 500 to 600 responses.

I want to take you through some of those responses, Mr. Speaker, because I think they're very instructive. The first question was: "What factors motivated you to become involved in this consultation process?" Do you know that fully a third of the respondents said that fear is what motivated them? Fear. So I guess the government propaganda strategy worked. They created fear all right.

The second one was: "Are you currently receiving benefits from the AISH program?" Now, you would think, Mr. Speaker, that this survey would be dominated by those who may have a self-interest, that AISH recipients would be the majority of people who would respond, because they had a self-interest. That would fit into the government's thesis that these AISH recipients are somehow scheming and conniving. But the truth is that 53 percent weren't AISH recipients; 53 percent were Albertans who were concerned about their neighbours, who had compassion for those who were receiving AISH benefits and wanted to make their views known. So this was hardly a self-interest group.

I always find it interesting that when this government runs into opposition and it's organized opposition, they'll either try to dismiss it entirely or they'll say: oh, well, it's just self-interest. But when they get a group that supports them, they say: well, this group was obviously speaking with the broad public interest in mind. It's an interesting irony, Mr. Speaker, and it's a bit of a delusion. [interjection] I don't know if it's Tourette's syndrome that the minister suffers from, Mr. Speaker.

The third question is: "How would you rate the information provided by the provincial government around the AISH review?" Now, the responses go like this. Mr. Speaker, 83.4 percent rated it "not good, poor"; 3.5 percent said "confusing"; 3.2 percent said that it was "good, satisfactory." But you know what? Almost as many, 2.2 percent, said that it was "shocking, disgusting." Pretty strong words for Albertans, a pretty clear message to a government.

MR. DUNFORD: By 2.2 percent?

MR. SAPERS: Almost as many people who thought it was good, Mr. Minister.

Question 4: "What areas of the AISH program should be reviewed and what type of changes would you like to see in those areas?"

Speaker's Ruling
Decorum

THE DEPUTY SPEAKER: Excuse me, hon. Member for Edmonton-Glenora. We seem to have a lively discussion going on between at least the Minister of Advanced Education and Career Development and sometimes Edmonton-Riverview. I wonder if they could wait their turn, unless they've already used it, to enter into debate and let the Member for Edmonton-Glenora conclude his debate in the time that he has left.

MR. SAPERS: Thanks, Mr. Speaker. I understand what's got the government members so upset. It reminds me of something that Harry Truman is reported to have said. He's reported to have said: I never give them hell; I just tell the truth, and then they think it's hell. So I can understand why they're feeling so upset.

Debate Continued

MR. SAPERS: In any case, question 4: "What areas of the AISH program should be reviewed and what type of changes would you like to see in those areas?" Thirty percent said to review the benefits, 15 percent said to review the flexibility, and 13.6 percent said that the eligibility requirements need to be reviewed.

Mr. Speaker, the next question dealt with the adequacy of benefits: 68 percent, more than two-thirds, said that it's inadequate.

The next question reads as follows.

> The government has stated that asset testing will be one of the program changes that will happen after the review is completed. How much money and how many assets do you think would be reasonable to allow under the program? What assets do you think should be exempt?

You know, Mr. Speaker, even phrased like that, open ended, encouraging people to accept the notion of asset testing, 27.7 percent, almost a third, said that there should be "no asset testing" at all. Remember that the majority of these respondents were not people who are collecting AISH benefits.

Mr. Speaker, as far as the asset level: very unclear. Most of them, the highest percentage, 4.8 percent, suggested that assets up to $30,000 should be exempt, but 2.8 percent said assets up to a million. So clearly many Albertans, even those who believe in asset testing, would suggest that it should be a very, very high threshold.

Question 7: "Should AISH recipients be cut off the AISH program if asset testing is introduced?" Mr. Speaker, 71.3 percent said no.

The next question: "Will the new policy on ability affect current and future AISH recipients?" The responses are fairly spread out, but the highest response is that it was very unclear; 14.7 percent of Albertans just couldn't anticipate what the changes would mean, which again speaks to this whole notion that the government's communication around the process has been very, very flawed.

Question 9: "What category would you place yourself in?" Again, 42 percent were AISH recipients; the majority weren't.

Question 10: "Do you think the proposed reforms will make it easier or harder to qualify for AISH?". Mr. Speaker, 87.5 percent said that it would be harder. I'm sure that 87.5 percent is probably even higher than the majority vote that the Member for Lethbridge-West received in the last election. So he would have to accept that as a strong measure of constituent concern.

Mr. Speaker, question 11 simply asked for additional comments, an honest attempt to find out where taxpayers were at when it came

to this program. I will say that Albertans are proud of this program, and this is one of the legacies of a former Conservative government that we can all be proud of, that the government recognized its obligation to do the right thing by these people who need a little bit of help. Question 11 gives us very good input as to what's on the minds of Albertans, and I'll have a copy of it tabled with the House because my time has expired.

THE DEPUTY SPEAKER: The hon. Member for Lethbridge-East.

DR. NICOL: Thank you, Mr. Speaker. It's a real privilege this evening to stand and speak to Bill 32, the Assured Income for the Severely Handicapped Amendment Act.

It's a different approach in this bill in the sense that it covers two basic issues. It extends benefits in a very positive way to a number of people who are receiving AISH, and it also is changing the definition of the program in the way that it moves the program further from being a program which recognizes a severe handicap as something that is a difficulty for an individual and that we as a society see a need or a purpose in providing them with financial support to help to overcome that handicap. So what we've ended up doing is moving away from that perspective, where we're providing dollars because of the handicap to facilitate their living with that handicap, to a program which looks at providing money because they are economically disadvantaged as opposed to because they are suffering from a severe handicap.

10:10

I want to just begin by kind of reflecting on a few of the comments that came to my office as the debate ensued leading up to the introduction of this bill. We had a number of individuals that were involved either by being handicapped themselves or by being associated with persons with a handicap or by facilitating services to the handicapped. They came in and talked about the focus that was being provided in the public in terms of how this program was going to be changed. There were a number of them that were very concerned about how they would be treated, how their client would be treated, how their service would be affected, and what happened was that this basically created a lot of misinformation out there, misunderstanding, if you want to call it that.

When we finally had the program clarified, we saw that really what we've got now is a program that provided additional dollars at the base level to persons on AISH so that they could in essence get a little bit caught up – by no means caught up but getting started to catch up – on the cost-of-living losses they've had in the last few years. It basically then said that we have to look at this in terms of how we're going to qualify people to be eligible to receive those dollars.

Now, as we were talking about the issue of increasing the payment levels, one of the things that was interesting is that to the best of my knowledge I can't see where there's any kind of an automatic cost-of-living component built into it. This is something that possibly should be there. If we're going to provide this to them, you know, I don't see really as much of a geographic differential across the province as we might want to see there. Some of the payment levels should be based on actual costs. You know, a person on AISH living in Calgary is burdened with a higher cost of living than they would be in other parts of Alberta. I compare the rents and the transportation costs between Lethbridge and Calgary, and I guess I could live on a smaller bundle of goods in Lethbridge than I could in Calgary.

What we need to do is look at: is the base level of support that we're giving to them adequate? As I said, again, a lot of the people that were involved in the office were quite interested in or quite excited about the fact that they're going to get a raise, until they realized how little it was. Then they said: you know, it's basically not much above a dollar a day, and what's that going to do to us?

In that context we have to look at some of the others that were provided. The extended health benefits was a really positive issue because a lot of the persons on AISH do rely on or do have demands for many of the services that are provided under an extended health program. So they were very excited about getting this. In effect it gave a number of them some additional disposable income in their pocket because the program was picking up some of their medical costs. When they looked at it from that perspective, it did provide some opportunity for them.

Another component of the program that excited a lot of people was the ability to participate in the employment and training initiatives. This goes along with the idea that a number of them feel they do want to be contributing members to their own well-being. They want to be contributing to the society in which they live, and that's kind of a sign of the commitment that they make to overcome their handicap and to live with their handicap: the fact that they do make that commitment to their community and want to be an active part of it. Providing support through this program will do that. You know, that's one of the things that a number of them ask: why there was no more of a focus on or an increase in the support for maybe even the onetime types of things that are necessary for someone who is newly handicapped and has to make a transformation in their house or has to move to get a house that is handicap compatible. This is something that a number of them asked about, why that kind of support wasn't provided. They felt that if they could just get kind of almost like transition money or establishment money, that would help them get started to make the adjustment that was necessary as they had to live with their handicap. That's one of the questions that I would put forward to the minister. This is something that he may want to think about as he reviews the program in the future in making sure that these kinds of maybe onetime payments and adjustments can be made at a more reasonable level to allow for that initial start-up cost or adjustment cost that's necessary.

The other thing that I did want to talk about a little bit again was some of the things that the community found as a question mark. The asset testing component came out, and everybody brought this back to the debate: what is the real intent of the program? A number of the people who wanted to look at the program as an economic income support felt asset testing was very valid. The others who felt that the program should be a support to live with the handicap type of a program felt that it should be universal to persons who were defined to be suffering from a handicap of a certain kind and that needed to be there because effectively their costs were going to be higher living with that handicap.

When individuals would say, "Let's accept the asset testing base," you'd ask them: well, how would they see it being applied? This is where a concept which is reasonably appealing up front to a lot of people gets bogged down in application in the sense that when you ask them to define what should be included in the asset and what should not be included in the asset, there's very little consistency, very little uniformity in the responses you get. A number of them say: well, you know, let's look at it from the point of view of assets above what they need for basics. So, in other words, you leave out their house, you leave out their car, you leave out the assets that are associated with supporting their handicap, whether it's a motorized vehicle with a lift or whether it's other assets of that kind. They say: leave those out. But then you say: okay; what do you mean by leave out their car and leave out their house? Is it a $10,000 house or $150,000 house or a million house? Is it a car that has the same

asset test that we have for social services, where if it's above a certain level, it doesn't qualify, but if it's below that, you can still have it and drive it and qualify?

Then people say: well, you know, this is not really so easy to define anymore. Especially when you're dealing with dependent children, how do you deal with the assets of the extended family? How far do you extend the family? Is it grandparents? Is it parents? Is it yourself only? Is it your spouse, maybe your spouse's family? How do you put these definitions into this kind of a program? I guess this is where the real debate comes out about: how do you start talking about asset testing or ability to support oneself without public support testing, you know, needs testing? Basically, the philosophy as this set of amendments is being brought forth in Bill 32 is that we're seeing a transformation to a much broader extension of the definition of responsibility for a person with a severe handicap. We're saying that the members associated with that individual who previously were not part of the eligibility investigation are now being brought in and being dubbed with some of the responsibility of financial or other support for that person with the handicap.

10:20

These are the kinds of things that we run into and say, you know, where do we stop this definition? Where do we draw the fence line that says: okay; that's where your support responsibility ends, and it becomes a common good for us to help support someone who is handicapped. I think a measure of the kind of society that we are living in is where we define those boundaries and where we define the limits to where we expect an individual to make arrangements for himself when they are disadvantaged, to where we encourage the public to take a participatory role in supporting an individual who has a handicap. So what we need to do is deal with this from the perspective of: where do we really want those fences drawn?

This is something that I think is going to take a long time for us to fully develop and fully implement, because, Mr. Speaker, we see a number of cases where you run into this issue of how do you define assets versus incomes, and the ability of individuals now through proper financial and legal counsel – it's quite easy to in essence take an asset base or an income flow and massage it to fit into the kind of criteria that we're defining associated with this bill. I would suggest that we have to make sure that as we get to implementing this asset testing and needs testing component, we should be looking at clear definitions and all-encompassing definitions, definitions that block some of those possible ways to manipulate the program or to manipulate financial holdings or financial flows so that we can have a clear reflection of the need component that's associated with the individual being considered for this.

So, Mr. Speaker, with those few words I think I've covered the issues that were raised in my constituency with respect to this program as it was being discussed this winter and spring. It looks like basically there was a mixed sense of feeling about the program. A lot of people were excited about the opportunities that were being provided, but they were very concerned again about some of the fences that were being built and some of the boundaries that were being created to either allow people to have access to the program or to actually exclude people from the program and also the additional component that I talked about in terms of the extended community that would in essence take on responsibility for a person living with a handicap as opposed to that individual and society having the relationship that allowed for society to support an individual who couldn't support himself.

So on that, Mr. Speaker, I'll close and look forward to possible amendments or whatever changes that can be used to improve the bill as we proceed it through the House. Thank you.

SOME HON. MEMBERS: Question.

THE DEPUTY SPEAKER: Before we call the question, may we get consent to briefly revert to Introduction of Guests?

HON. MEMBERS: Agreed.

THE DEPUTY SPEAKER: Opposed?

head: Introduction of Guests
(reversion)

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

MR. SAPERS: Thank you very much, Mr. Speaker and colleagues, for unanimous consent to introduce a guest in the gallery. I'd like to introduce Elena Cecchetto, who is here because she is concerned about Alberta's natural environment and particularly about Bill 15. Elena is the co-ordinator of the Foothills forest campaign for the Alberta Wilderness Association. I would invite her to please stand and once again be welcomed to this Chamber.

head: Government Bills and Orders
head: Second Reading

Bill 32
Assured Income for the Severely Handicapped Amendment Act, 1999
(continued)

[Motion carried; Bill 32 read a second time]

Bill 35
Government Fees and Charges Review Act
(continued)

[Adjourned debate May 5: Mr. Gibbons]

THE DEPUTY SPEAKER: The hon. Member for Edmonton-Riverview on a fresh start.

MRS. SLOAN: Thank you, Mr. Speaker. A bit of a reprieve. I feel refreshed and ready to provide some insightful thoughts on Bill 35 this evening, the Government Fees and Charges Review Act.

To begin, I thought I'd offer a comment that was made by a very esteemed politician in our country. It went like this:

> When I think of some of the statements made here I begin to think that we are living in a new age of palaeontology – political palaeontology – the invertebrate age, which is government without a backbone.

That statement was made by John Diefenbaker, and I thought how appropriate it is for introduction to the debate on Bill 35, because in essence, Mr. Speaker, a government with a backbone would have acknowledged that all of the aspects of fees that are encompassed in this bill are really taxes, but they didn't have the spine to call them that. They didn't have the political courage to make it clear to Albertans that that was the case, because they'd been very hard at work concocting the spins and messages that taxes in Alberta were going down, and all the while some Albertans – I wouldn't say all but some Albertans – have been hoodwinked into believing that taxes are on the decline.

Now, in fact, it appears that the government of Alberta has been somewhat hog-tied by a ruling of the Supreme Court in the Eurig estate case and has found themselves in a position where in order to respond to that ruling, Mr. Speaker, they have to review at least 800 of the user fees that have been initiated in Alberta since the reign of

the Klein government began. In fact, if we wanted to be really factual tonight, we most probably could say that there are about 1,300 fees that actually should be under examination. In that respect, perhaps Bill 35 in its scope doesn't go quite far enough. It is, though, to factually establish the intent of the bill, proposing to protect or freeze 800 user fees and charges levied by the government for one year, pending a review of those fees.

I understand that we're going to have a committee that has been established. It's becoming a very common type of committee, Mr. Speaker, comprised not of equal representation of all democratic parties that exist in the province, not comprised of any experts in the area of taxation or user fees but rather, as is now so commonplace in Alberta, a committee that is representative of a particular political ideology and some private-sector representatives that for all intents and purposes would perhaps propagate the same political beliefs if they had the opportunity to hold political office at some stage.

Mr. Speaker, we're almost in a position this evening to be able to predict what that committee will determine when its review is completed. I would like to speculate on the record that in some way there will be an attempt to somehow cloak the existence of these fees in justifiable terms, that the majority cannot be referred to as taxes because there is an identifiable expense attached. Of course I don't have the thousands of dollars that exist and offer the spin expertise that the Premier and his government have within the office of Public Affairs, under the auspices of his office, but I'm sure that given the number of weeks we have until the conclusion of that review, Mr. Speaker, that office will be able to come up with something that will reinforce the government's ideology and Toryspeak on this issue.

10:30

We know that from 1992 the Klein government has introduced or increased 500 separate user fees, licences, and premiums. Over 400 have been introduced by regulation. Talk about an intentional misleading of the public, not only to introduce them, Mr. Speaker, but to introduce them in a way that does not engage the public democratic process, does not engage the Legislative Assembly, doesn't put them out in a comprehensive report to allow the public to be informed but rather introduces them by regulation, private, backroom, cabinet order in council.

Five hundred new or increased user fees represent an additional $289 million in new provincial taxes in the province. That's $97 in new taxes for each and every taxpayer in the province. While the revenues from user fees, premiums, and licences have gone up 28.1 percent over the past seven years, Alberta's population has increased by only 12.6 percent. That's an interesting comparison. While the revenues from health care premiums have gone up by 60.5 percent over the past seven years, Alberta's population has again only increased by 12.6 percent. Over the course of the next three years, from 1998 to 2002, the government is expected to raise an additional $101 million, or 7.8 percent, more in taxes from new or increased user fees, premiums, and licences. That's another $33 for each and every taxpayer in the province.

The other interesting statistic, Mr. Speaker, is derived from Statistics Canada data. Alberta now has the third highest level of user fees per capita among the Canadian provinces during the '97-98 fiscal year at $389 per person. Three hundred and eight-nine dollars per person.

Now, let's just go to a little bit more specific analysis. In considering Bill 35 Albertans have a right to know about all the tax increases this government has made over the past seven years, in the tenure of Premier Klein. In the last seven budgets AADAC room and board fees have increased from zero dollars to $10 a day. The government has increased duplicate and permanent teaching certificates from zero to $20. Teacher certification fees have increased from $20 to $35. Student transcripts have increased tenfold, from zero to $10. Individual campsite permits have gone from zero to $2 a night. Also, group camping permits have gone from zero to $20 a night.

The hon. Minister of Community Development, through the chair, Mr. Speaker, is expressing some surprise or exasperation over that, and I share that, because those permits are for provincial parks and lands which should be open to every Albertan regardless of their ability to pay. They are owned by the taxpayer. Why should a family that is in the category of earning less than $20,000 a year, as I spoke about this afternoon, not have the ability to take their children on an overnight camping trip to a provincial park in this province? Well, as this would go, they could be paying up to $20 a night. As the Member for Edmonton-Rutherford talked about, we have recipients of AISH in this province that exist with $30 of disposable income a month. Would those people be able to afford to pay these fees in conjunction with all the other ones that have been imposed? I suspect not.

Specifically by regulations we have had increases in nursing home per day standard ward accommodation fees from $18.25 to $21.40. That regulation change occurred in July of '93. We've had rangers' fees increase from $10 to $25 through regulations in September of '93 for services to capture or contain animals. Public vehicle classification fees and permits were set at $50 through regulation. That also occurred in '93. Marriage, birth, or death certificates, something many Albertans utilize, have increased from $7 to $20 through regulation. That change was brought in by the government by regulation in 1995. A $25 initial fee under freedom of information, again through regulation in '95, and changes as well made to increase fees paid by skiers brought in in October of '96.

I'd like to provide some analysis made by individuals aside from the Official Opposition, including the province's own Auditor General. In his 1993 report, five years ago, Mr. Speaker, the Auditor General said: the Treasury Board also should fully review and report on alternative procedures that could be established to ensure that the Assembly has appropriate opportunity and information to decide which user fees to review; such a review could involve the examination of fees to determine whether the minister has the authority to establish such fees, affected users have been adequately consulted, and the costs and benefits of imposing the fees were assessed.

By the statement being made, Mr. Speaker, it seems to me this issue has been out there circulating for some time. The government has been more than aware of it but has chosen not to act until they were forced into a position of having to respond by the Supreme Court. That's unfortunate. It's not accountable government. It's almost governance by default or governance under duress.

Another interesting reference with respect to user fees is a report that was completed by the Alliance of Manufacturers & Exporters. This was commissioned. It's entitled User Fees: Where Does the Buck Stop? It appears as though the publishing date was 1999, so this year. I'd like to specifically spend just a few moments actually talking about the economic impact, the business sector impact of user fees that the alliance report provides. The report stated that

> business impact analyses should also examine how proposed fee structures may affect revenues and workload for the regulatory program. One of the key values of a business impact analysis for the regulator is to assist in determining the feasibility of the fees in generating the revenues required to survive and carry out their regulatory mandate. Further, the analysis should examine how demand for government services will be affected by charging of fees. In essence, the analysis should provide a sense of the demand elasticities for the government's services.

Now, I'm wondering if the government's committee is going to

consider some of these recommendations and suggestions for examination. I would highly recommend that they do so.

10:40

Under another section the alliance report spoke about the cost to consumers and raised the point that the ability of the industry to pass on these costs, the user fees, to consumers is unknown.

> As discussed earlier, decisions about passing on prices to consumers are affected by a multitude of factors within the marketplace. What is known is that in the long run, economic theory suggests that prices will stabilize in a competitive marketplace at the value of marginal costs. Since fees increase marginal costs to companies, the additional full cost of fees will eventually be passed on to consumers in the form of higher prices. This implies that over time, Canadian consumers would face increases in overall consumer prices of about 0.3%. The $534 million increase in cost recovery for mandatory regulatory fees since Program Review could lead to increases in consumer prices of 0.1%, and a reduction in real disposable income of 0.1% (again, based on $500B in annual consumer spending in Canada). This does not include the effect of reduced choice for consumers where products and services are removed from the market because of fees, or are delayed or not introduced . . . because of fees.

Again, astute observations and useful recommendations that the government should consider to make their review worth while.

Just to conclude on this report, Mr. Speaker, the alliance made some recommendations, and their recommendations were provided in three options. One was that user fees could be eliminated for regulatory services. The second option was really the status quo; the government could take the ostrich approach and ignore the problem. The third was to get the policy under control providing a greater degree of accountability and scrutiny of department's cost recovery regimes through user fees.

Now I'd like to talk just a little bit about the moratorium suggestion. The recommendation in this section spoke about placing a "moratorium on new or increased regulatory fees until the actions described below are taken." The report indicated that

> the Cost Recovery Policy should be updated with the addition of an Implementation Standard. Given the concerns raised by stakeholders, the Auditor-General, the Finance Committee and the Supreme Court, this Standard should be developed to ensure more uniform, consistent and fair application of regulatory fees . . . The Implementation Standard should require, but not be limited to, the following:
>
> – cost of service provided;
> – private benefits;
> – fees for regulatory services;
> – and cost to other jurisdictions, taking market size into consideration; fees based on more accurate marginal . . . more rigorous determination of direct [costs], justification for charging right or privilege.

I'm not going to go through all the additional recommendations, Mr. Speaker, but I'd point that report out to the government MLAs that are serving on the review committee and highly recommend that they consider it in their deliberations.

Now, the Official Opposition has made a number of recommendations with respect to this as well. I'd like to briefly summarize those. Before I do that, though – I spent a bit of time this afternoon just contemplating perhaps all the other market opportunities the government saw on the horizon with respect to user fees. This paranoia exists, Mr. Speaker, because I've long heard this government talk about the fact that there's only one way taxes are going in this province, and that is down. It's really a matter of the government making a statement but the brain not being engaged, because as the population of the province grows, as the infrastructure demands grow, the revenue requirements are going to be there, and they can choose to ignore them or choose to find resources for them.

Thank you so much.

THE DEPUTY SPEAKER: Would the Assembly agree to briefly reverting to Introduction of Guests?

HON. MEMBERS: Agreed.

THE DEPUTY SPEAKER: Opposed?

The hon. Member for Edmonton-Glengarry.

head: Introduction of Guests
(reversion)

MR. BONNER: Thank you very much, Mr. Speaker. It is a pleasure this evening to rise and introduce to you and through you Mr. Sam Gunsch. Sam is with the Canadian Parks and Wilderness Society, and he is here this evening hoping to hear some debate on Bill 15. I would ask him now to rise and receive the warm applause of the Assembly.

head: Government Bills and Orders
head: Second Reading

Bill 35
Government Fees and Charges Review Act
(continued)

THE DEPUTY SPEAKER: The hon. Member for Edmonton-Mill Woods.

DR. MASSEY: Thank you, Mr. Speaker. I'm pleased to have the opportunity to make some comments about Bill 35, the Government Fees and Charges Review Act, at second reading and to spend a few minutes looking at the principles and talking to the principles that underlie the bill.

Before I get into the specific principles, I want to explore just a bit the reasons why this bill is before us. There's been reference, of course, to the Supreme Court decision in the Eurig case, where the court ruled on the probate fees charged in Ontario, ruled that those probate fees levied by that province were in fact a tax and that as such it had to have the approval of the Legislature before they could be levied.

There are a number of other reasons, though, other than the Supreme Court decision in the Eurig case, that we should be looking at user fees. Reference is being made to the study that was conducted by the Alliance of Manufacturers & Exporters Canada entitled User Fees: Where Does the Buck Stop? Even though it's a look at federal user fees, they explored with the public reasons why those fees should be examined, and I think those reasons are equally valid as we entertain Bill 35.

Some of the reasons they list are, first of all, that "there has been substantial growth in regulatory fees in recent years." Those fees have had a number of purposes. One of those purposes has been to meet government revenue targets in some cases and that they are not always supportive of sound policies by government. So the rapid growth. A number of speakers have already identified the magnitude of that growth here in our province in the last number of years.

They go on to indicate another reason why we should be looking very carefully at user fees. They are "often levied by a monopoly supplier," that in many cases it's the government itself, and that there's a limited ability to improve or look at the resource gains that are a result of the imposition of those fees.

10:50

Another reason they suggest is that there's confusion in terms of

user fees or regulatory fees because there's "a mixture." There are those fees that are "fee for service, where the price reflects in some manner the actual cost of providing the service, and fees for a right or privilege" of undertaking some activity, and it was their experience that that price for those right or privilege fees "often bears no relationship to the cost of the service provided."

Another reason they suggest a review is timely is that the "regulatory fees have pervasive and complex effects on the economy and," our concern here, "on consumers." I think my colleague from Edmonton-Riverview made some comments about this particular reason. User fees do impact citizens to a very great extent. We look at the debate about some of the fees levied in our own province, and we see that impact very clearly on some income groups when we look at health premiums and even the debate over whether the premium is a fee or not.

Another reason that they indicated a review of fees is needed is that the fees can "have a detrimental effect on the competitive position of our businesses, on productivity," and even on the kind of "revenues generated by government."

So they give five sound reasons that sit aside the Supreme Court judgment for the review of regulatory fees and charges. I think the two key points they made in referring to those fees are that there are two kinds of fees. There's a fee that must be directly related to the cost of providing that service, and we know that as a tax. Then, if it is a tax, it has to be imposed by an act of the Legislature; it can't be imposed by regulation. It's those two key points that underlie the reason for this bill being before us, in part, for the government bringing it forward and then putting in position a committee to review it for the province.

Looking at the principles that seem to sit beneath the bill, one of the principles is that it's important that the differences between user fees and taxes be made. Again, that has its roots in the Supreme Court decision. Given that that principle is really one of the outcomes of the review, you have to ask: how much difference does that make to Albertans, to the person on the street? The distinction between a fee and a tax is usually lost on most of us. It usually just means that it's something you have to pay, and whether a health care premium is a tax or a user fee really doesn't make much difference. Again, it's a sum of money that you have to come up with one way or the other. So while there is great concern arising out of the court case and the whole thrust of this bill is pointed at trying to make that distinction, for most Albertans I suspect it's not a huge issue, except where those fees bear no relationship to the cost of the service that's being provided. There I think it could generate some concern.

Another principle that if not stated is inherent in the bill is that there needs to be a more uniform, consistent, and fair application of fees. I think that's an important principle we can all support, that those fees, the ones that are levied, have to be above all fair, that if you're being charged for a service or a privilege, that is seen to be fair.

Some of the fees that are listed in the bill itself. For example, if you look at the teacher certification fees, for Alberta graduates the fee is $200. For out-of-province graduates in North America it's $225, and for out-of-province graduates, foreign graduates, it's $250. It just somehow or other seems to me that if you're examining documents that are issued by Alberta institutions, that is a somewhat easier task than if you're trying to examine documents from Thailand or from Korea or from a more remote jurisdiction. Yet is $50 really the difference in completing that task? So, again, this notion of it being fair and somehow or other related to the service I think is important.

There are other examples you can look at, too, in terms of those that the bill will have examined; for instance, some of the fees under the Universities Act. I know we'll get an opportunity at committee stage to look at some of the fees in detail. When you look at fees for private colleges, accreditation board fee schedule: $4,000, $15,000, $11,000, $6,000, very, very substantial fees for the review of applications of applicants for some of those institutions.

The whole business of fairness is a particularly important aspect of this legislation. The debate that will surround it won't conclude with the passage of this bill; it will really just start as the committee does its work. Fairness, I suspect, is going to be paramount in the minds of those people that are discussing it.

There are a number of other principles that the bill should embody. I think it does, for instance, make the distinction that fees are a mixture of fee for service and fee for a right or a privilege. There's the principle that the fee policy – and I'm not sure it's a principle – the notion that somehow or other the fee policy has to be brought under control. This bill is part of the actions the government is taking to try to make sure that is exactly what happens: that the fee policy is reasoned and is one that makes sense in terms of public policy.

A fifth principle that I think the bill embodies is that there should be a justification for charging right or privilege fees. There are hundreds of fees, of course, listed in the bill. You can go through, and it doesn't take very much reading for you to start having questions raised in your mind as to the relationship between the fee that's being outlined there and the privilege that is being paid for.

Another principle which, if it's not embodied in this legislation, will certainly be embodied in actions and the bills that follow it is that there must be accountability for fees, that if it's not in the legislation, it will be enforced by the courts, that there has to be accountability for future fees, that they have to bear relationship to the costs involved, or if they don't, that they're passed by an Assembly and are labeled taxes as such.

11:00

With that sort of set of principles that are part of the bill and will probably be part of future legislation, I'd like to conclude, Mr. Speaker.

There is one piece that's not included in the legislation that I think should be given a more prominent place in the legislation, and that's the fees charged by delegated authorities. There's quite a difference in the fees that are listed here and some of the fees that are charged by those authorities, yet how those are going to be addressed I don't think is quite clear. How are we going to make sure that those delegated authorities' actions are consistent with the actions determined by the Supreme Court and the actions that would arise out of the principles that are embodied in this bill?

Just one last concluding comment, and that is on the approach of the government to user fees and on how healthy I think it is that this bill is here for public examination. It has been an area clouded by more rhetoric probably than reason. This gives all Albertans an opportunity to see what those fees are and to see what the charges are and to see that the public policy that's being developed with regards to those charges is rational, fair, and acceptable.

Thank you very much.

THE DEPUTY SPEAKER: The hon. Member for Lethbridge-East.

DR. NICOL: Thank you, Mr. Speaker. It's a real pleasure to rise this evening and speak to the bill on the review of government fees. This is kind of an interesting piece of legislation to read through. It effectively is a couple of pages and then a whole bunch of inclusions or schedules. As you read through the bill, it just basically tells us that there's a set of fees, approximately 800 by count, that are being

set aside for review. It's interesting in the sense that in the bill there is no reference at all to how that review is to be undertaken. You have to ask what criteria the members of the committee have – and I must say they've undertaken quite a task, so my hat's off to that committee – in terms of how they're going to go about carrying this out.

Cost of service is a term that was used by the courts in the Eurig case. How do you define that? Is it defined by some phrasing in the legislation? Is it defined by some reflection of service provided? Is there the possibility for a dual-purpose fee? How are we going to measure those kinds of conflicts that exist within a fee?

Let me just elaborate a little bit on that, Mr. Speaker. You know, it's very easy to price out or cost out a fee in terms of the cost of that service and the service provided. If all it is is, "Here, please take this piece of paper and xerox it," and you need a dime to put the xerox on and so much an hour for you to walk the 10 feet to get it done, you can come back and say, "Okay. The cost of that was 15 cents." But if we're looking at it from the perspective of some of the fees that are listed in here – and I just happened to be thinking about this.

I opened almost the last page there. I started looking down a list of a number of the fees that are being charged for certain aspects under the Wildlife Act or some of the hunting fees. You look in there and see that, gee, there's a different price for a resident elk licence versus a resident moose licence. I'm sure there's no difference in the cost of processing those two papers, but what this really does reflect is not just necessarily the cost of service. That differential in that fee there is because there's two functional purposes to that fee. At least that's how I interpret it, and that's how I think it's interpreted in the community. The difference there is the cost of providing the piece of paper and the administration that's associated with it, but it's also a method of controlling the use of the resource that applies to it. In other words, by having a higher fee on one licence, we can limit the number of people who are willing to pay that fee to in essence shoot the appropriate animal or capture the appropriate animal or trap it or whatever the appropriate definition is.

So will the committee have the flexibility that they can look at the actual purpose that's legislated for that fee when they determine what the cost of service is? It isn't only the cost of providing the relevant piece of paper or the service. It's also an alternative definition which could say: we're using this fee for something more than a strict provision of service. You know, that's something where we want to be able to make sure as a government agency that that option is still there. We want to be able to control use through fees as well as control use through the cost-of-service concept.

Now, I would say that I don't know whether we necessarily want to be in a position where we classify something that is a control-of-use fee as a tax. The control-of-use fees are basically prices that exist in the commodity market when you've got a monopoly power. They are not necessarily thought of as a tax. They may be thought of as a pure profit in an economic sense but not necessarily as a tax. So I guess what we almost need to do is say that maybe the Supreme Court didn't go far enough in defining what it was. They defined in a very specific sense what they perceived as a violation or a noncompliance with a part of the Constitution, but they didn't go far enough to say what the criteria are where we can define things that are not just a cost recovery fee as opposed to a tax. There are a whole bunch of other reasons for having costs associated with something, whether it's to provide a general revenue as opposed to a cost-of-service recovery. So I look forward with anticipation to the results of the committee as they undertake that debate to look at how those kinds of different definitions can be put in place.

The issue that we're also looking at when we're dealing with this is really: how is the committee going to go about defining the service? Again, I started at the other end of the act and looked at one of the first pieces that showed up there. Well, in fact it was on page 4 where it came up. I was trying to pick out something that I would recognize and be able to talk about with some background and experience, and I said: my gosh, the Universities Act is included here, so the fees charged under the Universities Act will be included in this.

Now, let's look at student tuition fees. What is the service provided by that tuition fee? We saw the minister's budget, and in his Universities Act amendment a little while ago he said that they were going to limit the tuition costs to 30 percent of the gross expenditures of the university. Well, now, is that 30 percent of the total cost to the university? Is that how the measurement is going to be done with the concept of this ruling, or is it going to be the cost of the service; in other words, the education that is provided by that university?

11:10

Universities are multifunction institutions. When I was a faculty member at the University of Lethbridge, I was hired on a contract that said that 30 percent of my time would be spent in the classroom. The rest of it was engaged in nonteaching functions. It was either administration or research or community service. So effectively 30 percent of my time, 30 percent of my office, 30 percent of the staff that were in support of the department I was in that were assigned to me would also be only that part that was associated with the actual teaching component and the education component that I was carrying out. So when they look at tuition fees at a university, will they be looking at that adjusted cost of the university in terms of whether or not the fee is excessive, or will they be looking at the total cost of the university so that in essence what we've got is obviously a fee that does not cover the cost of service?

Effectively, what I'm trying to point out, Mr. Speaker, is that when the act was put together, it would have probably been appropriate to at least put in a section that would say that the cost of the service or the function of the fee must be defined in the context and under the purpose that it was applied to in the act. I've heard a number of people come into my office and say: you know, the health care premiums are by definition just a cost recovery to cover the costs of the administration of the health insurance act. Well, if that's the case, that's a lot different than saying that your health care insurance premium is a premium to cover a proportion of your total health services. What we need to do, then, is make sure that as we look at the effective way of defining these costs and the relative fee that's associated with them, there's a clear definition and that that purpose is defined in the act.

Mr. Speaker, that leaves, I guess, a couple of observations on what can be an outcome of this review. What we might see, then, is possibly the committee coming back and saying: yes, this fee is in excess of the cost of service using this definition for cost of service or service provided. But if we change the definition of that service provided, then the fee is still legitimate. Rather than reducing the fee back to that cost of service, what we do is we redefine the service provided by that fee. Is that going to be an option that the committee will also have? In essence, we'll see a whole series of amendments to the appropriate acts that are included in schedule 1 coming in, and in each of those there'll be changes in the definition of the fee so that the definition is broad enough so that the cost of providing that defined service is by far in excess of what the fee was. So that's another option of how to get around the court ruling.

I think we have to look at whether or not that kind of flexibility is going to be provided to the committee. You know, I was talking

about those hunting licences a minute ago, and yes, it's conceivable because of the difference in the fees charged for different animals. The cost of providing that service – in other words, issuing that piece of paper – shouldn't be as variant as what is reflected in those fees. Effectively we've got to be able to either justify why there's a difference in those fees or say that the fees all have to be made the same. So what we do is we go back and define in the legislation an additional charge which reflects quantity control or volume. That way, if we want to reduce the volume of the number of those licences issued, what we'll do then is raise the cost by increasing that component of the fee. We in essence, then, have a way around trying to say that these are effectively taxes.

The other thing that's missing in the act, Mr. Speaker, is the complete definition of how the government relates the arm's-length services that are now being provided more and more through the delegated authorities. How do we bring the measure of those in? You read the Supreme Court ruling, and it refers to fees imposed under legislation or through regulation; that is, not directly stipulated in legislation. Well, a lot of our delegated authority legislation effectively delegates to those authorities the right to charge a fee. Is that any different than legislation that delegates to a minister the right to charge a fee? So how do we end up then saying, "This is good," or "This is not a tax"?

If it's a fee, even within a quasi-government agency or a delegated authority, we in essence could have the option for cross-subsidization of costs by having fees in this area and no fees or higher or lower fees in one area or another, which would be effectively the same issue that was challenged by the Eurig estate. Effectively we could have eliminated the possibility of future challenges to some of our fees that are imposed through delegated authorities by just including them in this legislation. The effect there is to look at how we can make this whole thing cost-effective and not a continuing activity that we have to undertake. We could do it all now instead of trying to do some of it and then find out later that the court really was implying a broader definition of what constitutes a government fee and then having to expand the mandate of the committee and come back and do things like the delegated authorities.

You know, there was a comment made to me – and I kind of chuckled when I heard it – that maybe the government's willingness and very open effort at putting such a large number of fees into the legislation and dealing with them all up front was to decide and to find out how many of the current functions that are carried out by government are effectively cost recovery. If they're cost recovery, maybe these are functions that we can then move outside the government and put them out into the private sector. So maybe what we could see is an ulterior motive here, and this is in effect identifying more agencies and more branches of the government that can be moved out from government control.

Mr. Speaker, I think I've covered the definitional issues that I wanted to address. Basically, how do we define the cost? Are there other fees that do not necessarily want to be defined as a tax that can be used legitimately under government legislation, and basically why wasn't it a more encompassing piece of legislation?

With that, I'll take my seat and let someone else join in.

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

MR. DICKSON: Thank you very much, Mr. Speaker. Really what I need is some kind of apron on my desk. I'm not sure who I see to gather up my amendments and my files here, because I spend all my time trying to find my speaking notes.

Mr. Speaker, just a couple of observations I wanted to make on the bill. I've been sitting and listening to what I think has been a withering, an absolutely withering analysis led by the Member for Edmonton-Glenora and then supplemented by the colleagues you've heard tonight: Lethbridge-East and Edmonton-Centre and Edmonton-Riverview and the balance of my colleagues. I found that there were a couple of elements that I thought could be further developed, so with the indulgence of my colleagues and members in the House I wanted to explore two issues which I think have perhaps been touched on but not explored to the extent that maybe the circumstances warrant.

The circumstances largely come from something the Provincial Treasurer said the other day. I'm not sure that the Provincial Treasurer has Mackenzie King as a particular hero of his, but it was of course Mackenzie King who said in 1931, quote, the promises of yesterday are the taxes of today, closed quote. He said that in 1931. I don't know whether Mackenzie King was thinking of user fees when he made that observation, but there certainly is some truth to it.

11:20

But what struck me and what motivated me to join the debate tonight was the Provincial Treasurer's comment in *Hansard* on April 27 when he was asked a question by my colleague for Edmonton-Glenora about another element of these nasty user fees, user-fee taxes, and the Provincial Treasurer turned it into an amazing speech. You could almost hear the trumpets blaring in the background as he went on to say:

> We are the only province in Canada that is doing a sweeping and comprehensive review of all our fees, and it is not because we have been ordered to do so by the courts. It is not because of that. We want to review all fees to see which ones are appropriate and to see which can be reviewed.

I thought to myself, you know, there may be some Albertans channel flicking at 3 in the morning, whenever it comes on in the early morning – another Albertan that only has a part-time job because they can't find a full-time job, and they have to watch question period while they're waiting for their part-time job to kick in – who might have watched it and might have thought: "Well, by gosh, the Provincial Treasurer. This man is a wonderful leader. This man is doing something that all taxpayers should be happy about."

Now, what happens? Maybe there's a position in the UA leadership campaign for a downtown Calgary Liberal, but the point I was trying to make is this. When I heard him say that, I wanted to stand up – unfortunately only one person can ask a question of the Treasurer at a time. I didn't get a chance to ask, but if I had, I would have wanted to say this: Mr. Minister, you know, the Eurig case, the Supreme Court of Canada decision came down on I think October 22, 1998. The hearing was on April 27, 1998, and you know what was interesting at the hearing – and I haven't heard this in the debate – is that this was not just the province of Ontario fighting the Eurigs in terms of whether the probate fees were appropriate or not. In fact, what we find is that in the good old province of Alberta, there were lawyers on this case acting for the Attorney General of Alberta, and they appeared when this case was argued not a matter of weeks ago, not a matter of months ago but when the thing was heard on April 27, 1998. Well, Mr. Speaker, isn't that a little more than a year ago that that hearing took place? A little more than a year ago. So we had lawyers representing the government of the province of Alberta there.

Now, does anybody think that the lawyers simply stumbled into the hearing on April 27, 1998, without having done a motion book first, without having done a factum first? I want to pay tribute to my colleague for Edmonton-Norwood who had the thoroughness and the initiative to root out a copy of the factum. This is the written argument submitted by the government of the province of Alberta to

the Supreme Court of Canada on the Eurig case, and this is on behalf, members, of all of us. When the Attorney General fills out one of these factums as an intervenor and goes in front of the Supreme Court of Canada and every time that lawyer opens his mouth, he's speaking for every one of us in here. He's speaking for Albertans.

AN HON. MEMBER: Or her.

MR. DICKSON: Or her. In this case it was a him.

So what that tells us is that the government of the province of Alberta was actively involved in fighting, not helping, the Eurigs, who were trying to challenge an unfair, legal tax. Where was the Provincial Treasurer then when these people were challenging their probate fees if he really believed that it was time that we rolled back these unfair, usurious user fees? And we were going to try and rein him in. If he were really concerned about the taxpayers of the province of Alberta, where was he? He was joining forces. He was locking up with the province of Ontario to defend these user fees on behalf of the people of Alberta. Mr. Speaker, how he could say with a straight face – that's the remarkable part – on April 27 that "we are the only province . . . doing a sweeping and comprehensive review . . . and it is not because we have been ordered to do so by the courts"?

Mr. Speaker, this has been a revelation on the road to Damascus because we've seen the Provincial Treasurer become a sudden convert, coincidentally, after the Supreme Court of Canada read the riot act to every provincial government in this country. If, indeed, the Provincial Treasurer was so concerned about these unfair, illegal taxes, one would have thought that he would have found his resolve, would have found his feet, would have found his voice long before April of 1999. It was an amazing assertion when he said it, and I don't know how my colleague for Edmonton-Glenora managed to keep from laughing long enough to ask his following supplementary questions. That was a feat in itself.

Let us spend a moment and see what the province of Alberta and Albertans were having represented on their behalf by their counsel. This factum of the intervenor is great reading. I encourage anybody here who's generally concerned about taxation – let me know and I'd be happy to send a copy over to you if you can't get it from the Justice department. It's a document that may not be readily accessible.

Let's just highlight some of the things that our Provincial Treasurer said on our behalf in this factum. The first thing is that they argued that because a probate fee was a charge in relation to a regulatory scheme, it was fine and we didn't have to worry about this nasty tax business. What, in effect, our provincial government was saying is that as long as there is "a regulatory scheme," any charges under that needn't be scrutinized further; in other words, as long as there's some regulatory scheme.

That links up with another issue which has been of enormous concern to this member in the seven years I've been an MLA, and that is that we do far too much lawmaking outside of this Assembly. It's done by order in council. It's done through the *Alberta Gazette*, and MLAs have precious little input except for those 64 MLAs who happen to be part of the government caucus, who happen to attend one of those meetings. But the rest of us, Mr. Speaker, who also have been duly elected by Albertans, whether it's in Lethbridge or downtown Calgary or in the Edmonton area, also have responsibilities, and we also are supposed to be doing a job on behalf of all Alberta ratepayers.

But because in this province the Standing Committee on Law and Regulations was put into the freezer, was frozen more than some 12 years ago and has never met since, these things under a regulatory scheme are out there in the nether land, and there's no adequate supervision, there's no adequate management of those kinds of fees.

It is an amazing assertion, and we see it again. You know, we've had people every night in here looking forward to debate on Bill 15. One of the big concerns those people have, Mr. Speaker, has to do with regulation, with laws being made not in this place where there is certainty, where there is public debate, where there's a *Hansard* record, but of being done in secret. We have no way of knowing, as those laws are being made, until we see the proclamation, unless you happen to be one of a small number of designated stakeholders with whom the government deigns to share some of what they're about. So it seems to me that it's an amazing assertion. That was the first argument advanced on behalf of the taxpayers of Alberta.

11:30

You know, I must say that there's a certain kind of irony. It's tragic irony that you have the government of the province of Alberta going shoulder to shoulder with the government of the province of Ontario to justify an illegal tax, to fight for an illegal tax when we all thought that the Provincial Treasurer and the 17 members of the cabinet were really trying to do a job for us as Albertans. We thought they were trying to represent our interests. All of that malarkey we've been hearing about how there's only one taxpayer, the sweat-soaked loonie: all of that is just so much verbiage, because when it really came to the test, our Provincial Treasurer wasn't there defending the interests of Alberta taxpayers. He was more interested in simply covering up an illegal tax that . . . [interjection]

You know, I feel like I'm leaving on a cruise, Mr. Speaker. You know, in the old days, in the '50s when they had the big Cunard liners and people waving from the deck of a sinking ship, waving at people on shore. Well, I hope that member has a lifeboat, because he's a hardworking member and I hope he's going to be around for another debate with at least some of the members of his current caucus, just not quite so many.

Mr. Speaker, the point I wanted to make is that as we go through the factum submitted on behalf of the taxpayers of Alberta, we see another argument that they bring forward. This is on the probate fee, that the probate fee is a fee for service. They go on to say that if the fee is intended in any sense to defray expenses, then that meets the test. Well, all of the evidence says that the probate fee – and I've spent lots of time in my previous career looking at the schedule of calculating probate fees. It has absolutely nothing to do with the work expended by the Surrogate Court clerks, the Surrogate Court judges, or anybody else involved in the system. The Surrogate Court fee is based on the value of the estate as nominated in the application for probate, and it's an arithmetic calculation. Is it not a curious thing that representatives of our government would stand up and assert that the probate fee is a fee for service when that's absolutely contrary to the evidence? It's absolutely contrary to the experience of anybody who's been involved in terms of probating an estate.

The third argument advanced, on our behalf ostensibly, was that a probate fee is direct. Therefore, this should be viewed as a direct tax, not an indirect one. We go on, and I'm not going to go through all of the legal precedents. But, you know, the government of Alberta then added a fourth argument, which was arguing the Constitution Act. This had to do with the . . .

MRS. SLOAN: The symbol of our thanks.

MR. DICKSON: Yeah.

Mr. Speaker, the argument went on to include reference to the Constitution Act, sections 90, 53, and 54. The reference there is

largely to the Supreme Court of Canada decision in reference re Agricultural Products Marketing Act and the decision of Gerard La Forest. Actually, Dean La Forest had been a dean of the U of A law school just across the river when at least one member was a law student there. A very impressive jurist. In fact, his analysis in that Supreme Court decision I think lays bare the vacuous nature of the government argument.

When we look at what the Supreme Court of Canada did with the argument put forward by the people of Alberta, it met with about as much success as our Attorney General met on the Delwin Vriend case, where once again Albertans' representative was putting forward arguments that frankly were an embarrassment to the people of Alberta. You know, I wish there were a way for the Minister of Justice to be in some fashion more directly accountable for these arguments that are put forward on our behalf, because they simply don't represent the views.

If one looks through the decision itself of the majority, the decision written by Chief Justice Lamer and supported by l'Heureux-Dube, Justice Peter Cory, Justice Iacobucci, and Justice Major from Alberta, you will see that they frankly saw right through the Alberta government's arguments, which were as shallow and transparent as one might imagine. In fact, they make it very clear that it was really the Supreme Court of Canada that was honouring the principle of no taxation without representation, not our Provincial Treasurer and certainly not our provincial government.

You know, I really hope that as this bill proceeds through, we don't have to listen to the Provincial Treasurer indulging in this imaginary conceit.

MR. SEVERTSON: If you promise we don't have to listen to you.

MR. DICKSON: Well, I'd never make that kind of promise, Innisfail-Sylvan Lake.

Mr. Speaker, I hope we're not going to hear any more of the indulgence in this fantasy world that the Provincial Treasurer seems to wallow in, where he sees himself as the saviour of Alberta taxpayers when in fact all of the evidence is that his office – and I don't want to be unfair. I shouldn't be referring to the individual. He is a representative of the government of Alberta. My intention really is to sort of envelop all members of the front bench when I refer to the Provincial Treasurer, because presumably they all had a hand in the submission.

MS OLSEN: Especially that Justice minister.

MR. DICKSON: Maybe you're right. Maybe it's the Justice minister whose feet we should be holding to the fire on this issue.

Well, I'm looking forward to further debate, Mr. Speaker. Thank you very much.

[Motion carried; Bill 35 read a second time]

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

[Mr. Tannas in the chair]

11:40 **Bill 37**
Freedom of Information and Protection of Privacy Amendment Act, 1999

THE CHAIRMAN: Are there any comments, questions, or amendments to be proposed with regard to this?

The hon. Member for Bonnyville-Cold Lake.

MR. DUCHARME: Thank you, Mr. Chairman. On behalf of the bill sponsor, the hon. Member for Peace River, I wish to move the following government amendments to Bill 37, the Freedom of Information and Protection of Privacy Amendment Act, 1999. I believe the amendment is being passed around at the moment.

As it's being passed, I'd like to say a few words regarding the proposed government amendments to Bill 37. Sections A and D are requested by ENMAX and EPCOR. Bill 37 already proposes that they be exempt from the legislation to enable them to operate on an equal footing with other private-sector gas and electric utilities. The amendment clarifies the proposal by including only the gas and electric subsidiaries of ENMAX and EPCOR.

Item B corrects a drafting error, and item C has been recommended by the Chief Justice and the Rules of Court Committee. Part (3) extends from 30 to 45 days the time frame for applying for judicial review of an order of the commissioner. Part (5) also allows the court to extend the 45-day time frame. Part (1) extends from 45 to 50 days the time frame for complying with an order of the commissioner. This change is made as a result of the extension to the time frame for judicial review.

Thank you.

THE CHAIRMAN: The hon. Member for Bonnyville-Cold Lake has moved on behalf of his colleague the hon. Member for Peace River amendments to Bill 37 which will be called amendment A1.

The hon. Member for Calgary-Buffalo.

MR. DICKSON: Thank you very much, Mr. Chairman. Just a couple of observations. I'm encouraging all members to vote against the government amendment. Members may not have been surprised by that assertion. They may be wondering why on earth I would oppose these amendments. That Member for Bonnyville-Cold Lake is clearly one of the most persuasive members of the House. I've worked with him on a couple of committees and he's a hard guy to disagree with, but I have a couple of reasons.

I take it we're dealing with it all together and voting it all together to save time, Mr. Chairman. I'm making that assumption, and I don't hear the Government House Leader saying otherwise.

If we look at section A and section D firstly, what we're doing is we're taking EPCOR and ENMAX completely out from the under the scope of the Freedom of Information and Protection of Privacy Act. Now, there may be some who say that we should be viewing them as private entities, and private entities normally aren't covered by the FOIP Act. But, you know, if you look at the reality, where do we think EPCOR and ENMAX came from? These were not a couple of private corporations that were capitalized to the normal extent and set about their business. These were businesses created by the taxpayers of the province of Alberta, certainly in the cities of Edmonton and Calgary, to provide a public service.

Mr. Chairman, if we look at what's happening in the United Kingdom right now – in fact Tony Blair, the Prime Minister there, in bringing in a FOIP law has gone to the point of expanding their freedom of information act, their new act, to cover privatized utilities, including water, electric, gas, bus, and rail companies. In fact the BBC, nationalized industries, and that sort of thing are being covered because that's the determination of Tony Blair. So you've got some international movement for more comprehensive protection at the same time that the government of Alberta is moving in the other direction. I think that's a problem.

On the other one, the C part, recognize that what we're doing now – currently you have to wait 30 days after the commissioner rules, if you're the applicant, before you can go down and register the commissioner's order so that it becomes enforceable, as any other

Court of Queen's Bench order. Now, what they propose is to extend it to 50 days. So what that means is that you may be delayed in getting access to the information you need for 50 whole days. Once the commissioner makes an order, you can't enforce it, if you're the applicant, for 50 days. Recognize that the history in British Columbia and Ontario is that it's the public body that goes and seeks judicial review, not the applicant.

So for all those reasons, I'm encouraging all my colleagues to vote against amendment A1.

Thank you very much, Mr. Chairman.

[Motion on amendment A1 carried]

MR. DICKSON: Mr. Chairman, I can't tell whether you're looking so hard because you think you might be overlooking somebody or you really would like to hear a different voice for a while.

We now embark on the first of a series of nine amendments. This is what I propose to the Member for West Yellowhead to economize on time. If he doesn't like my proposal, we can spend a lot longer doing it.

AN HON. MEMBER: What did you sit on the committee for?

MR. DICKSON: Well, you know, I'm asked questions, and I don't really want to respond because I told the Government House Leader that I was going to do my level best to bring the amendments in, to speak specifically to them, to move them, to vote on them, and we can move on and deal with other business. But if in fact I'm challenged, I'm happy. I spent probably about 16 meetings on that FOIP committee. I filed a dissent. In every one of these amendments I've telegraphed those things, and I have colleagues that are anxious to help. So those members can decide how they want to do it this evening.

THE CHAIRMAN: Hon. member, I think we're having a surfeit of amendments. Oh, we do have one that's A2.

MR. DICKSON: My proposal, Mr. Chairman, I hope, is that all the amendments would be distributed at one time so all members would have all nine amendments on their desks at the same time. I'm sorry. I may not have communicated that clearly to the table.

THE CHAIRMAN: Would you like to read the amendment?

MR. DICKSON: I'd be happy to, Mr. Chairman. Amendment A2 is to move that Bill 37 be amended in section 7 in the proposed section 13(2) by striking out "or multiple concurrent requests have been made by 2 or more applicants who work for the same organization or who work in association with each other." [interjections] Well, this is exciting, Mr. Chairman. People are actually looking for the amendment. They're actually going to read it.

This amendment relates to a problem. Section 13(2) of the act will expand the ability of the head of a public body to be able to refuse or to extend the time to respond to an access request. If you look at section 7, section 13(2), this is a circumstance where the head of a public body can extend the time to deal with a FOIP request.

11:50

In order to be able to meet this test, what has to happen, Mr. Chairman, is that the head of the public body has to make inquiries. Here's the problem. If my colleagues from Edmonton-Riverview and Edmonton-Norwood and I all happened to make FOIP applications, what can happen is that the head of the public body can say, "Oh, well, I think these three are working in cahoots, and therefore I need extra time to process the request." Now, you may say it's easy to make the identification, but what happens if Joe Btfsplk and Mary Smith and I happen to make similar applications? What happens is that this is a reason for extending the time. I don't think the head of a public body should be in a position to be able to make inquiries to find out how people associate with each other. We have a freedom of association guarantee in the Charter of Rights and Freedoms, and in fact that's offended by the way this thing comes forward.

So because of the freedom of association guarantee in the Charter and because I don't want the head of the public body to be making inquiries in terms of which applicants associate with each other, I move this amendment. I call the question on the amendment, Mr. Chairman.

[Motion on amendment A2 lost]

MR. DICKSON: Next I'm moving the following amendment, which I'd ask be A3, to amend section 29 in the proposed section 53 by striking out clause (b). What that is is that in section 29 in the bill . . . [interjections] I'm happy to sit down and wait until the member from Edson gets a specific amendment. I read it out with the hopes that we can proceed with dispatch.

In any event section 29, which is being amended, does this: it would allow the commissioner to "authorize the public body to disregard . . . requests" to add the ability to dismiss an application on the basis that it's "frivolous or vexatious." Now, the problem I have with this is that we already have in section 53 the power to screen out requests that are "repetitious" or of a "systematic nature." That's an effective way of policing it.

We are preoccupied in this province with thinking that there are all these frivolous and vexatious requests. Mr. Chairman, that has not been a problem under the act. It's been acknowledged by the Department of Labour that it's not a current problem with the act, and it's been acknowledged by the Freedom of Information and Privacy Commissioner that it's not a problem with the act, yet we have the government insisting that they want to build this power in. So I'm suggesting that it come out altogether: frivolous or vexatious requests.

Thank you very much.

[Motion on amendment A3 lost]

THE CHAIRMAN: The hon. Government House Leader.

MR. HANCOCK: Mr. Chairman, pursuant to the provisions of Standing Order 60 I'd move that the committee do now rise and report progress on this bill.

[Motion carried]

[Mr. Clegg in the chair]

THE ACTING SPEAKER: The hon. Member for Highwood.

MR. TANNAS: Thank you, Mr. Speaker. The Committee of the Whole has had under consideration a certain bill. The committee reports progress on the following: Bill 37. I wish to table copies of all amendments considered by the Committee of the Whole on this date for the official records of the Assembly.

THE ACTING SPEAKER: Thank you, hon. member. All those in favour of the report, please say aye.

SOME HON. MEMBERS: Aye.

THE ACTING SPEAKER: Opposed, if any?

SOME HON. MEMBERS: No.

THE ACTING SPEAKER: Carried.

[The Assembly adjourned from 11:59 p.m. to 12:02 a.m.]

THE ACTING SPEAKER: Will the House now come to order, please.

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

[Mr. Tannas in the chair]

Bill 37
Freedom of Information and Protection of Privacy Amendment Act, 1999
(continued)

THE CHAIRMAN: The next amendment that we have for consideration is amendment A4. I would ask the hon. Member for Calgary-Buffalo to move it and read it.

MR. DICKSON: Amendment A4 would be that Bill 37 be amended in section 28 by striking out clause (b).

The reason for this is that now under section 53 the commissioner has very broad power to make inquiry. Now, what's going to happen if this bill goes through, the commissioner's scope to make inquiry will be more limited. In fact, we can all remember when there was a request to the Premier's office, and I know the Member for Edmonton-Glenora remembers this very well. The initial response was: we don't have the records. Then later in a news conference, the Premier was waving around the very records that had been sought in the FOIP request.

There was an investigation subsequent to that. Now, that may account for the government's rush to amend the act in section 28, which would amend section 51(1) to limit the commissioner's power in this respect to "bring to the attention of the head of a public body any failure by the public body to assist applicants under section 9."

The original act is broader, and this amendment that I'm moving would help restore the original, broader jurisdiction. I don't think we need to narrow the scope of the inquiry. I think it should retain its original breadth.

Thank you very much, Mr. Chairman.

[Motion on amendment A4 lost]

THE CHAIRMAN: Calgary-Buffalo, amendment A5, and would you read it, please.

MR. DICKSON: Mr. Chairman, thank you. Amendment A5 is this: that Bill 37 be amended in section 2 by striking out clause (d). The reason for this is that if you look at section 1(1)(h), we're expanding the definition of "law enforcement." This is a problem, because the whole purpose with freedom of information initially was to make sure the exceptions were limited and were narrow. What's happening is that in fact we're getting an ever increasing expansion of this definition. In fact, what now happens, members recognize, is that if there's even an administrative investigation which could lead to some sort of administrative penalty, FOIP doesn't apply anymore. FOIP can't access those records.

I know my colleague from Edmonton-Norwood, who has got experience in law enforcement, knows that it's one thing to say: if it's an investigation into a criminal matter or where there's going to be a criminal sanction. That's one thing. You know, this would mean that if an elevator crashes in an apartment building across the street and there are deaths that result, even though there's no criminal conduct and there's some kind of occupational health and safety review or whatever, we may not be able to get access to any of that material. When I say we, that's Albertans, the media, opposition, and so on. That's the reason I move this amendment and encourage members to support it.

Thank you, Mr. Chairman.

[Motion on amendment A5 lost]

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

MR. DICKSON: The amendment A6 I'd move is that we amend Bill 37 in section 12(a) in the proposed section 19(1) by striking out clause (d.3). The reason for this is that we would now take out not only things that would interfere. This is an exception, one of the discretionary exceptions in the act. What it now provides is that not only are we going to protect information that might harm an ongoing criminal investigation or law enforcement investigation. That's fine. That's where it should stop. We're going further to say that it might "reveal any information relating to or used in the exercise of prosecutorial discretion." It's simply too broad. If our freedom of information act is to mean anything, then I think we've got to tighten this up. Hence amendment A6.

Thanks very much, Mr. Chairman.

[Motion on amendment A6 lost]

THE CHAIRMAN: Calgary-Buffalo.

MR. DICKSON: Thank you very much, Mr. Chairman.

Next I want to move what I propose would be A7 to amend section 17 in the proposed section 26(1)(b) by striking out subclause (i).

What this is, Mr. Chairman – we protect legal advice given by a lawyer in the Department of Justice. What this amendment would do would be to say that when the Minister of Justice gives legal advice or gives advice and information, that should also become a secret. I have to ask you this. Firstly, I'm not sure who would be lining up to get legal advice from our Minister of Justice. He has a department of 200 lawyers on the civil side. He's got another several hundred lawyers on the criminal side. He has a capable, brand-new Deputy Minister of Justice. He has an office full of lawyers.

12:10

My concern is that the Minister of Justice meets with registered nurses in this province or meets with social workers, delivers a speech which on second thought he decides better not see the light of day. Somebody tries to get a copy of the speech, and he says: oh, I was giving some legal advice to those people. You know, the job of the Minister of Justice – he's a political leader; he's not to be going around giving legal advice. What if the Minister of Justice is not a lawyer? What if the Minister of Justice is a lawyer who has only worked as a house lawyer in an oil company and hasn't had the benefit of working in the court system for awhile?

Mr. Chairman, I think all members can see why this is a dangerous thing, to clothe the Minister of Justice with this sort of blanket secrecy. It's not to be sustained. There's no case that's been made

for it, and I encourage all members to join with me and my colleagues in voting for amendment A7.

Thank you very much.

[Motion on amendment A7 lost]

MR. DICKSON: Mr. Chairman, is it just my imagination, or is the volume of the no getting louder?

Mr. Chairman, we're moving now amendment A8. This is to move that Bill 37 be amended in section 2(c)(ii) by adding the following after the proposed section 1(1)(g)(iii.1). It would add: "(iii.2) the Provincial Mental Health Advisory Board." The reason for this is that it's important that the Provincial Mental Health Advisory Board in fact be included. We're adding in Bill 37 the Alberta Cancer Board. Why wouldn't we also tag the Provincial Mental Health Advisory Board? It runs a whole range of community programs: Alberta Hospital Edmonton, Alberta Hospital Ponoka, Raymond/Claresholm facilities. Given the fact that one of the biggest issues requiring attention is access to mental health services, I would think all members would be interested in seeing that the Provincial Mental Health Advisory Board in fact be specifically named as a public body subject to the Freedom of Information and Protection of Privacy Act.

Thanks, Mr. Chairman.

[Motion on amendment A8 lost]

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

MR. DICKSON: Thanks again, Mr. Chairman, and thanks to the table officers for their patience this evening.

The next amendment, which I'd propose would be A9, would be this: to move that Bill 37 be amended by striking out section 44(a)(ii). Now, the reason for this amendment. I'll just say that section 44(a)(ii) is the one that says that you can designate by regulation "technical standards and safeguards to be observed for the security and protection of personal information" and standards for "data matching, data sharing or data linkage."

Mr. Chairman, the Ontario Legislature doesn't do everything right; they do lots of things wrong. But I'll tell you that one thing they did very right was that in the health information bill that was introduced a year ago in the Ontario Legislature, they actually put a whole section in their health bill, which they're looking to expand to their FOIP bill, which deals with: when personal data about any member here is processed, it could be shipped to New Mexico. It could be shipped to Venezuela. It could be shipped to the Jersey Islands. I mean, it can be sent virtually anywhere to be processed.

Now, all we're saying is that in this act we need principles. You can't spell everything out in the statute, but as we've seen with Bill 15, it's important that you set out the tests and the standards in the bill that then will limit what can be done by way of regulation. So what we're proposing here is to take out this regulation-making power so that the government has to do it by way of statute. That's important because that in fact is the challenge we have now with data being moved around outside the province. We only have jurisdiction within the geographical limits of the province of Alberta. Hence this amendment. I hope members will support it.

Thanks, Mr. Chairman.

[Motion on amendment A9 lost]

THE CHAIRMAN: Calgary-Buffalo.

MR. DICKSON: Thanks, Mr. Chairman. We now come to my final amendment. Firstly let me move the amendment so it's clear on the record. What I'm moving is amendment A10 to amend Bill 37 in section 46 in the proposed section 91 by striking out subsections (1) and (2) and substituting the following:

> (1) A special committee of the Legislative Assembly must begin a comprehensive review of this Act within 3 years after the coming into force of this section and must submit to the Legislative Assembly, within one year after beginning the review, a report that includes any amendments recommended by the committee.

That's the amendment I'm moving.

The reason is simply this: the municipalities, universities, colleges, all these local bodies are coming under FOIP or have in the last while or will be in the next short number of months. It's important. They have asked us that they have an opportunity – and I know that my colleagues on that select special committee heard this submission – to check in in terms of what's working and what isn't so that we can make a revision. It's important that it be done by a legislative committee, not simply by a ministerial task force. Those are my reasons, Mr. Chairman, in moving this particular amendment. I hope members will support it.

Thank you very much.

THE CHAIRMAN: On amendment A10 the hon. Government House Leader.

MR. HANCOCK: Yes. Thank you, Mr. Chairman. I'd just like to speak briefly to amendment A10, which is being brought forward by Calgary-Buffalo. I'd encourage all members of the Assembly to support this amendment.

We've seen tonight a great degree of the spirit of co-operation, an amazing thing. We've talked about a FOIP bill. We've dealt with a number of significant amendments that have been proposed on this bill. We've dealt with them very efficiently and effectively. This last amendment is an amendment which can be supported by the Minister of Labour. I discussed it with him, and he finds that he can support this amendment. Also, the sponsor of the bill has advised me that he can support this amendment.

I would encourage all members of the House to support this amendment.

[Motion on amendment A10 carried]

12:20

[The clauses of Bill 37 as amended agreed to]

[Title and preamble agreed to]

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

HON. MEMBERS: Agreed.

THE CHAIRMAN: Opposed? Carried.

The hon. Government House Leader.

MR. HANCOCK: I believe now would be an appropriate time to move that the committee rise and report.

[Motion carried]

[Mr. Clegg in the chair]

MR. TANNAS: Mr. Speaker, the Committee of the Whole has had

under consideration a certain bill. The committee reports the following with some amendments: Bill 37. I wish to table copies of all amendments considered by the Committee of the Whole on this date for the official records of the Assembly.

THE ACTING SPEAKER: Thank you, hon. member. All those in favour of the report, please say aye.

HON. MEMBERS: Aye.

THE ACTING SPEAKER: Opposed, if any? Carried.

The Government House Leader.

MR. HANCOCK: Thank you, Mr. Speaker. Notwithstanding the eagerness of my colleagues to continue discussion this evening, I would move that we adjourn until 1:30 p.m. today.

[At 12:23 a.m. on Wednesday the Assembly adjourned to 1:30 p.m.]