[Chairman: Mr. Schumacher] [8:35]

MR. CHAIRMAN: Well, ladies and gentlemen, I see a quorum.

I'd like to take this opportunity of welcoming -- I guess I'd better be fair -- the proponents and opponents to Bill Pr. 19, those representatives of the city of Calgary and in particular Mayor Klein. It's nice to have you with us this morning, Your Worship.

The normal procedure, which we will follow this morning, is to first of all call upon the Parliamentary Counsel to report on the Bill. Then we'll have the witnesses sworn and the evidence led, which will be followed by questions from members of the committee. That'll be on behalf of the proponents, the city of Calgary first, and then we will go on to other intervenors. I'm sorry that we don't have a complete morning to devote to this matter, because I know practically everybody on my left has come from the city of Calgary. Because of Hansard transcription requirements, we're pretty well compelled to stay in this room, and the Public Accounts Committee is set to meet here at 10 a.m. So we will try to move on as expeditiously as possible.

I would like to call on Mr. Clegg to give us the report on the Bill.

MR. M. CLEGG: Mr. Chairman, this is my report on Bill Pr. 19, the Calgary Assessment of Annexed Lands Act, 1987, pursuant to Standing Order 99.

The purpose of this Bill is to remove from the jurisdiction of the courts certain orders of the Local Authorities Board as amended by order in council. There is no model Bill on this subject, but the removal of any such order from the jurisdiction of the courts has to be regarded as a very unusual position.

Thank you.

MR. CHAIRMAN: Now, before proceeding to swear whatever witnesses will be giving evidence, I'd maybe ask counsel to sort of briefly outline the nature of the relief being asked for.

MR. G. ANDERSON: Thank you, Mr. Chairman. My name is George Anderson. I am a lawyer with Howard Mackie in the city of Calgary, and I'm acting on behalf of the city of Calgary in this particular matter.

This Bill that is coming before you is frankly, as Mr. Clegg points out, unusual. We clearly state to you that this Bill is a type of Bill that has not in the past ever appeared or come before a Private Bills Committee. It is unusual. We are, in fact, asking you to give us dramatic relief from a situation that has arisen and that can cost the taxpayers of the city of Calgary untold millions of dollars. Our only recourse with the time that we had available was to come to you, and that is why we are here today.

The situation, so you're aware -- and we'll go into this in somewhat more detail -- has arisen because of two factors. In 1986 the Local Authorities Board of this province heard an application of the city of Calgary to amend two annexation orders of 1957 and 1960. There were in those annexation orders a number of triggers that brought property from the rural environment into an urban situation. Unfortunately, in 1957 and in 1960 no one had envisioned the tremendous growth that Alberta would undergo, particularly the cities of Calgary and Edmonton. Those particular triggers that were incorporated in that order were totally inadequate. As an example to show you how ludicrous this situation became as a result of those orders, there was a provision in those orders that if, in fact, lots were subdivided into smaller than 20 acre parcels, they would then come into the urban mainstream. But if they remained over 20 acres in size, they would remain as rural land. I guess no one in 1957 or 1960 envisioned shopping centres such as West Edmonton Mall, Chinook Park in Calgary, whatever: very large, major areas that required far in excess of 20 acres.

As a result, the anomaly in all this is that those types of shopping centres are not taxed as a result of a court decision, are not taxed as if they are in part of the urban mainstream. They're taxed as if they're a rural property. That was totally unacceptable to any right-thinking person, and the city did take that action. They went before the Local Authorities Board; they received a decision from the Local Authorities Board that was very favourable. That decision was approved by cabinet through the Lieutenant Governor in Council under two orders; that would be 760/86 and 761/86.

But like everything, there's a fly in the ointment. Here the fly in the ointment became certain individuals who thought that they were going to take a run at this order through the courts, and they did. Whether or not they'd be successful is really immaterial; the problem is that there is a risk. To counter that risk, the city of Calgary determined that they had to do something. The only solution within the time that would insulate the taxpayers of the city of Calgary from a massive tax increase was to come before your committee.

But that wasn't the end of it. Lawyers being lawyers, judges being judges, changes being changes, the use of the Canadian Charter of Rights and Freedoms -- it's almost like an employment pool for lawyers, I guess. But everything that now exists in legislation, there's been a run or soon will be a run taken at it. In the province of Ontario there was a provision in their municipal government Act that in fact said that you had to commence action against a city within three months. That turned out, of course, to be tossed out, based on that particular matter. As a result of that court decision it appears that this may affect legislation totally unrelated to a negligence type of action, and that's the Tax Recovery Act of this province, which provides for a six-month limitation. There now is a fear that someone may be able to upset that particular limitation.

So that is why we are here before you today. We will present to you a very detailed submission outlining why we are here, what we are asking you to do, and tell you the rightness of what we are doing, because as legislators that is the most important. You not only do what is expedient and needs to be done, but it's got to be right, and we are going to attempt to show you what we are asking you to do today is right, at law and for the citizens of the city of Calgary.

I have with me this morning His Worship Mayor Ralph Klein. Mayor Ralph Klein is here because of the great importance to the city of Calgary of this matter. Unfortunately, Mayor Klein has to leave because of a prior commitment in the city of Calgary, and I would ask your indulgence, if you would allow him to be excused as soon as he makes his submission. We also have Mr. George Cornish, the chief commissioner of the city of Calgary. Again, this stresses the great importance that the city of Calgary is placing on this matter. We also have Mr. Michael Facey, who will be appearing as one of the witnesses before you, and Mr. Facey is the director of corporate resources for the city of Calgary. We have Mr. Glen Judd. Mr. Judd will also be giving evidence before you; he's the city assessor. And we have Mr. Paul Tolley, who is a solicitor with the city of Calgary law department.

Mr. Chairman, that is my brief introduction, and as I under-

stand, because we intend to present our evidence to you in support of this Bill in the way of the panel, we would ask that all those that are here be sworn.

Thank you.

MR. CHAIRMAN: Thank you very much.

[Messrs. Klein, Tolley, Facey, Judd, and Cornish were sworn in]

MR. G. ANDERSON: Before proceeding, I drafted this Private Bill, and I guess in part there'll be a couple small errors. I would ask your indulgence. If you would turn to page 2 of Bill Pr. 19, in the "WHEREAS" at the top of page 2, and in the first line, third word, change the word "the" to the word "these." So that first line would then read, Mr. Chairman:

> WHEREAS if these Orders of the Local Authorities Board as varied by the Lieutenant Governor in Council are varied . . .

I would then ask you to look at section 1, and I would ask you to turn to the seventh line and to the third and fourth words. Those third and fourth words read: "annexed thereby,". It ought to read: "subject to these Orders,". So that line would then read: "the lands subject to these Orders, notwithstanding any informalities," and on as before. Those are the two minor amendments to that particular Bill, Mr. Chairman.

MAYOR KLEIN: I missed the identification of that second correction.

MR. G. ANDERSON: I'm sorry. If you would turn, sir, to section 1, the seventh line of section 1, the third and fourth words. They now read: "annexed thereby,". They ought to read: "subject to these Orders,".

MR. SIGURDSON: For the record, Mr. Chairman, I believe that Mr. Anderson in his opening remarks said that the orders in council were numbered 760 and 761. I believe that they are 780 and 781 -- the order in council by the . . . Can we just get that correction? Because in the Private Bill it is 780 and 781.

MR. G. ANDERSON: Yes, that is correct. I am sorry. Either my bifocals aren't working properly or something. I just had them changed, too. But thank you very much. Those are the proper order numbers.

Mr. Chairman, I would like to present to you, Mayor Ralph Klein of the city of Calgary. Mayor Klein.

MAYOR KLEIN: Thank you very much, George. Mr. Chairman and Members of the Legislative Assembly, I wish to thank you for the opportunity to speak to you today, especially those of you who live in Calgary and pay taxes there, because it's important to you, very important.

I'm speaking in support of the Calgary Assessment of Annexed Lands Act, 1987, because I believe without this legislation Calgarians face the possibility of a tax increase in the order of $36 million or more over and above this year's mill rate increase. The situation arises from the potential of having to refund up to $25 million of previously paid property taxes coupled with an annual tax shift of some $5.5 million a year for at least two years. Well, needless to say this is a matter of grave concern to myself, to members of city council, and indeed all Calgarians. I must emphasize to you that the imposition of such a major tax hike would seriously jeopardize city council's goal of restraining tax increases. At a time when Alberta is going through difficult economic circumstances, we need more than ever to be able to keep our property taxes at a reasonable level, and we have strived to do that, even this year, with a 4 percent increase in the mill rate.

We know that strengthening the economy is a provincial goal too. Therefore this $36 million, which essentially arises from giving a retroactive and, I would submit, a windfall tax benefit to certain large property owners mainly based outside of Alberta at the expense of Calgarians, runs completely contrary to what we in the city, and I believe you in the province, are trying to achieve. Moreover -- and George alluded to these -- where shopping malls are concerned, such tax benefits must be passed on to the tenants, thereby creating an unfair competitive advantage to those shopping malls located [inside] the order over those located outside. That points up simply one of the inequities that comes about as a result of the challenge to this particular order.

When last December the Lieutenant Governor in Council approved the amendments to the original annexation orders which had created the problem, we had hoped the matter was resolved, and we believe that that situation was resolved in the spirit of common sense, because that's what it boils down to. It boils down to a matter of common sense. Well, since then, as you will hear from our solicitor, certain events have occurred which have put these decisions at risk and will expose Calgarians to a major financial burden. There can be no doubt that the proposed legislation may appear to be unfair to some, and I have mentioned the kind of property owner that it might be unfair to. But in this particular instance the greater public interest is too large to ignore and must be paramount in consideration of the issues that have led up to this proposed Bill. And I would emphasize that this Bill does nothing more than, firstly, to preserve the Local Authorities Board orders as amended and approved by the Lieutenant Governor in Council and, two, to reinforce the existing and long-standing provisions of the Tax Recovery Act. So, members of the committee, Members of the Legislative Assembly, your support is very, very important to 650,000 Albertans, about a third of the population of this province.

I thank you very much for your time.

MR. G. ANDERSON: Thank you. With the permission of your committee, if you have some questions to ask of him, Mr. Klein is prepared to respond to them, but he does have to leave immediately for Calgary.

There is another problem I think that Mayor Klein has, and that may have to do with the credit rating of the city of Calgary, which I'm sure whatever you people decide here today will have some bearing on.

Are there any questions of Mr. Klein?

MRS. MIROSH: I'll be very brief. I just want to thank you, Your Worship, for coming today. We appreciate your taking the time to come to Edmonton, realizing your busy schedule.

I know you've been a mayor in Calgary for a long time, and I'm just wondering why this has slipped by you, why this hasn't been addressed previously?

MAYOR KLEIN: Well, the reason it wasn't addressed previously is simply that we didn't anticipate a challenge. In other words, we are responding to a challenge that has been made through the courts, and we are asking this committee to bring

forth legislation that would circumvent that particular challenge.

MR. G. ANDERSON: Could I just add to that? The mayor is totally correct. There has been no slipup by the city. The city did everything that it possibly could. It went and obtained the orders. The orders were obtained, but there was a sequence of events, which I alluded to in my openings remarks, that in fact put the city into the frying pan. We're asking you to get us out.

Thank you very much.

MR. CHAIRMAN: Mr. Sigurdson.

MR. SIGURDSON: Thank you, Mr. Chairman. Your Worship, for the record, can you tell the committee why you didn't go after a public Bill? What you ask from the committee in having a private Bill is incredibly wide-ranging, and I feel that perhaps it ought to have been a public Bill. Can you advise the committee why we're in private committee and not in the . . .

MAYOR KLEIN: Expediency.

MR. SIGURDSON: Solely?

MAYOR KLEIN: Absolutely.

MR. G. ANDERSON: Again, as I pointed out to the committee, Mr. Chairman, there was absolutely no possibility for the city of Calgary to get a public Bill before this House to protect the citizens of Calgary in the time that the city of Calgary had to act.

MR. CHAIRMAN: Mr. Anderson, I think maybe I could maybe clarify this. This is a public Bill. This is a private Bill, but it is a public Bill. It applies as a general application to the province. It's not a private member's Bill. I think maybe what Mr. Sigurdson is asking is: why didn't the government adopt the problem and deal with it with government legislation as opposed to private?

MR. G. ANDERSON: Yes. That was the case, that to get a government Bill there was not time to put it on the Order Paper to get it before the House. Our only recourse was a private member's Bill.

MR. CHAIRMAN: Mr. Clegg would like to say something on this.

MR. M. CLEGG: Mr. Chairman, I'd just like to clarify this for the committee and the record. This is a private Bill for a private Act. It will have very general application, but in a limited area of the province. The fact that it applies to a significant portion of the land around Calgary and not just one particular property doesn't mean that it won't become a part of the general public law of the province. However, this type of legislation has always been dealt with by private Act, not only in Alberta but in other provinces and throughout the Commonwealth.

It is not changing the public law throughout the province; it is making a special exception to the law with respect to certain orders which affect certain pieces of land. Therefore, it would be procedurally correct for it to be dealt with by a private Bill, and this is the correct procedure for it. It's not only the question of pressure on the government Bill list. In fact, it would probably have been not correct for it to be handled as a government Bill. It's the kind of Bill which should be handled by this process, which includes a hearing and the right to oppose before a committee of the Assembly, which is not available directly to citizens when a government Bill is being handled.

MR. WRIGHT: My question has really substantially been asked by the Member for Edmonton Belmont, Mr. Chairman, but one point that concerns me is the interference or possible interference with vested rights retrospectively. That is a very serious thing. With greatest respect to Parliamentary Counsel, I would have thought that a matter of this seriousness, involving this sort of thing, would have been better handled with a public Bill, because they do not necessarily have to be of general application in the province.

So my question to the mayor is: how about the question of notice to all these people affected? Admittedly there have been the required advertisements in the newspaper, but it does seem to me that there's a principle here that's not inviolable, and I think this may well be a case in which it is justified, because of the manifest unfairness of the present situation vis-à-vis the taxpayers of Calgary. Nonetheless, because of the problem of interference with vested rights of citizens I'm concerned about the adequacy of the notice that has been given to those possibly thousands that might be affected.

MAYOR KLEIN: Well, I question whether there are possibly thousands. I don't think that there are . . . Pardon me?

MR. WRIGHT: All right. Hundreds then.

MAYOR KLEIN: I stand to be corrected. There are possibly hundreds, and included in those hundreds are some very, very small parcels. But we're talking quite specifically about the large commercial properties that would otherwise be taxed as farms rather than shopping centres. We're talking about those kinds of inequities.

As to notice, I think that there was fair and adequate notice as we worked our way through the Local Authorities Board process. Certainly there was adequate public knowledge that the city was going to seek a change in those orders, and there was ample opportunity given to the landowners to challenge our proposition before the Local Authorities Board, which, in fact, they did. And certainly there was a tremendous amount of negotiation with the landowners to seek an approach to the Local Authorities Board and legislative bodies as to what would be eminently fair. So I think that everyone has been aware of this situation for some time, for a long time, as a matter of fact.

MR. MUSGROVE: Mr. Chairman, I'm a little confused on this issue. Number one, this annexation took place in 1961, and obviously there were some things in the annexation order that said what the taxation would be for some time. But am I right in presuming that there's been a period of time that the urban development on these lands has been assessed and taxed as urban development?

MAYOR KLEIN: Yes, they have been. When certain things took place, they were taxed -- and rightfully so -- as land within the urban environment. But in 1981 -- was it? -- there was a challenge to the annexation orders in the courts, and I think that was upheld in 1984, vis-à-vis the Cirrus Land situation in southeast Calgary, which upheld, I guess, the letter of the law with respect to those annexation orders and gave that particular landowner relief. It was at that particular point that we sought relief

and changes to the orders from the Local Authorities Board. Those changes were granted. Now there has been a challenge to those changes, so we're coming to the Legislature to say: put in legislation to enshrine for all time the intent and the meaning of the LAB's orders.

MR. MUSGROVE: My confusion on the issue is -- and having had some experience in rural assessment and taxation, regardless of whether it is farmland or not, any land you change in rural Alberta to a different type of land use and farming becomes subject to assessment and taxation. In other words, if I had a farm, was assessed as a farm, and built a shopping mall on it, immediately that would be assessed as a shopping mall through a rural assessment policy.

MAYOR KLEIN: Certain things happen. One, if there's subdivision to less than 20 acres -- in some cases that did not happen. That did not happen. The issue was somewhat complex because certain things had to happen in conjunction with other things, and if they both didn't happen, then the board order could not be upheld. That was the basis and the essence of the challenge by Cirrus.

MR. G. ANDERSON: Mr. Chairman, we will be in a position to present to you our main submission, which I think will go a long ways to answering all the questions that the members of your committee in fact may have. Mayor Klein has to be in Calgary, and I believe has to catch a plane at 9:30. I'm not too sure if he's going to be able to make it or not, but if there are any other brief questions, we'd be . . .

MRS. HEWES: That's fine.

MR. CHAIRMAN: Your Worship, we understand the pressures that you're under, so we'll understand your having to leave the Chamber when you have to.

DR. WEST: There's a figure of $36 million or $25 million plus two years of $5 million. Could you explain if that's substantiated, or how did you come about that figure?

MAYOR KLEIN: That is substantiated, based on the assessed taxable value of those lands as if they were outside the annexation order or inside the annexation order. The $36 million would represent $25 million in back taxes that we would have to pay on a reasonable assessment and what it would cost us in future years.

MR. G. ANDERSON: And we'll be able to outline that again in our submission, because that is a very crucial question: how do we arrive at the $36 million? And we'll be able to explain that as well to the members of this committee.

MAYOR KLEIN: But to answer your question, it is based on reasonable information -- assessment information.

MR. AKINS: I think, according to Mr. Klein's words, he said that this Bill . . . Now, maybe I should explain a little. I'm from the southeast part of Calgary. I have approximately 115 acres in that, and I've been before the Local Authorities Board many times. I think I've seen Mr. Judd perhaps oftener than some of my own brothers in that period of time. But he said that this would be unfair to some. Now, who are the "some," and how many would that concern? If it's unfair to some, it certainly could be unfair to others too. Who are the "some"? Is it me? I am not a lawyer or a politician or anything. I have nothing to gain. I'm just a straight farmer and rancher. But if it is unfair to some, then how fair is it to anybody? Or if this goes through, have we gone back to the days of Russia, taken a note out of their book, where we don't have the right to appeal?

MR. CHAIRMAN: Excuse me for a moment. [interjection] I would like to keep this to a matter of questions, though, rather than rhetorical questions.

MR. AKINS: Okay. Then the question is: how many is it unfair to?

MAYOR KLEIN: You're not affected. Your land, as long as it is agricultural, will be taxed as agricultural land.

MR. AKINS: Actually, that wasn't an answer to my question. He said it's unfair to some. I asked approximately how many would be affected.

MR. CHAIRMAN: Well, I heard the mayor say it was going to be unfair to 650,000 Calgarians. That's what I heard.

Mr. Anderson, we will proceed with the next portion of your presentation.

MR. G. ANDERSON: Fine. Thank you, Mr. Chairman. Thank you, Mr. Mayor, for coming.

MAYOR KLEIN: Thank you very much, Mr. Chairman, members.

MR. G. ANDERSON: Mr. Chairman, Members of the Legislative Assembly, Private Bills Committee. The problem outlined by the mayor has its origins in Public Utilities Board orders 20027 and 25860, dated 1957 and 1961 respectively, under which large tracts of land were annexed to Calgary. The intent of the orders was to shelter these annexed properties from urban assessment rates while they were farming operations or country residential developments prior to the properties being put to urban uses. However, ambiguous wording of the orders has led to varied interpretations by administrative and judicial bodies. The effect of various court decisions would have been to provide an opportunity for the owners of certain properties such as regional shopping centres or other major urban developments to take advantage of a partial tax shelter from urban taxes. This, in turn, would have resulted in an inequitable shift of the tax burden to the majority of Calgary taxpayers, which would have amounted to some $7 million annually, equivalent to an additional 3.75 percent increase in municipal property taxes.

I would like to have Mr. Glen Judd, the city tax assessor, give you an historical overview as to how this situation arose. Mr. Judd.

MR. JUDD: Mr. Chairman, members of the committee. It is clear that the original purpose of each annexation order was to protect the rural nature of the annexed lands from full city taxation until they were integrated into the urban infrastructure. The orders also provided to the assessor for the city of Calgary some necessary rules on how to assess these rural properties. This was necessary because assessing legislation was not consistent for the city and for the municipal districts. The assessment Act

governing the municipal districts contained very comprehensive rules for assessing farmland. The city Act, on the other hand, contained but a single paragraph, with very little in the way of assessing information. In practice, the city had followed the municipal district rules.

Problems were encountered in administering the orders. Firstly, we had been assessing the properties in good faith for many years. Recent court decisions have given new interpretations to the orders, such that some properties have been returned to the protection of the orders. Additionally, the courts have directed that we must assess the properties as though they were physically located within the municipal district from which they came, relying on the best comparables found within the municipal district.

As an example, had these orders not been amended last year, the Sunridge Mall, which is a major regional shopping centre within Calgary, would have been returned to the protection of the order. As city assessor I would have had to assess it as though it were not located within the city of Calgary but located within the municipal district of Rocky View. There are no realistic comparables to the Sunridge Mall within Rocky View. Those comparables that are available result in a ridiculously low assessment.

The second major problem involved the indicators of when a property should be removed from the protection of the orders. As an example, annexation order 25860 relies on voluntary subdivision to parcels of less than 20 acres in size. This may have been realistic in 1961; however, modem forms of development -- say, shopping centres and other developments located on parcels well in excess of 20 acres. Additionally, large areas had been subdivided into small lots circa 1910. All of these parcels are being developed within the existing survey. The existing triggers therefore do not remove them from the orders, even though some of them are truly integrated into the urban infrastructure. These are but two of the problems that we have been experiencing. There are many others.

The city's application to the Local Authorities Board was intended to make the original annexation orders manageable within their original intent of protecting farmland and country residential properties from full city taxation pending their urbanization.

MR. G. ANDERSON: Thank you, Mr. Judd.

As Mr. Judd points out, in 1986 the city of Calgary did in fact make application to the Local Authorities Board to amend these orders. The primary intent of the city's application was to ensure that properties used for bona fide farming operations, country residential purposes, and certain other properties not yet used for urban purposes would continue to enjoy the shelter provided in the original orders, while other properties that were clearly outside the original intent of the orders -- for example, shopping centres -- would pay equitable taxes. In other words, Mr. Chairman, the city was very careful to keep within the original intent of the annexation orders. If you farm, you're assessed as farmland. If you had a country residential residence in 1957 or 1960 and you still have one in 1986, your assessment stays the same. You are assessed as if you were still in the MD of Rocky View, or at an agricultural rate.

MR. CHAIRMAN: I think Mr. Ady had a question arising out of Mr. Judd's.

MR. ADY: That's fine; let him finish.

MR. G. ANDERSON: Thank you very much. The Local Authorities Board held public hearings on the matter and amended the orders. The Lieutenant Governor in Council subsequently approved the amendments after making certain amendments of its own. These actions have resulted in the inequitable tax shift being reduced to about $1 million per year. Clearly, the city is still foregoing and willing to forgo a million dollars a year to those particular individuals whose property still is within the same parameters that the original annexation orders provided. In addition, the Lieutenant Governor in Council backdated the orders to December 31, 1985, to remove the potential of the city having to refund up to $8.7 million of previously paid municipal taxes.

I would like now to introduce to you Mr. Michael Facey, the director of corporate resources for the city of Calgary, who will outline to your committee the triggers that are in the new orders.

MR. CHAIRMAN: Just before that, Mr. Anderson, perhaps we could have Mr. Ady's and Mr. Younie's questions as we go.

MR. G. ANDERSON: By all means.

MR. ADY: My question goes back to the $36 million Dr. West spoke of. I'd just like to extend on that a little bit. That's a pretty impressive number. It's a lot of money and, of course, it gets our attention. But maybe this question to Mr. Judd: in arriving at that figure, is that based on taking the assessed taxation in dollars that you would actually have to refund, calculated out accurately, or is that just a figure you have arrived at through some other means? I'm not clear on how that was arrived at. The mayor spoke to it, but I'm afraid I wasn't clear.

MR. JUDD: Mr. Chairman, in the presentation that we made to the Local Authorities Board, we examined each and every property that was subject to the conditions of these two major annexation orders, and in our examination we took a look at what these properties would be taxed for under the order and again within the rules of the city of Calgary. The difference in taxation between the two sets of rules for the taxation year 1986 was approximately $6.5 million. About $1 million of that sum remains subject to the order, so for 1986 there is $5.5 million of differential between the two systems of taxation. It is based on that examination that our figures are developed.

MR. ADY: Thank you. I have one other question. I'm sorry, I don't have my glasses; I can't see. Is that Mr. Anderson?

MR. G. ANDERSON: That is correct, sir.

MR. ADY: Thank you. It would seem to me, as you outlined the way taxation would be done within the city if this Bill is passed -- in other words, you would use discretion. Those who farmed would be taxed as farmers, those who had acreages would be taxed as acreage holders, and shopping-centre owners would be taxed on that basis. But would this Bill then give you overall powers to do as you pleased, so to speak? In other words, if you decided next week to change that, would it be at your discretion to do that?

MR. G. ANDERSON: No, it wouldn't be, sir. I drafted that Bill for a very specific purpose, to apply it in a very specific instance. We are asking you as the legislators of this province of Alberta to grant us the protection that we seek, so as a result

of these two instances which I outlined earlier, we do not have to be put in the position of opening the door and having to pay and refund for the period of six years those amounts of taxes. The intent has always been clear from a legal, political, and moral point of view that we have no intention -- none whatsoever -- of treating anyone who gets the protection under those orders any differently today than they would have been in 1957 or 1961.

MR. ADY: One final question. Do I have one more left?

MR. CHAIRMAN: Yes, go ahead, Mr. Ady.

MR. ADY: I suppose one of the things that we have to be concerned with in considering this is that if it's passed, it would seem to me that the hundreds of people that were spoken of by the mayor would not have the right to due process of the law. Is that a fact, or is that removed with this?

MR. G. ANDERSON: That is partially true. I say "partially true" because as you recall, in the Bill we made a provision that if you took your action within the times that were prescribed under the laws of this province of Alberta -- the municipal Tax Recovery Act -- we ain't gonna touch ya: you've done it right, and you're going to get the benefit of whatever that legislation provides. Our fear -- and it's a justifiable fear -- is that because of certain events there now is an ability to attack, to go back, to do something that this province does not have the legislation to protect. That is why we're before you on this private Bill. I think that's about as much as I can answer that question, sir.

MR. YOUNIE: A comment first. The concept of fairness was brought up by the gentleman at the back. As I understand the proceeding here, the purpose is for us to get the information so that we can decide whether or not the legislation is fair. I would be concerned about that aspect of fairness, that I would not want to pass legislation that would truly be unfair to anyone.

But a comment on what is fair or unfair. In one of the submissions we were given, concerning the Klippert property, his taxes were raised from $410 a year to $94,310 a year. On the surface, that would appear unfair to almost anyone. My concern would be, if he's running a business that's turning over a justifiable and reasonable profit to him, to pay annual taxes on his property and on his business that are one-third of what I pay on a very modest bungalow with a small yard -- maybe what I'm being asked to do is rectify a gross injustice of a business being allowed to exist on extremely small taxes for a long time. So the unfairness might be the reverse of what would first appear.

MR. G. ANDERSON: Sir, you've hit the nail on the head.

MR. YOUNIE: I have some questions related to that, and those are with section 2 and the appeal procedure. Basically, if the Tax Recovery Act could be overturned under the Charter of Rights and Freedoms, then it stands to reason on the same grounds that once we pass this clause 2, could it not also be overturned on the same reasoning? If the six-month time limit to appeal is judged to be unfair, then wouldn't the same principles apply to this? So in fact, if that's true, we are not being asked here to pass anything that a person couldn't overturn at some future point if it were deemed by the courts to be unfair. All we're being asked to do is uphold the provision of the Tax Recovery Act.

MR. G. ANDERSON: I'm glad you asked me that question, sir, because I think to lawyers, to individuals, to legislators, that is a very important question to ask. The Canadian Charter really colours our existence in this country today. But there have now been a great number of cases that have been decided through the Supreme Court of Canada on the question of fairness, and those cases clearly state that fairness is -- to put it this way, the common good prevails. There may be instances when one or two individuals may be adversely affected, but it's a question of weights and balances. The courts have determined this, that they look and see. In this particular case this individual has a right that's affected. To give him his right, thousands lose theirs. So you have this question of weights and balances, and it becomes very, very important.

For example, it's clear that people cannot say, in freedom of speech, whatever they wish to say. You can't transcend into certain areas. That's why they have laws for libel and slander. In exercising your freedom, you can't do whatever you want. You can't benefit in every way if thousands suffer so you may have a particular right. So the courts will look at it, and it's a question of weights and balances. This is what happens in this particular case. If you're interested, I can outline to you statements from the Supreme Court of Canada.

Here's one. It's sort of a classic case. It's the one where the lady wanted to become a hockey player. This is Blaney and the Ontario Hockey Association. Now, this is obiter from the judgment, but this is what the judge says: This is not to suggest that section 15(1) -- and section 15(1) is the one that people have the right to equal protection and equal benefit of the law, without discrimination -- requires that every person in every instance be treated in precisely the same manner. There is no infringement of the section unless the unequal treatment is discriminatory. Most laws provide for distinctions and prescribe different results based on those distinctions. Indeed, a state could not function without classifying their citizens for various purposes and treating some differently from others. In that case, of course, they determined that that particular individual was discriminated against.

Another one that's quite interesting is Addy versus the Queen. This is a judge in the Federal Court of Canada. At that time the Federal Court provided that judges must retire at 70, whereas in the superior courts in the provinces of this country you can stay until you are 75. So this particular individual then took action against the government of Canada to claim for equal treatment. Again -- and this is obiter -- the judge says here: One must compare the treatment complained of by the aggrieved person with that of a group of persons who substantially belong to the same class and are similarly circumstanced.

What do we have here? We have a few taxpayers on one hand who stand to benefit greatly; thousands on the other hand. They're all taxpayers. They all live in the city of Calgary. They all receive city of Calgary services. These individuals, and you'll hear from them, are really -- and I'll be blunt about it -- asking for a free ride. They want to pay less than what I pay, what you have to pay, what everyone else has to pay.

MR. CHAIRMAN: Mr. Anderson, I've got three people on the list for questions. I hesitate to even hear them, because I think it's unfair to you. It may possibly prevent you from presenting your full thing. I would like to give them the opportunity, because I have started it. Then I think I'll close it off and allow you to finish your presentation. I'm sorry.

MR. G. ANDERSON: I might want to give fuller answers than maybe everyone expects, but I just want . . .

MR. CHAIRMAN: It looks like we're going to have to come back next week anyway.

MR. G. ANDERSON: I just want everyone to know that we are not coming out of left field, that this is a reasoned approach. We want to make sure that you fully know, before you make your decision, what the situation is. We don't want you to . . . You know, you have to know, and we want to be able to tell you and respond to every question you have. I'm sorry?

DR. WEST: Yes, my question is more of a statement. I look at Pr. 19 here as a Bill of convenience more than anything. And it is presumptuous . . .

MR. CHAIRMAN: Dr. West, I'm going to interrupt you there. If this is going to be an opinion on the merits of this at this stage, I think I will exercise [inaudible] rather than stop you. If it's a matter of information as a result of something that has been said, a factual matter, I'll allow it. But I don't think we should be debating this -- my own view is -- until the presentation has been made.

DR. WEST: All right. The information I want is: are we presuming that a court case will take place with a result that will put the city of Calgary at risk? Is that the point?

MR. G. ANDERSON: It's more than a presumption, sir. You will find people here in this very Chamber today, if things go the way they would like them to go -- the courthouse door opens at 10 o'clock in the morning, and they'll be there. You open the door to them, and they'll give it a try.

MR. CHAIRMAN: I guess the question is: is there litigation pending now?

MR. G. ANDERSON: Yes, there is. The gentlemen to my right have already commenced legal action. They'll take advantage. If the opportunity is there, you will find some lawyer and someone there. They'll be there. If the door is open, they're there.

MR. MUSGROVE: I want to get back to this $5 million of tax revenue that's in question. Now, I'm presuming that the $5 million tax revenue is on parcels of land over 20 acres that are used for urban development and that the assessment is only on the land, presuming that the assessment on improvements on buildings in the MD of Mountain View and the city of Calgary would be similar. So it's only the land we're talking about and parcels over 20 acres.

MR. G. ANDERSON: Mr. Judd, would you be kind enough to answer that particular question from Mr. Musgrove?

MR. JUDD: Mr. Chairman, the observation is fundamentally correct, that the buildings would be assessed at the same level regardless of where they are located. But the level of taxation, if I can use that expression, does vary from one community to another, so there is an impact that's based on the level of taxation, not on the quantum of assessment for the buildings. It is in the main -- let's say probably 80 to 90 percent of the difference lies in the assessment of the land. The rest would be a level of taxation, the different need for money in the communities.

MR. MUSGROVE: Then am I to presume that you are required to use the mill rate that would be put on the county of Mountain View rather than the city of Calgary mill rate?

MR. JUDD: That is absolutely correct. When we make the assessments under the rules, in this case, of either the municipal district of Rocky View or the municipal district of Foothills, we use their complete set of rules as though I were the assessor for that municipal district. When we tax, we also use the mill rate for the municipal district from which it came.

MR. MUSGROVE: This is in fact in the city of Calgary, though.

MR. JUDD: These lands are all physically within the legal boundaries of the city of Calgary.

MR. CHAIRMAN: Mr. Day.

MR. DAY: Thanks, Mr. Chairman. I just wanted to pursue with Mr. Anderson and have him explain more fully to us the question of fairness and rights and the question of material loss as opposed to legal loss of rights. Whichever way the decision by this committee is to go as far as this Bill, there obviously is going to be some material loss on one side or the other. That does not necessarily mean there's going to be a loss of rights, but it may. You talked about Supreme Court rulings which state that to uphold the rights of a few when it would mean the loss of rights of thousands would not be, let's say, fair. If the Bill is to go through, could you explain to us the loss of rights of the few? And if the Bill is not to go through, what loss of rights -- not material loss -- of the thousands are you talking about?

MR. G. ANDERSON: Well, what I tried to explain to you, sir, was that in this particular instance we are here asking you for a monetary request. We are asking you because we do not believe the city of Calgary can bear in this particular year or in any year -- these are the most difficult times in Alberta. They are particularly difficult in the city of Calgary. To ask our citizens to fork over -- and that's what it is -- a sum up to or more than $36 million is a great problem. Frankly, that is what motivated us to come before your committee. That's important, and don't discount the fact that there are 650,000 people in this province that are going to be asked to pay on their taxes a considerable sum of money to benefit a few.

So then we ask ourselves a question: who are those few that we are going to benefit? Do they deserve the benefit? Or are they in a position to take advantage of certain quirks in the law? The answer to that question is yes. Because I ask you: how do you justify someone like CFCN-TV -- and I'm only using them for an example -- to pay something less than full city taxes? Because they receive full city services. They have water; they've had sewer. They've had water since 1960; they've had sewer since 1982. They have police services. They have fire services. They have all the infrastructure of the city of Calgary. It's theirs, the same as it's mine in my house. We only ask them to pay what their competitors pay.

We then look at someone like a shopping centre. There's a very major, original shopping centre, Sunridge Mall. There are others: Market Mall, Northland Village Mall, Marlborough Mall. These are major shopping centres, not downtown but in

the heart of the city of Calgary.

MR. CHAIRMAN: Mr. Anderson, I'm going to interrupt again. We're not on facts again. I want to try and keep this to factual questions and not philosophical ones, members of the committee.

MR. G. ANDERSON: Well, I was just trying to respond to the question of . . . [inaudible].

MR. CHAIRMAN: I know; I am not blaming you.

Mrs. Mirosh, have you got a factual question?

MRS. MIROSH: Mr. Chairman, I'm wondering, in lieu of the time, if the people who have spent a lot of money to come here are going to have a chance to talk.

MR. CHAIRMAN: Everybody has understood, Mrs. Mirosh, that we probably would not finish today on this matter and that we'll probably be coming back next week. That was well understood amongst most of the participants.

MRS. MIROSH: I just want to ask a brief question to Mr. Judd. It's nice to put a face to a man who sends me my tax assessments. But I am concerned, and I understand what Mr. Anderson was alluding to, when you annex land and you have shopping centres and people who are taking advantage of the city's sewers and waters and so on. But what about those that have not? What about those who have several hundred acres of land and haven't done anything to it, don't make any money off of it, and are still taxed a substantial amount of money over and above what they feel is reasonable?

In fairness -- and you know, I understand when you talk about the law and all the legalities, but we're talking about fairness as well. I know that the city of Calgary has always developed an attitude of fairness. I really feel that those that have been annexed that have done nothing to that land and have just been in the circumstance and the land is just remaining vacant and are still assessed at a very high number. Could you answer that question?

MR. JUDD: Mr. Chairman, if I could answer the question this way. With the amendments that were made to the orders last fall, farmland, country residential, and vacant land are all being assessed as though they lay within the municipal district from which they were originally annexed. So farmland is being assessed as farmland, utilizing the rules of either Rocky View or Foothills. Vacant land that is not farmland would again utilize the rules of the municipal district, which basically says that the first three acres would be assessed at 65 percent of market value for that type of land in the municipal district and the balance would be assessed at farmland rates.

I suggest, with respect, that the types of property to which you allude are not being penalized at all because they are located within Calgary. The ones that have changed are the ones that are intensively developed and have entered the urban infrastructure of Calgary.

MRS. MIROSH: That's not what this speaker is saying. Or are we going to get to that later?

MR. CHAIRMAN: You might ask the author of that paper about that, Mrs. Mirosh. That's the city's position, but I'll ask Mr. Soulière.

MRS. KOPER: On a point of order.

MR. CHAIRMAN: A point of order.

MRS. KOPER: Mr. Chairman, it would be most helpful to me if the city could get through their whole story, so that . . .

MR. CHAIRMAN: I understand that point; I didn't want to cut the people off who are already on the list. But I would ask people to be very short and factual with these type of interventions. Was it Mr. Soulière?

MR. SOULIÈRE: Soulière.

I have a question concerning the rights of employees of the firms. Has the city considered how many jobs might be lost by going after these taxes in the future?

The second question I have is: industrial land that was owned prior to 1963, are you saying that these people are remiss in their taxes at the moment?

MR. CHAIRMAN: I don't know whether I will allow the question about the loss of jobs at this time. I think that might be incumbent on the . . . If you have some evidence about that and you want to bring it before the committee, that would be fine, but I don't think I will require the city to respond as to whether they've conducted an economic study of that aspect of this Bill.

But the second part of the question might be responded to.

MR. G. ANDERSON: Could you tell us the question again? We've sort of . . .

MR. CHAIRMAN: The second part, Mr. Soulière.

MR. SOULIÈRE: The question was: industrial land owned prior to 1963, are you saying that people with that type of property are remiss in their taxes or will be in the future?

MR. G. ANDERSON: Mr. Facey, could you respond to that question? Or Mr. Judd?

MR. JUDD: Mr. Chairman, with respect, I'm not sure what the gentleman means by "remiss" in taxation.

MR. SOULIÈRE: Are they not paying sufficient taxes currently?

MR. JUDD: Basically, Mr. Chairman, at the time of the annexation order, which was 1961 for the most recent one, there were very, very few examples of industrial property located there. The properties that have become industrial since then: some of them are enjoying the benefits of the order and are being assessed as though they were physically located within the municipal district and are therefore not paying the equivalent of taxation that the identical property not subject to the conditions of the order would pay.

I hope I've answered the question. We will not, Mr. Chairman, be trying to collect any retroactive taxes.

MR. KLIPPERT: I'd like to point out, since our property was used as one of the examples here, that our taxes did not go from $410 to $94,000. The assessment went from $410 to $94,000.

What our appeals have all been based on is the fact that we're being taxed at city rates rather than municipal rates.

MR. CHAIRMAN: Mr. Klippert, I'm sorry to interrupt. You've cleared up a factual thing, but I'm not going to allow you to put the basis of your appeal forward now until we've heard the presentation from the city. I'm sorry; I can't let you bootleg that in.

Mr. Miller, did you have a question?

MR. MILLER: Mr. Chairman, perhaps as a point of order, I just want to indicate that there were some statements made by Mr. Anderson that were not responding to legal issues. They were factual issues. They're not under oath, and I assume that his witnesses will address that. We disagree with those facts alleged.

MR. CHAIRMAN: I accept that.

MR. LYONS: I'd like to ask Mr. Judd if there were any assessments between 1961 and 1985 related to lands under the board order. This is vacant or farm lands brought in from Rocky View that were unfairly taxed during that period of time or where the taxholders had to pay more than was considered equitable for those lands.

UNIDENTIFIED SPEAKER: Or just unfairly taxed.

MR. LYONS: Okay. I could leave it at that.

MR. CHAIRMAN: I guess the question is whether there were some adjustments in the last three years.

MR. JUDD: Mr. Chairman, during the period 1981 through 1985 there were certain properties that were assessed based on the market value of that property where it actually sat in Calgary but applying the rules of the municipal district. The courts in a subsequent action have said to us that no, we may not use what would be the normal level of value in consideration; we must assume that they are located within the municipal district. So based on the decision of the courts, they have said we must use a lower level of assessment. And if that is unfairly taxed, then I guess the answer becomes yes.

MR. CHAIRMAN: Mr. Akins.

MR. AKINS: Yes. This is perhaps a point of order. Is there not some place where we can go and continue this meeting? I've come 250 miles to get here. My tractors are lying idle in the field while I'm away, and . . .

MR. CHAIRMAN: Mr. Akins, I'm sorry. There really isn't at this time. We're working at trying to get this room made available, having the other committee give way for a period of time. We're hoping to do that, but we cannot just pack up and move to it. There just isn't another facility that we can have this morning. I'm sorry. We would like to do that, but it's just an unfortunate situation. We may be able to carry on, though. We're hoping to have some, but . . .

Mrs. Hewes, have you something brief?

MRS. HEWES: Yes.

MR. CHAIRMAN: Because I would like to use as much time to allow the city to at least finish its presentation.

MRS. HEWES: I'll be as brief as I can, Mr. Chairman. Thank you.

To Mr. Judd. I'm not sure I understand. At any time were there some lands being assessed and taxed as though serviced by the city of Calgary when in fact they were not receiving city services?

MR. JUDD: The answer to that, Mr. Chairman, is no.

MRS. HEWES: At no time.

MR. JUDD: That's correct.

MRS. HEWES: Thank you.

MR. CHAIRMAN: Well, Mr. Anderson, I'll . . . Yes, Mr. Chisan?

MR. CHISAN: Yes. I'd like to ask a question here. I think it'll maybe highlight what we've been talking about in terms of fairness, at least the city's mentality regarding fairness.

I'd like to first describe the land just briefly before I ask the question.

MR. CHAIRMAN: Well, be very brief, Mr. Chisan, because . . .

MR. CHISAN: It is a parcel of 2.2 acres in the city of Calgary, pretty well on the edge of the city limits. It has never had any improvements whatsoever from day one that anybody knows of. It is growing grass. There has been some farming activity. Now, in 1981 in my case and also in the case of Cirrus land that also went to court.

I'd like to ask the city: is it not true that both of those cases involved raw, undeveloped land and that when the assessment in 1981, as compared to 1980, increased approximately 32,000 percent -- is not that the occasion that brought the matter to the forefront and took the matter to the courts? Is it not the question of the gross unfairness in 1981 that brought us here today?

MR. G. ANDERSON: Mr. Judd, would you care to respond to that question?

MR. JUDD: Mr. Chairman, the two groups of properties that are being referred to were lands that have, in the main, been subdivided into residential lots or were being subdivided. If I could refer firstly to Mr. Chisan's property at the time of annexation order 25860, these lots were subdivided into 15 lots, each approximately 50 feet by 126 feet. For the taxation year 1981 the municipal district of Rocky View undertook a general reassessment. Calgary, because of the rules of the order, also reassessed on the identical basis those properties which were subject to the order, and of course Mr. Chisan's properties were reassessed.

Up to 1980 the value placed on Mr. Chisan's land was similar to that of a farmland rate, but for 1981 the land was deemed to be not farmland and was assessed based on its actual value where it sat in Calgary. Hence, there was a very dramatic increase in assessment from 1980 to 1981. The mill rate for the municipal district also went down dramatically but certainly not

in the same proportion. The issue eventually went to the courts, and we were instructed by the courts that we must assess those properties as though they sat within the municipal district, and we have of course complied with the instructions of the courts.

The assessor for the municipal district of Rocky View was asked to consult us as to whether in his opinion these specific properties were being used for farm purposes. His advice to me was: no, if they were physically located within his jurisdiction, being the one that they would have remained in had they never been annexed, he would not have treated them as farmland.

Now, the Cirrus issue is very much the same except you're looking at a much larger area of land in the process of subdivision, and you've got a variety of combinations. But I think my previous answer gives the generalities applying to Cirrus as well.

MR. CHAIRMAN: Well, Mr. Younie, briefly.

MR. YOUNIE: A very factual question. It was mentioned that the lands were developed, and it was also mentioned that they were undeveloped or that they were subdivided, so I want to clear up to what extent. Did the subdivision just include drawing off lines by a surveyor, where they would become lots if in some future point they were sold as housing lots? Or were services put in? To what extent were they developed or subdivided?

MR JUDD: Mr. Chairman, in the case of Mr. Chisan's property, there are four city blocks in the same vicinity that are, for practical purposes, the same. These would be, as you say, the lots drawn on a plan, but surrounding these four blocks on three sides you have a full, complete, modern plan of subdivision with housing on it. That would be the north, the west, and the south sides. On the east side -- I haven't looked at it in the last little while -- I believe that's still open space. There is servicing in the immediate vicinity. There would be a paved road, curb and gutter, and I believe street lighting on the north side of six of Mr. Chisan's 15 lots. The balance of his land effectively has no servicing available to it. But servicing is in a position where it could be simply extended at the owner's expense with the usual development process.

MR. YOUNIE: That's the same process that would be used if it were any other area of the city outside of the annexed lands in question.

MR. JUDD: That is correct, sir.

MR. YOUNIE: The standard procedure is the city runs services to the property line. The owner, the developer, or whoever provides the on-property servicing and the hookup to the city services.

MR. JUDD: Actually, the normal practice is that private enterprise would extend the utilities to the properties, and then of course the individual development would see the servicing from the property line into the improvement. The city does not normally install the improvements themselves in the street.

UNIDENTIFIED SPEAKER: But they would pay for it.

MR. JUDD: No, they would be paid for and front ended by the developer who is doing the work. The only thing the city would usually pick up would be capital oversize, and that would be where we're requiring the size of the utility to be greater than what's needed for that particular area so that it would extend into some other area. But the normal costs would be borne by the developer, and when you and I buy lots we're paying for that as part of the price of the lot we pay.

MR. YOUNIE: Okay. But as yet, Mr. Chisan's property is not developed and sold or profit making in any way.

MR. JUDD: No, it is not.

MR. CHAIRMAN: Well, ladies and gentlemen, we have some good news, and that is we are not going to be evicted by the Public Accounts Committee, so we have more time.

But at this time I think we've had a good opportunity for members to get a lot of background that might help the city properly put forward the balance of its case. I'm going to suggest that that be done now, that the city be given the opportunity to at least complete the presentation of its case, and then we will go from there with questions from other interested people to the city.

MR. G. ANDERSON: Thank you very much, Mr. Chairman.

When we were partway through our submission, I was just about to introduce Mr. Michael Facey to you, who is going to outline for you the triggers that were provided in the new orders. The Local Authorities Board has those orders, which were confirmed by the Lieutenant Governor in Council to bring property into the urban infrastructure. Mr. Facey.

MR. JUDD: Mr. Chairman, I just have something to say first.

MR. G. ANDERSON: Oh, I'm sorry.

MR. CHAIRMAN: Could I have some order in the press gallery up there? I don't think we need to hear the rustling of papers down here.

MR. JUDD: If I may, Mr. Chairman. If I could go back to the last question, I'd like to point out that Mr. Chisan's property is being assessed and taxed as though it physically lay in the hamlet of Shepard, within the municipal district of Rocky View. We are not assessing it and taxing it as though it's part of Calgary, and it does not reflect any servicing that's there.

MR. FACEY: Mr. Chairman, the main thrust of the amendments which the city requested and which was subsequently made by the Local Authorities Board, amended and approved by cabinet last December, were directed towards improving the criteria or triggers by which properties are removed from the shelter of the orders as urbanization occurs. These new or augmented triggers are now better attuned to recognize contemporary urban development, thus ensuring that a property is removed from the order as the urbanization process proceeds.

I'd also like to stress here that the private Bill does not change any of the provisions of the amendments as approved by cabinet last December. It simply enacts them into legislation so as to protect them from challenge.

Now getting back to the triggers. Specifically, each order had an existing trigger in it, and we have strengthened these. In order 20027 the availability of sewer and water services was the trigger. We have defined availability so as to be more explicit as to when properties -- and that's properties which are not al-

ready hooked into these facilities -- can be deemed to have them available to them.

Secondly, in order 25860 the existing trigger, as you've heard, is subdivision to less than 20 acres. However, there were a lot of properties where subdivision to urban size lots occurred way back prior to these orders being brought in in 1957 and '61. While the survey has been done, you might have a number of these lots under one certificate of title. We have specifically now provided that if that certificate of title is separated, to separate out these lots, that will constitute subdivision for the purpose of these orders. That will make sure that in implementing these old subdivisions for urban development, they will be removed from the orders.

However, neither of these triggers fully reflect the contemporary urban development of today, and there is really a better way of recognizing that than either subdivision or availability of services, so in both orders an additional trigger has been added. This additional trigger will remove property from the orders when the following conditions have been satisfied. Firstly, the property has received an urban land use designation under the land use bylaw; that is, it's been zoned, to use the vernacular, or, more correctly, designated for residential, commercial, industrial, or equivalent use. If its designation remains as A, agricultural, or UR, urban reserve -- neither of which permit urban-type developments -- then it remains within the order.

Secondly, not only must it have been rezoned but an application must have been made for a development permit or a building permit for use allowed in that zone. That hasn't been infallible, because there are some industrial developments which are nonconforming uses on UR which will still retain the benefit. But to a very large extent those two provisions recognize that when the owner has taken the necessary first steps to urbanizing his land, and are thus clear signals that urbanization is proceeding and that the land should be removed from the shelter of the orders.

In conclusion, I would like to stress that those properties which are not taken out of the orders by these new triggers and therefore continue to enjoy the shelter of the orders will also still be dealt with under the rules of interpretation established by the courts, and these interpretations will continue to be respected.

MR. G. ANDERSON: Thank you very much, Mr. Facey.

To go on, Mr. Chairman, recently two complicating factors have arisen. Firstly, two owners of relatively small properties which are mainly unaffected by the orders have applied for leave to appeal the Local Authorities Board decision. This matter is presently adjourned before the courts. As the land presently sits, the owners' taxes would not be affected by the amendments. The city could, however, now initiate local improvements and add them to the property taxes, which would mean that the owners would then be in the same position as anyone else in Alberta and would have the same opportunities to object. Another effect is that if these owners redesignate their lands and develop them for urban purposes, they would have to pay urban taxes, as do all other Calgary taxpayers.

Unfortunately, the Local Authorities Board decisions have been worded in such a way as to be vulnerable to attack. If these two owners are successful in their legal action, it would probably result in the Local Authorities Board orders and the amendments by the Lieutenant Governor in Council being nullified. Consequently, the city would have to go through the whole hearing process again. This would include notification of all property owners, a rehearing by the Local Authorities Board, whose membership is now different from that of the board who heard the city's 1986 application, followed by a review of the Lieutenant Governor in Council. This process could take up to two years or possibly more to complete and in the end would not necessarily resolve the situation because there still could be legal challenges to any new orders.

As previously stated, the properties of these two owners continue to be sheltered by the order and are currently taxed at rural rates. By way of example, the major landowner owns 15 lots and in 1986 paid a total of $562 in taxes on these combined. Thus the financial gain to these individuals in challenging the Local Authorities Board order before the courts is negligible, and their motives are obscure. On the other hand, if successful their challenge would provide an opportunity for substantial windfall financial advantages to the third-party owners of property such as regional shopping centres or other major urban developments, giving them an unfair competitive advantage over like properties outside the orders. This would result in an inequitable tax shift of $5.5 million to $6 million per year to the majority of Calgary taxpayers.

The second factor relates to recent court decisions interpreting these annexation orders which have opened the door for claims to rebate a portion of prior years' taxes, that is, before 1986. One such opportunistic claim has already been commenced. CFCN Communications Ltd., subsequent to the public hearing of the Local Authorities Board mentioned earlier, commenced action against the city of Calgary for repayment of portions of prior years' taxes as far back as 1981.

CFCN is maintaining that city water and sewer services were not made available to it under the terms of annexation order 2002 and hence it should not have been taxed at urban rates. While city records indicate that CFCN tied into the city's water system in 1960 and the sewer system in 1982, the city, by an oversight -- and we do make mistakes -- omitted to remove CFCN from the protection of the order. Nevertheless, the issue of the availability of city services is secondary to that of the ability of CFCN to recover taxes paid as far back as 1981. The door is now open, or we believe it is open.

A search of city records indicates that no assessment appeals were filed by CFCN for the taxation years in dispute, and it would appear that CFCN is attempting to cash in on certain court decisions which led to the city's application to the Local Authorities Board and which have opened the door for urban developments to take advantage of a partial shelter from urban taxes. This committee will be hearing from other objectors who are attempting, like CFCN, to belatedly obtain tax refunds contrary to the provisions of the Tax Recovery Act of this province.

In resisting such claims for return of municipal taxes, the city now relies on the six-month limitation period in the Tax Recovery Act. That's the legislation of this province. This provision states that no action shall be commenced against a municipality for return of taxes unless the action is commenced within six months from the date of payment. A recent Ontario superior court decision has indicated that such a limitation period may be contrary to the Charter of Rights and Freedoms. If this decision were followed by an Alberta court and the six-month limitation period invalidated, the limitation period for return of municipal taxes could extend from the current six months to six years or possibly more. This could put the city in the position of having to refund up to $25 million or more of previously paid taxes on property such as shopping centres or other major urban developments, which would result in a corresponding major tax shift to the other Calgary taxpayers. If someone gets an advantage,

someone pays.

This is a serious consideration, because under the provisions of shopping centre leases the owners are obligated to pursue any opportunity to reduce property taxes and pass on the benefits to their tenants. But the taxpayer, he's already paid, because each and every one of those merchants in the shopping centres, as part of their cost of doing business, has in fact included in the price of their goods the cost of their rent and their operating costs, which are taxes. So now they then get the door opened to take twice from the average taxpayer in the city of Calgary. When we talk about fair, is that fair? Would you like to pay an extra 50 cents on a pair of pants and then have that same person, in addition to taking the 50 cents out of your pocket because that represents his operating costs, in turn achieve additional money out of your pocket? That's not fair. In your wildest dreams that can't be fair.

Since many of these properties are owned or leased by companies mainly based outside Alberta or by the federal government -- and we can assure you and we've been told that if these people get advantage, the federal government will take advantage. The federal government, who already digs into your pocket very deeply -- and most of us are finding that out in the next few days -- are prepared again to do it, and they have told us so. A substantial amount of this money -- and this is now a concern to Albertans, a major concern to Albertans, because we are, frankly, the whipping post. When times were good in Alberta, everybody wanted a piece of our action. Times are now tough in Alberta. We need help; we don't get it. So a substantial amount of this money would likely leave the province, to the detriment of our local economy.

Section 30 of the Tax Recovery Act has been enforced for a considerable period of time. This is your legislation that is under attack now. This legislation states:

> (1) No action, suit or other proceedings for the return by a municipality of any money paid to the municipality whether under protest or otherwise, on account of a claim, whether valid or invalid, made by the municipality for taxes, shall be commenced after the expiration of 6 months after the payment of money.
>
> (2) After the expiration of the period of 6 months without any such action, suit or other proceedings having been commenced, the payment made to the municipality shall be deemed to have been a voluntary payment.

If you sleep on your rights, you don't take action within the time prescribed by the Act, you've lost you right. Is that unfair? I don't think it is. It is clear that the intent of this provision was meant to create certainty in municipal finance. And I guess, as you're all aware, that is very important.

Municipalities cannot run at a deficit. Provincial governments can, and we are running one; federal governments can, and God, we do have one. But municipalities are on a pay as you go. If they need the money, they have to go to the taxpayer and get it right away. They may run in the hole, but the next year they've got to make it up. And that's why that legislation is there; it is to protect municipalities from shocks they are now feeling today. It is to protect us to make these retroactive payments. Thus, the quieting provisions of the proposed private Bill would reinforce this existing legislation. And that's what we're asking for. We're asking not only for you to help us in our need; we are asking you to reinforce your own legislation. Is that unheard of, to ask the members of this province's Legislative Assembly to reinforce their own legislation? I'd think you would want to do that, and you now have the opportunity by this private Bill to do so.

We do not believe that the majority of Calgary taxpayers, the residential property owners, the people who vote for the mayor, who vote for you -- these are the people that are concerned -- should be exposed to the risk of increased tax rates as a result of potential tax shifts amounting to $36 million or more of previously paid and future property taxes. Such a situation is particularly intolerable, since the circumstances creating the risk are not ones caused by the city of Calgary. They're the results of the Local Authorities Board wording of the orders -- that's your Local Authorities Board -- and the recent Ontario Superior Court decision.

The private Bill presented for your consideration will resolve both of these problems. We have got the solution: (a) enacting into legislation the 1986 Local Authorities Board order and the amendments by the Lieutenant Governor in Council -- we're just asking you to do what you've already done; (b) quieting all opportunistic claims against the city which may arise out of the publicity of this situation. It is going to get publicity. One of the claimants is CFCN, who control the *Calgary Sun*, the *Edmonton Sun*, CFCN, and the radio station in Calgary. It's going to get publicity. And it's going to open the door to everybody. So when people say they haven't been notified, the very fact that you have almost a full gallery behind me is that a lot of people know. They know what's going on, and they're here to take advantage. I would reiterate that this clause is simply preserving the well-established principles already contained in the tax recovery -- it's already there -- of limiting a taxpayer's right to claim return of money paid to a municipality, thus creating certainty in municipal finance. Because as often happens, if governments run short of money, they come knocking on your door, and I don't think you have that much anymore. We are looking after ourselves and attempting to look after ourselves.

The city of Calgary has taken care to protect the rights of those who commenced proceedings. We're not going to run roughshod over people who have followed the Act, who have done what the law says they ought to do. They're protected, and the city is protecting them. There are a number of people out there, and we'll handle those cases, because they've done what the law tells them they should do. These other people are jumping in; they are taking advantage. They're opportunistic.

I thank you very much. I'm sorry it took beyond the time we had allotted, but thank you very much. We're now open to questions, each and every one of us, by the members of your committee.

Thank you, Mr. Chairman.

MR. CHAIRMAN: Thank you very much, Mr. Anderson. Now, just so there's no misunderstanding in the room, we can stay here. Of course, if we lose a quorum, we have to stop. Members did not plan on staying till noon, but we can stay till noon if we have to and members and everybody else concerned are willing to.

MR. G. ANDERSON: The city of Calgary is here at your convenience. We'll come back if we have to; we'll stay if we have to. Whatever your committee wants we will gladly adhere to.

MR. CHAIRMAN: At this stage I'm going to now ask whether any members have some questions arising out of the complete presentation, and then I will give the opportunity to the interveners to cross-examine, first of all. Then, following that, we

will allow for presentations to be made by interveners when they'll be sworn and then also subject to cross-examination.

Mr. Wright, followed by Mr. Younie.

MR. WRIGHT: Yes. Mr. Anderson, would I be right in summing up your case more or less as follows: that when these areas of lands were taken into the city of Calgary in the '50s and '60s, agricultural operations were grandfathered? The triggering mechanisms in the orders were, perhaps we can say, "sloppily drawn" so that some owners subsequently have been able to drive a coach and four through them and avoid the triggering. And you're simply trying to correct the ill effects, possibly disastrous effects, of this perhaps sloppy wording?

MR. G. ANDERSON: Sir, you put it very succinctly. That is correct. That's what we're trying to do. That's why we went to the Local Authorities Board in 1986 -- to fix it, to make it fair.

MR. YOUNIE: Okay, we've heard it . . .

MR. G. ANDERSON: Can I just interrupt for one second, sir? I've just received a message. I alluded earlier that the city had some other problems in Calgary today, and Chief Commissioner George Cornish has to be in Calgary by 12:30. To catch the earliest available airbus, I wonder if he could also be excused.

MR. CHAIRMAN: Mr. Cornish, you're excused. Mr. Younie.

MR. YOUNIE: We've heard several times that part of the problem was the fuzziness of the original LAB orders and so on. I'm wondering if at this point the LAB orders that we're being asked to, by this Act, enshrine in law have been clarified, or if in fact we're going to be bringing fuzzy LAB orders into law through the Act?

MR. G. ANDERSON: No, the orders themselves are clear as to the triggers. The problem that we have really relates as much to the conduct of the Local Authorities Board during the course of the hearing, which may in fact open the door because -- just the way they held the hearing, which has no control over the city. The actual triggers under the orders are in fact -- I can be very clear about it -- the triggers that the city of Calgary recommended to the board, and they accepted those. We believe they will work very effectively for all citizens in the city of Calgary.

MR. YOUNIE: Okay. Another one: we are being asked to some extent to remove the right of people to appeal past tax assessments in a form that upholds present Tax Recovery Act stipulations. Would this have any affect on a person's ability to appeal, and his recourse to the courts even, on future assessments?

MR. G. ANDERSON: No, not in future assessments. No, I'm sorry. It only rolls back from the date that's established in the order, which is December 31, '85.

MR. YOUNIE: On, say, 1989 assessments or 1990 assessments, if somebody felt they were unfair, he would have the standard six months within which to commence proceedings and appeal.

MR. G. ANDERSON: Correct. In other words, it blocks off anyone who wants to go back to 1981 or maybe even beyond that. If you have a claim that arises out of the 1987 assessments -- and I can assure you that you will in the city of Calgary, because the province has ordered the city to do a reassessment; we are going to have substantially a number of different claims arise out of that -- this does not affect that.

MR. YOUNIE: One more point. You'd mentioned rezoning land. I wanted to make sure your explanation did clarify it in my mind. The fact that you rezone land and build utilities or services up to somebody's property line will not affect his tax assessment unless he applies also for some kind of urban use of the land?

MR. FACEY: Yes, he has got to also apply for a development permit or a building permit.

MR. YOUNIE: So, for instance, you could not build the services up the edge of somebody's farm and tell them it's now urban land use and rezone it. The fact that he's driving his tractor around planting crops . . .

MR. FACEY: Let me clarify that point. The city (a) doesn't build these services; adjoining landowners do. And under the existing trigger that has been in 20027 since 1957, if city services are extended to become available to undeveloped property, that has always triggered that property to come out of the order, and that doesn't change. What we've done is clarify what that word "availability" means. We've defined it fairly specifically as being in surrounding rights-of-way and within the projections of the property lines.

MR. YOUNIE: I did want to make one more point, because part of the problem seems to be a judgment of how many people who are affected by the LAB orders will, whether you call it opportunistic or not, appeal decisions and try to get a refund. It seems to me that we can't have that many stupid businesspeople who would pass up a chance to get a few hundred thousand dollars of back taxes back if the opportunity were made available.

MR. G. ANDERSON: Well, for example, an owner of a shopping centre would be required under the provisions of his lease to obtain whatever relief was available on taxes for the tenants. That's a provision in the lease. Our firm acts for major developers, and I'm familiar with that provision in the lease. They would in fact be required to do that, because whatever their costs are for doing that are passed on to the owners or the tenants as an operating cost. But they would be required to do that. If they didn't, the tenant could take action against the landlord.

MR. YOUNIE: I'm just wondering what kind of dollar fee we're talking about on a major shopping mall, the difference between if they can keep being taxed as rural land and the urban taxes.

MR. G. ANDERSON: Mr. Judd can answer that. He'll have the exact figure, say, for Sunridge Mall as an example.

MR. JUDD: Mr. Chairman, there are in fact three regional shopping centres that are involved in this; one neighbourhood shopping centre. The regional shopping centres would pay $800,000 to $900,000 of taxes per annum on Calgary base. If they are assessed and taxed on the basis of the municipal dis-

trict, it would be in the order of, say, $500,000, giving an advantage of close to $400,000 average for each of those three regional shopping centres per annum. That's based on 1986 calculations.

MR. JONSON: Mr. Chairman, just a question on what's been referred to as the error in wording or fuzziness of the Local Authorities Board orders. Am I correct -- and I could direct this to the presenter -- that what we're really talking about there is an error that was made in process in terms of hearing the objectors and the presenters and so on when those Local Authorities Board orders were passed down? Or just what is that particular problem?

MR. G ANDERSON: It's really a combination. There is a possibility that there could be -- and I say these are just "may" -- there could be perhaps not to the triggers but in other parts of the order a concern about the interpretation of the order. Not as to the triggers per se but to the other parts of the order there could be a problem. And I say "could be." And there could be a problem as to the conduct of the hearing. I again stress "could be." We cannot say that we would be unsuccessful in court. I like to believe that whatever I tackle is going to be successful. But there is a risk, and for $36 million you can't afford to run the risk. It just doesn't make sense. The fact that it could be attacked, whether it would be successfully attacked or not no one can say except the court, but the risk is there. The reason we are before you here today is that no man in his right mind, if he has another route to go, would run a risk. You don't flip a coin if you can protect yourself by another means. And that's really what it is. Going to court is a coin toss; any lawyer will tell you that.

MR. CHAIRMAN: Mr. Hope, you have been waiting.

MR. HOPE: I think perhaps it would be better that I reserve my statements until all questions of the city have been asked and then I can get into my submission.

MR. CHAIRMAN: Any cross-examine type questioning on facts or . . .

MR. HOPE: I think I have a couple, and I can do it perhaps right now, Mr. Chairman.

I just wanted to ask perhaps a question of one of the city members; I don't know which one might know. First of all, how many people do they feel -- landowners, whether they be corporate or individuals -- are affected by this particular Bill, whether it be pursuant to the amendments of the LAB order or whether it be pursuant to these rights they wish to extinguish. Obviously a supplementary to that is: how have they been notified of this particular petition? Because there are really only about half a dozen people here today.

MR. FACEY: Mr. Chairman, in 1980 there were about 1,800 properties still subject to the order. By 1986 these had reduced to about 1,400 because the triggers that existed at that time took out four, and this year at the present time there are only 700 because the triggers that were imposed, as we described earlier, have in fact taken out about 700. Some of these could be affected by the situation. However, this is a very small percentage of the total taxpayers, of which there are some 200,000 in the city of Calgary who would be adversely affected if we don't achieve this private Bill.

In terms of notification, we did do the proper advertising. Prior to the Local Authorities Board hearings, there were individual notifications done. A lot of people turned out at those hearings. Not many of them are here today. Many of them were quite satisfied with the outcomes of that process. We also for these hearings went through the statutory requirements of advertising in the *Calgary Herald* once a week for two successive weeks and also in two successive issues of the *Gazette*. We also notified directly any people who we knew had claims against the city.

MR. HOPE: Thank you. Mr. Chairman, perhaps this is a further supplementary to that. Mr. Facey, you agree with me that according to the Local Authorities Board Act, you were required to give individual notice to affected landowners, as was done last year. Correct?

MR. FACEY: When we were amending the orders, yes, and we did that. We aren't amending any orders this time.

MR. HOPE: That's correct, Mr. Facey. However, in this particular situation today you are asking for a confirmation of an LAB order, and as well you're asking to have certain civil rights extinguished that affect those landowners. Isn't that correct, Mr. Facey?

MR. FACEY: I think the lawyers should answer that question.

MR. G. ANDERSON: Mr. Chairman, I guess lawyers are wont sometimes to, in the guise of a question, try to get their point of view across. What my learned friend is attempting to do in the guise of a question, which to me is clearly not a question but a statement that he would like to place before you -- his place is best able to do it as part of his submission. That is not a question. [interjection] It is clear. Please do not interrupt me, sir.

MR. CHAIRMAN: Maybe I can help. I think the committee understands that there may be different requirements for Local Authorities Board hearings, as there are for the proceedings of the Legislative Assembly, this committee in particular, and I guess we know that as far as we're concerned about our petitions for private Bills, it has to be advertised three times in the local. The city is saying it has met the requirements of the Legislative Assembly as regards Pr. 19 in advertising, and I guess Mr. Hope is suggesting that because it could affect everybody, perhaps an additional, nonrequired step be taken. The city has said it hasn't taken that step.

MR. HOPE: I haven't asked the most specific question, Mr. Chairman and Mr. Facey. Have Canfarge and CBR Cement been individually notified of this particular petition?

MR. G. ANDERSON: Sir, the question I'd ask you: are Canfarge and that other company represented here today by counsel? The answer is yes.

MR. CHAIRMAN: Mr. Hope, I don't think we will pursue that any further. But is there anything further?

MR. HOPE: Yes, Mr. Chairman, I suppose again to any one of the individual members here from the city. What documents do they have here today to show how they have calculated this $36

million? They keep using this figure, but we haven't seen one piece of paper verifying it in any formal fashion.

MR. JUDD: Mr. Chairman, I attempted that answer earlier. At the time of the Local Authorities Board hearing, we presented to the Local Authorities Board a document wherein we looked at each and every property affected by the order, including those that the courts had said should go back into the order. We calculated the taxes on the basis of the municipal district; we calculated the taxes on the basis of the city of Calgary, looked at the difference between the two, which was approximately $6.5 million. Of that $6.5 million, the triggers do not take about $1 million out, so the $5.5 million for the calendar year 1986 is based on the documents we provided to the Local Authorities Board.

MR. CHAIRMAN: Mr. Miller, do you have any questions on cross-examination?

MR. MILLER: No questions, Mr. Chairman, thank you.

MR. CHAIRMAN: Mr. Soulière.

MR. SOULIÈRE: Thank you, Mr. Chairman. My question is to Mr. Anderson. You reiterated three times that a substantial portion of the tax refunds would go to non-Albertans. Do you have any figures to say how much that substantial portion is?

MR. G. ANDERSON: Not exact figures, Mr. Chairman, but it is pretty clear that, for example, Sunridge Mall is owned by Cambridge shopping centres which is located outside the city of Calgary. Northland Village Mall is owned by Cadillac Fairview and Marathon which are outside the city of Calgary. Market Mall is owned by Cadillac Fairview which is outside the city of Calgary. There are a number of other businesses. We know for a fact that a lot of the tenants of those particular stores are firms located outside the city of Calgary, outside the province of Alberta. For example, Dylex is in virtually every shopping centre across this country under Big Steel, Fairweather, whatever, Tip Top. We know, and it is clear, that because Alberta has very few native businesses and most of these chain operations, Safeway, whatever, are all located outside the city of Calgary; their profits go outside the city of Calgary.

MRS. MIROSH: Point of order, Mr. Chairman.

MR. CHAIRMAN: Yes, Mrs. Mirosh.

MRS. MIROSH: I'm not sure that this is relevant, though, to the Bill. Where people are located -- they do bring business and they do employ people.

MR. MUSGREAVE: On a point of order.

MR. CHAIRMAN: Yes, Mr. Musgreave.

MR. MUSGREAVE: I may agree with the hon. Member for Calgary Glenmore that it's not relevant, but the issue wasn't brought up by the presenters. I do wish all of you would try and stick more to the subject and less of this jousting back and forth, because I think we as committee members are quite capable of working our way through the presentations if you stick to the facts and never mind this hassling back and forth that is part of your nature of the kind of profession you represent.

MR. CHISAN: There have been a number of occasions here where the city has raised the matter of hearings before the local tribunals that are the hearings that were heard before the local LAB tribunal. A member of the committee has raised the question also of notice, and there have been comments made by the city that these hearings were as required by the LAB Act; landowners and interested parties were given notice of this. I would like to ask the city if they do not know full well, and have really evaded the matter in their answer, that yes, individual notice was given of the LAB hearings. It was given for a date in July, and that hearing was canceled. There was no further indication as to when those hearings would be reheld, and there was no further individual notice. There was an advertisement in the paper a few days before the hearings, and when people went to the designated place for these hearings, the hearings were not even held there; they had been moved again without any notice. Now, the city knows full well, I would suggest, and I'd ask them to comment on that charge.

MR. CHAIRMAN: I don't like to take charge here, but I think in all fairness, Mr. Chisan, that is probably one of the technical things the city is concerned about in legal quirks as to the validity of the most recent Local Authorities Board orders. Now, if I misunderstand that, maybe the city could say.

MR. TOLLEY: Perhaps I can speak to that, if I might, Mr. Chairman. The Local Authorities Board hearings were originally scheduled in July. One of them was postponed by the chairman of the Local Authorities Board. There was a hearing held with respect to annexation order 20027, and a sizable amount of people showed up for that hearing, at which point in time the chairman said the accommodation we have is not sufficient to hold the hearing on order 25860 because there are more property owners. And with respect to that he directed that the city find another enlarged accommodation to take care of that situation. The city did so and posted someone at the old location to direct all landowners to the new location.

MR. CHAIRMAN: Thank you.

MR. CHISAN: Is it not true, though, that the original hearings for 25860 were canceled and there was no notice given to the individual property owners as to the second hearings which occurred in October? Is that not true?

MR. TOLLEY: Mr. Chairman, I believe that the chairman simply adjourned those hearings and directed that there be an advertisement taken out in the paper. There was no individual notice given, because that would have been an extremely costly procedure to undergo. It was simply at the request of the chairman, I believe -- and Mr. Judd may want to correct me on this -- that the hearing be put to another day and a notice taken out in the newspaper to advertise of the hearing's being rescheduled.

MR. JUDD: Mr. Chairman, if I could add to that answer. The original date that had been scheduled for the hearings came up, and shortly before that date, but after we had provided to the Local Authorities Board the list of affected properties, we got a court decision which effectively added 72 or 76 additional properties to the list. And these 76 people had not been served. The chairman and members of the Local Authorities Board adjourned the hearings to a later date for the purpose of being able to notify those additional properties that were now deemed to be

subject to the order because of the court decision.

The location where the original hearing was to be held had signs posted there. I had staff members who attended that location to advise people who appeared that the hearing had been adjourned and the dates that it was being adjourned to. The hearings were subsequently held in accordance with the chairman's adjournment.

MR. CHAIRMAN: You're referring to the chairman of the Local Authorities Board?

MR. JUDD: The Local Authorities Board -- that is correct, sir.

MR. CHISAN: I would hope that what you have said there is that in fact there was no second notice given at all of those hearings individually to the landowners, although there was an advertisement in the paper.

Now, in your presentation -- going on to the second question, you have made reference to two triggers. I would ask the question: by virtue of changes to subparagraph (11) which says, "NOTWITHSTANDING ANY OTHER PROVISION IN THIS ORDER . . ." upon reassessment by the MD of Rocky View. And it goes on from there. Is that not a third trigger, that once the MD of Rocky View reassesses the land in their MD, then the provisions of the order no longer apply, and therefore making landowners subject to the same increase in assessment as occurred in 1981 -- as in my case, 32,000 percent.

MR. G. ANDERSON: Mr. Chairman, that is not a matter at issue before this particular committee. We're not prepared to respond to that.

MR. CHISAN: Well, if it's true it's not a matter at issue, then why bother bringing up the triggers in the first place? Like, I didn't raise the matter of the triggers. The city has presented two triggers. I'm asking a question as to whether that is a complete and full picture.

MR. G. ANDERSON: It was provided to you by way of background, Mr. Chairman.

MR. CHAIRMAN: The third question . . .

MR. CHISAN: Maybe it's a matter of background, too, that we have heard so much on this $36 million, and so maybe my question will be ignored there also. But as a matter of background, it was presented to the Local Authorities Board at that time that it was fact that there were forgone taxes of approximately $7 million. And there were particularly a number of malls, as you've heard repeatedly here today -- malls such as Northland mall, Market Mall, Sunridge Mall, and Marlborough Mall. That makes for a very sad story to say, "Help us, help us; we're in trouble," because these malls were going to be assessed as rural lands, and there are forgone taxes.

I would like to ask the city whether they have had any contact with those malls, and whether in fact any refund has been made to these malls. And if no refund has been made, have there been any claims for the amount that the city has put before the Local Authorities Board and put before this committee? There certainly hasn't been any action filed in the courthouse. The mall representatives, their administration, deny making any claim whatsoever for any back taxes or any change in assessment from the current city rate. How do they place this kind of statement under oath before this committee?

MR. CHAIRMAN: Well, again I will review what I heard. I didn't hear the city say that there were any claims made by any of the malls. What I heard the city say was that there were one or two property owners challenging what had been done, and if they were successful, that would open the door to the malls to come in, Mr. Chisan. I don't think I heard the city say that they had received any direct indication that the malls were going to be applying for refunds of taxes, but they were afraid that the malls might look to see what other taxpayers had done and use that as a precedent to make claims at some future date. I think that's the evidence that was before us.

DR. WEST: Mr. Chairman, perhaps we could have the city respond to those questions, where they're directed to.

MR. G. ANDERSON: That answer is totally correct, sir, that that is what in fact -- it's a fear. Because once the door opens -- I thought I made that fairly clear. A shopping centre has the obligation under its leases to take advantage, but they're not doing so now because it's not good business. You don't want to be seen as opening the door to stepping over your customers. You know, that's why they're not doing it. But once somebody else opens the door, they're obligated to do so. And a lot of what we're saying is: these are fears, but they're justifiable fears; they will come to pass, we believe.

MR. CHAIRMAN: At this point then, I think I will ask Mr. Miller if he would like to proceed on behalf of . . . I'm sorry, Mr. Anderson.

MR. G. ANDERSON: I'm sorry to interrupt, sir. You may not believe this, but the city of Calgary does have someone in support, and I thought that you might want to hear all those that are in support of the Bill speak first. We have a Mr. Martin Kubik from Twister pipeline who would like to say a few words. He will be very brief, I understand, but he is a taxpayer of the city of Calgary who has come up from Calgary and supports the private Bill.

MR. CHAIRMAN: I think that would make sense to have those supporters heard, and then we'll go into the detractors.

[Mr. Kubik was sworn in]

MR. KUBIK: Mr. Chairman, ladies and gentlemen, my name is Martin Kubik, and I represent the owners of Twister Pipe Ltd., which is located at 8615-48 Street SE in Calgary and is directly affected by this Bill.

We are a manufacturer of highway culvert, grain bins, and guard rail and have been at this address for 11 years. At our peak season we employ approximately 50 people, with our off-season payroll at approximately 20. Over the past 11 years Twister Pipe Ltd. has spent tens of thousands of dollars on gravel for both the front street as well as our backyard. In spring when the frost comes out of the ground, we increase our septic service to every second day, as our tank cannot hold the large amount of water seepage. Last summer during one of our normal rainfalls we were forced to hire a vacuum truck to remove thirty-two 3,000-gallon loads of water from our backyard. The water we hauled away was in addition to the two pumps which were going all day pumping water into a ditch. This ditch

is located on 48th Street and was finally put in two years ago to help alleviate our water problems.

The road passing in front of Twister Pipe becomes a sea of moving gravel every spring. This road is not just full of potholes; it literally sinks under the weight of a two-ton truck. Our product is delivered to various places in Alberta, Saskatchewan, Manitoba, and B.C. by semitrailer units. There have been times when these units were unable to reach our plant to load because of the road conditions. Along with some of our neighbours we have purchased the broken asphalt which was removed from other streets in the city and spread it on our front street. All the costs were borne by Twister Pipe Ltd. and one or two other businessmen.

Since 1976 the company has expanded the plant twice to accommodate our increased sales. This also resulted in increased employment. There have been times when the truck hauling water into our plant was unable to make it and the plant ran completely out of water. This also has happened with our septic service. We, unlike many other businesses on our street, inhabit our building all year long and have had to endure these inconveniences regarding our facilities. The businesses only one block north of us have piped-in water, have sewers, have paved streets, as well as street lights. The owners of Twister Pipe Ltd. have tried many, many times in vain to get something done regarding our problems, but were told that the city of Calgary could not initiate any action.

We understand that this Bill Pr. 19 will not guarantee us services immediately but is the first step to clearing the way for future negotiations for these services. We further understand that our taxes might increase accordingly, but we feel that the increased cost would be worth having those facilities. Twister Pipe Ltd. therefore fully supports Bill Pr. 19.

Thank you.

MR. CHAIRMAN: I guess I would like to ask a question from the Chair then, Mr. Anderson, to the city. How does Bill Pr. 19 assist Twister Pipe in getting these needed roads and services?

MR. G. ANDERSON: Mr. Judd can answer that question, sir.

MR. JUDD: Mr. Chairman, we're dealing with annexation order 25860, and if you go to that order -- clause 4.(2); and 4.(3) -- as the order was originally drafted, the only way a local improvement could be initiated would be by property owner petition. The Bill precluded the council of the city using the rest of the provisions of the Municipal Taxation Act to initiate a local improvement. Subclause 3 went on further and has been horrendously misinterpreted, I feel, over the years, as to whether the city could recover the costs from people who did not actually petition.

If Bill Pr. 19 is passed, then it takes away the uncertainty to local improvements that existed under the original annexation order, and there are additional flexibilities to the city to utilize the full benefits of the Municipal Taxation Act. Individuals would still have the right to file negative petitions under that Act; there would be no variation from it.

MR. CHAIRMAN: You're saying, as I understand it then, that it confirms what has happened in the recent LAB orders -- the new triggers, the new interpretations?

MR. JUDD: Yes.

MR. CHAIRMAN: Mr. Facey, did you . . .

MR. FACEY: Yes. I'd like to just add that what Bill Pr. 19 does is enact into legislation the amendments which solve the problem and which were made last December. This gentleman's concern is that if we don't have Pr. 19 and the court case is successful and the Local Authorities Board order of last year is nullified, then they're going to have to wait several more years while we go through the whole process before they can start asking the city to initiate those local improvements.

MR. CHAIRMAN: Thank you. Mr. Miller, would you like to proceed with your presentation at this time?

MR. MILLER: Thank you, Mr. Chairman. For the record, my name is Keith Miller. I'm a lawyer with Bennett Jones in Calgary, and I represent CFCN Communications Limited.

As you're probably aware, CFCN filed a letter of objection dated April 1, 1987, with this committee regarding Bill Pr. 19. CFCN will produce today one witness, Mr. Shaun Purdue, who will return momentarily, who is the president of CFCN. In addition to addressing matters raised in the letter of objection and making some brief remarks by way of verbal submission, he will address what we believe to be some misstatements of fact referred to by Mr. Anderson, one being the matter of availability of water and sewer services to the CFCN property, and secondly, the corporate relationship of CFCN with other media in this province.

On behalf of CFCN I would like to take the opportunity to thank the committee for giving us this opportunity to speak to the Bill. Obviously, CFCN considers this to be an important piece of legislation having far reaching consequences, and I think that there's great merit shown in giving parties who may be potentially affected by the legislation an opportunity to speak to the people who will exercise judgment in whether that legislation should pass.

As a matter of observation, we've heard a great deal about the potential liability for the city. But one has to note that if the potential liability exists, and in particular for parties who have a great financial stake here, why are there not more people here? And one has to question whether it's a matter of notice and that parties whose legal rights may be seriously affected by this piece of legislation have not been given notice by whatever means -- and I mean effective and communicative notice -- or secondly, that they don't have the financial stake that the city alleges and they're not here because they don't have any concerns about the arising of this legislation. I don't know anything about that, and I can't make any submissions. It's strictly an observation.

To be clear, CFCN is affected by the Public Utilities Board order 20027, and for simplicity I'll simply refer to it as the 27 order in future. And in particular it's affected, and the basis of its claim is clause 9, which makes reference to the method of taxing lands that are affected by that order where the city has not made available to the lands water and sewer services. In that regard, CFCN has commenced a lawsuit in the Court of Queen's Bench of Alberta in December 1986, an action against the city for recovery of tax moneys on the basis that the city taxed the CFCN lands contrary to the provisions of order 27. That's almost one year after the effective cut-off date for legislation that will be permitted to carry forth if this legislation is passed.

A great deal has been made about and references have been

made to the terms "free ride" and "opportunistic." Mr. Purdue will address the facts relating to the state of mind of CFCN concerning its assessments and its taxation and why it commenced its lawsuit when it did, after December 31, 1985. It's particularly relevant, though, when one considers a six-month limitation period after moneys have been paid to the city, which is essentially the defence of the city under section 30 of the Tax Recovery Act. One must consider when an affected party became aware that it was improperly taxed or it overpaid its taxes relative to the six-month period. And Mr. Purdue can address that.

To be clear as well, CFCN is not one of the parties who was affected by the order insofar as there was a rural land use and then an urban land use. It is strictly on the basis of availability of services. We submit that the committee ought not to be burdened with attempting to adjudicate what really are issues of fact and law. There will perhaps be disputes as to what services were made available, when they were made available, and what the effect of those services are or the tie-in is within the context of order 27. Making available under the terms of the Public Utilities Board order and being tied in may have two entirely different legal consequences. Certainly the position of CFCN is that in fact that's the case and that's what creates the liability of the city to CFCN.

If this legislation is passed by the Legislature of the province, CFCN will clearly lose its right to pursue whatever remedies it may ultimately have. It is submitted that Bill Pr. 19 is an extremely broad brush. Not only does it make nonappealable or nonreviewable the Local Authorities Board orders, it also extinguishes any pre-existing legal rights that a party may have. Mind you, in the context of what the effect of section 30 of the Tax Recovery Act is, whether it's constitutional or nonconstitutional -- that is, does it offend the Charter of Rights? -- that certainly is a matter we believe for the courts to determine.

Also, to be clear, CFCN is not one of the parties who has or will challenge the Local Authorities Board orders in question here. There is no dispute. The claim of CFCN relates to the payment of taxes for the years 1981 to '84 inclusive. It is submitted that by way of section 2 of the proposed legislation the effect is to preclude possible implementation of the Charter of Rights and Freedoms. We submit that this is a very serious precedent not only for the citizens of Calgary who, the city claims, would be affected by increased taxes but for all citizens of the province of Alberta, because it effectively removes due process of a party who may be affected by the actions of the city in the way that they tax particular properties. That's a very serious matter: to take a party's opportunity to have their day in court.

Mr. Anderson suggested that the situation the city finds itself in is a quirk in the law. I would submit that it goes much further than ever being a quirk. This is not some peculiar wording, some slip of the draftsman's hand, some unusual interpretation. This is a matter that goes to the very fundamental issue of the applicability of the Charter of Rights and Freedoms. It's not a quirk.

There's been reference to the situation of the tenants of shopping centres who may have, as the city alleges, overpaid the owners of the shopping centres through rents based on municipal taxes and then there's a windfall for the owners of the shopping centres. We would ask the members of the committee not to just stop your thinking at that level but consider whether those tenants might -- and again, I don't know -- but might have some recourse against the landlord to recover overpayment of taxes, if indeed moneys are directed to be refunded from the city.

It is submitted that the city has the burden of establishing to the committee the level of liability it alleges. We note that other than just bare statements there's been nothing submitted to the committee nor to any other affected party that I'm aware of to establish such a high level of liability. I want to point out again that there aren't many people here opposing this thing. I'm not aware of anybody who owns a shopping centre being here. So the burden is on the city to demonstrate the potential liability; it's not on somebody like CFCN who doesn't have the capability to show that the city is wrong. We're not in the business of taxing lands and making assessments.

There's been some discussion as to parties being aware of these proceedings or proceedings related to this legislation through their involvement in the Local Authorities Board process. There are two matters I want to make abundantly clear. One is what the Local Authorities Board did is quite different than what the Legislature of this province is being asked to do. The Local Authorities Board was asked to clarify, given present circumstances, the intent of the earlier Public Utilities Board orders so that they're more applicable to the present circumstances. That is a prospective thing, although cabinet backdated the orders effectively to December 31, 1985. What the city is doing is going beyond something that the Local Authorities Board did and, I submit, could in law do, and that is retrospectively change those orders or take away any rights arising out of those orders. The two are very different.

I think His Worship Mayor Klein, in discussing the matter of notice -- somebody had asked the question of the mayor as to what notice, whether there was ample opportunity given to people -- referred to the Local Authorities Board notice. My point in referring to the Local Authorities Board proceedings is not only to make the distinction between the legislation and what the LAB has done, but also indicate that there was nothing by way of the notice of the Local Authorities Board proceedings that would give any indication that something of this nature would arise out of those proceedings. They're fundamentally different and not directly related.

To conclude, before I turn to Mr. Purdue: the simple position is that CFCN wants its day in court to determine whether it has been taxed in accordance with order 27, and it's as simple as that.

Thank you.

[Mr. Purdue was sworn in]

MR. CHAIRMAN: Mr. Wright, are you just getting on the list, or did you have a question before Mr. Purdue's evidence?

MR. WRIGHT: Just getting on the list.

MR. CHAIRMAN: Okay, thank you. Mr. Purdue.

MR. PURDUE: Thank you. At the commencement of this discussion, I'd like to clarify some points raised by the city in its submission. Firstly, CFCN is a resident Alberta corporation. We employ some 300 Albertans throughout the province in radio and television. We do not own any portion of the *Calgary Sun* or the *Edmonton Sun*, nor do we own any shopping centre complexes. Secondly, the land in question in CFCN's suit is located to the west of the downtown core and encompasses some 30 acres which contain our Calgary radio and television

facilities.

In 1961 CFCN purchased the lands in question and built its original TV and radio facilities. At that time, CFCN constructed at its sole cost a water pipeline, some one to two miles in length, beyond the CFCN land boundaries to carry water from existing city water mains. The capital costs, the maintenance, and all operating costs were to be borne by CFCN and were borne by CFCN. In 1985 CFCN expanded its facilities, and at that time the city requested CFCN to sign what they called a "deferred service agreement." I would like to read you some clauses from that agreement. Clause 4 of that agreement states:

> The Owner shall bear the cost of constructing and maintaining all underground utilities and surface improvements on the Land which relate to the Development.
>
> 5. (d) The Owner hereby agrees that any water service connection which may be installed by the Owner to the Land, from the watermain in 59 street N.W. as per Clause 5(c), which is not located within an existing road allowance shall be designed and constructed as a private facility. This private facility or any portion thereof shall not be maintained by nor become the responsibility of the City of Calgary.
>
> 6. The Owner acknowledges that the City will not provide the full range of usual urban services to or in the vicinity of the Land until their availability becomes economically feasible in the opinion of the City Engineer.
>
> 7. The Owner acknowledges that fire protection to the Development may be limited by the lack of ultimate usual urban services and the distance of the Development from fire fighting facilities.

Under the redefinition of availability in LAB order 18101 CFCN lands did not have water or sewer service until 1986. At that time those city services became available in the public right-of-way which is directly adjacent to the subject lands.

CFCN Communications Ltd. is not here to question or ask for any redefinition of LAB orders 18101 or 18119 nor the original underlying LAB orders 25860 or 20027. In effect CFCN has no objection to section 1, page 2, of Bill Pr. 19. Our concern and the reason for our appearance is section 2, page 2. This provision clearly removes the legal rights of Calgary residents to challenge the city of Calgary for improperly taxing lands, contrary to the Public Utilities Board orders in question, unless residents had commenced legal proceedings prior to December 31, 1985.

CFCN only became aware of tax problems late in 1985 when there was a substantial change in the assessed value of our lands. It was therefore not practical for CFCN to launch a suit prior to December 31, 1985. In the case of CFCN we filed a statement of claim against the city for excessive taxation under board order 20027 on December 15, 1986. This step was taken only after we had requested in May 1986 adjustment to past taxes from the city. I would note that CFCN did not receive any reply from the city to our May '86 inquiries.

If this Bill is passed, CFCN's legal right to challenge the taxation by the city would be retroactively removed. This Bill voids litigation already in process.

I would further request this committee to carefully consider the fact that the city, by requesting passage of this Bill, is asking the Legislature to effectively opt out of specific provisions of the Canadian Charter of Rights and Freedoms insofar as section 30 of the Tax Recovery Act is concerned. This we believe should only be done in the most extreme circumstances and only after very careful and thoughtful public debate. The validity of section 30 of the Tax Recovery Act is something for the courts of Alberta to consider, and an individual's right to commence and maintain a lawsuit is something which should not be lightly interfered with. We believe there are numerous landowners who are unaware of this Bill and who, if informed, would find themselves in a position similar to CFCN's of having their existing legal rights retroactively removed through passage of this legislation.

If it is the Legislature's intent through this Bill to ensure that LAB orders 18101 and 18119 may not be challenged, this can easily be done by enacting only section 1. This legislation would then not remove existing legal rights of landowners to challenge in the courts improper city taxation nor invalidate ongoing litigation, as is the case with CFCN. We would therefore respectively request that you delete section 2.

If I could just make one correction to an earlier statement, I said that CFCN only became aware of our tax problem late in 1985; in effect, the assessment that triggered our concern was February of '86.

MR. CHAIRMAN: Thank you, Mr. Purdue.

MR. WRIGHT: A question, Mr. Purdue. This is not, I suppose, very strictly relevant, but you did say that you do not own any portion of the *Calgary* or *Edmonton Sun*. You mean, of course, CFCN . . .

MR. PURDUE: Communications Limited.

MR. WRIGHT: Are you connected in any way with those publications?

MR. PURDUE: Maclean Hunter Ltd. is our parent company, which owns 100 percent of CFCN. It owns approximately 50 percent at this point in time of the Toronto Sun group.

MR. WRIGHT: Yes, so you're part of the same family.

MR. PURDUE: We are. However, I should note that there are documents filed with the federal government relating to control of newspaper, radio, and television operations that limit the influences of our parent company upon the Toronto Sun group.

MR. WRIGHT: Thank you. But you know you are here to tell the whole truth, Mr. Purdue, when you -- that strikes me as being rather a tricky sort of reply, to be very frank with you.

Mr. Purdue, you said that CFCN only became aware of problems -- I think you amended it to '86 now. Is that so?

MR. PURDUE: Yes.

MR. WRIGHT: And at that time you received a letter from the . . . What happened at that time to make you aware?

MR. PURDUE: The assessed value of our land went from somewhere in the neighbourhood of 1.2 million to about $50,000, and that's when we thought that perhaps there was something unusual occuring.

MR. WRIGHT: Again, you said it was a change in the taxation

that alerted you to the problem. This was a change downwards.

MR. PURDUE: Yes, that's right.

MR. WRIGHT: Up to that time you'd been content with the tax as it stood.

MR. PURDUE: Well, we had been paying the tax as it stood.

MR. WRIGHT: Were you not content with it? I don't know if anyone's ever content with tax, but relatively speaking

MR. PURDUE: Well, I guess at the time that we were paying our taxes, we were paying them on the presumption that they were being properly calculated.

MR. WRIGHT: You were getting a break, weren't you, compared to people in the city?

MR. PURDUE: We were not being properly taxed under the particular board order.

MR. WRIGHT: My question -- please listen -- is: you were getting a break compared to other people in the city, weren't you?

MR. PURDUE: I can't honestly answer that question.

MR. WRIGHT: Were you being taxed on a rural basis but not as completely as you ought to have been according to the courts?

MR. PURDUE: I'm not sure about that one.

MR. WRIGHT: Mr. Purdue, CFCN was not being taxed as it would have been if your operation had been located outside the area covered by the Public Utilities Board order that you're under but elsewhere in the city.

MR. PURDUE: If our lands had not fallen under the Public Utilities Board order, we would have been taxed at a different rate. Yes.

MR. WRIGHT: At a higher rate.

MR. PURDUE: Pardon?

MR. WRIGHT: A higher rate.

MR. PURDUE: If we were in the city, I don't know. I would be assuming that it would be a higher rate.

MR. WRIGHT: Perhaps I've made the point enough, Mr. Chairman. So what you're after is a bigger break?

MR. PURDUE: No, we're after the break -- we're after, I guess, the proper application of the Public Utilities Board orders that apply to our land.

MR. WRIGHT: Which gives you a bigger break.

MR. PURDUE: Our claim states that we would attempt to recover some $71,000 in overpayment of taxes for the years '81 through to '84.

MR. WRIGHT: Thank you.

MR. YOUNIE: I've got some question about the timing of this suit as well, insofar as the existing law of the province says that there is a six-month period after payment of taxes that one has the right to commence action. So I'm wondering why it is, in fact, an action is even before the courts now if it is in contravention of that clause of the Tax Recovery Act. Because obviously, if present law says you have six months to commence action and you're commencing action in '86 on taxes paid in '81 to '84, that's far beyond the six-month time limit. So really my opinion is not that we're being asked to extinguish your right to your day in court or to sue for back taxes but in fact that we're being asked to uphold the Tax Recovery Act that says you only have six months, and you've already gone years beyond that six months.

MR. MILLER: Mr. Younie, if I could respond to that, what you're being asked to do in the legal sense with respect to the Tax Recovery Act will only have effect concerning the assessments and the lands subject to this particular Bill. If there is a flaw in the Tax Recovery Act, that's going to continue and the city is going to face that problem in any event. It will meet the Charter arguments from today and forward until that matter is resolved by the courts.

With respect to the timing of the lawsuit, I think the evidence of Mr. Purdue is that CFCN became aware of a change on the basis that it was being taxed, alerted it to some discrepancy, and then investigated it. In my opening comment I asked the committee to consider the fairness of someone being bound by six-month limitation periods, some, let's say, four or five years after they become aware that they have a right in the lawsuit. So you're not being asked to uphold the Tax Recovery Act; you're being asked to circumvent the Charter of Rights, which may invalidate section 30 of the Tax Recovery Act in any event.

MR. YOUNIE: I would suspect if it invalidates that it would also invalidate clause 2 of this Bill at the same time or certainly would set a precedent which would allow for the invalidation of this, so it would not change anything there.

I also had a question about the one matter that was brought up in terms of providing water service and sewage service to CFCN, that being that we've been told that you, at your own cost, ran the piping to the nearest city hookup. And we've been told before that that is in fact the procedure anywhere in the city that those who are developing on land run the service. Personally, I have some reaction to the fact that the city says, "Well, you install the pipes, and you pay for the cost of putting them in there, and then we'll charge you for using them on your monthly bill" -- as I'm charged for using sewer pipes on my house. But that notwithstanding, it seems to be the normal operation in the rest of the city, so again that should have no bearing on the case. If it's the same as happens everywhere else throughout the city, then you should be being taxed on the same process as everywhere else throughout the city too. And the only thing that should allow you for a different tax rate is if there is something different about the services you're receiving.

MR. MILLER: If I might respond again, Mr. Younie, as a matter of law as distinct from the fact, LAB order 18101 establishes again or redefines clause 9; that is, the availability of water and

sewer provision. What I would suggest to you is that if one reads that clause and one assumes the facts, that you have a facility such as CFCN where it ties into city facilities and the city has not made available the water and sewer lines at a location specified in the order -- that is, CFCN ties in beyond those points -- such a facility would still be subject to the operation of clause 9 of the new LAB order and would still be taxed at the lower levels. And that is the prospective effect of the Local Authorities Board, given those facts.

So the point here is that with a redefinition of what the meaning of availability of water and sewer is by this new LAB order, if one takes this and puts it in the context of the original order based on the facts as put forth by CFCN within the meaning of "available" in the PUB order, those facilities were not made available. And so the city would have to tax it on the basis of the lower level as a matter of law.

MR. YOUNIE: Which level are they taxing you on now, the lower or higher level?

MR. PURDUE: At the current time -- in 1985 I assume we were under the board order; in 1981-84 we were improperly taxed under the particular board order. Okay. Prior to that I would have to assume that we were properly taxed under the board order. As of 1986 water and sewer services were available to our land, abutting our land, as per the board order, so we would come out of the protection of the board order.

MR. WRIGHT: Mr. Chairman, I'd like to try my questions to Mr. Purdue; I have some for Mr. Miller, if I may.

MR. CHAIRMAN: Could I just get Mr. Jonson first?

MR. JONSON: Mr. Chairman, following up on the line of questioning pursued by Mr. Younie: really, as I understand this, suitable water and sewer services were made available to this property in 1986?

MR. PURDUE: Yes.

MR. JONSON: What is being argued by CFCN -- and I ask this of them -- is really a very fine technical point which has no bearing upon the service provided to you. It's just so happened that the lines came in in a different fashion than was described in the board order, but really the service was there?

MR. PURDUE: No. We had built our own water pipeline, which is not normal. We extended it beyond our boundaries, obtained rights-of-way through private properties to tie our waterline into an existing city service, which was on the opposite side of Sarcee Trail and Bow Trail. Up until 1985 CFCN did not have any sewer services; we used septic fields. In early '85 we ran into problems with our septic field, and we built a sewer connection that again extended beyond our property boundaries, and we had to obtain rights-of-way across roads to hook into an existing city sewer facility. So we did not have the normal services available throughout that whole period of time, and we had to pay the full cost of those services, which we were willing to do. We paid the capital cost; we paid the operating cost; we paid the maintenance cost -- everything else in regards to those services.

MR. JONSON: But isn't part of your argument also that there is something at issue here because now you're getting these services but they're not in a public roadway or are out of a public roadway?

MR. PURDUE: No, I think the redefinition of the LAB order said that for you to be covered by the LAB order, these things could not happen. Given that those items have now happened in 1986, our land would not be covered by the LAB order.

MR. CHAIRMAN: Mr. Clegg.

MR. G. CLEGG: Thank you, Mr. Chairman. I just seem to be getting more confused as I sit here, and I sat on local government for a lot of years. But I was always of the understanding that the assessor puts on an assessment. Now, if you didn't like that assessment, you had the right of appeal to the appeal board. Now, if you didn't like what the appeal board told you, you went to the Alberta Assessment Board. Now, my specific question is: will the Alberta Assessment Board hear an assessment four years ago? You know, I have difficulty believing that you can go back four years when it clearly states in the Act that you can't go back after six months.

MR. CHAIRMAN: Mr. Clegg, we'll try to shorten this up. As I understand it, CFCN is something like the city in this respect: they are willing to take their chances in court, but they don't want to be denied their access to court. I think that's their argument in a nutshell. The city says that they are not saying that what's happened before is necessarily wrong, but they don't want to take their chances in court. So that's the difference here. I don't know if I'm stating it unfairly; I think I'm pretty fair there.

MR. G. ANDERSON: Mr. Chairman, I think on behalf of CFCN you're stating it quite fairly.

MR. CHAIRMAN: Well, I hope I'm not doing it just on the basis of CFCN. That's what I heard.

MRS. MIROSH: On that point, Mr. Chairman. Why wouldn't you have gone through that process rather than going through the courts?

MR. CHAIRMAN: Well, Mrs. Mirosh, again they say they didn't do it because they didn't know about it. They had no knowledge of it. They were going along in a sort of a force of momentum, then all of a sudden they found a lower assessment for some reason, and they got into the facts of the situation and now feel that they are aggrieved, and they want a right to go to court. I think that's the . . .

MRS. MIROSH: Well, on that point, Mr. Chairman, it's a process that everybody can follow. I mean, the city gives tax notice. We all get them. And you had that right to appeal, as my colleague has just outlined. He must have known that process.

MR. G. ANDERSON: Mr. Chairman, we will have something to say in that regard. With respect to the process I can only infer that everybody's taken, you know, what remedies they may have by way of appeal from assessments. But unless you know that you have a basis -- for example, if the city tells you that your new assessment is X dollars and you say, "Well gee, that seems a little high." In other words, there's got to be some

anomaly, some basis for it. But if there's been consistent assessment or whatever and there's been no red flag waved, then why bother appealing an assessment if you don't think it's been improperly made? I think the evidence of Mr. Purdue is that all of a sudden in 1986 something arose to cause him to go back and say, "Well gee, on what basis were the assessments made earlier?" And that, I think, fairly states how this came about.

MR. CHAIRMAN: Mr. Wright.

MR. WRIGHT: Yes. Mr. Miller, would you not agree that the purpose of the disputed clauses in the Public Utilities Board orders of 57 and 61, was it . . . Which is yours, the early one?

MR. MILLER: Fifty-seven.

MR. WRIGHT: All right, 57. And 61 was to a grandfather in people engaged in bona fide rural activity, either farming or perhaps country residential, something like that. I mean, that's what we hear about. Don't you agree that's so?

MR. MILLER: Mr. Wright, I think there was an express recognition quite apart from the nature of the land use. In the order of 1957, the 27 order I refer to, in the last clause of the preamble on the first page -- and I'll read it -- the board went on to state:

> And . . . appearing that while there is a need for the annexation of the area and that it is particularly suitable for the purpose it is to be put

and this is the important part:

> it will be some time before the entire area is fully developed and in the meantime the taxpayers of the undeveloped portion will not be receiving much more in the way of services from the City than they have been receiving from the Municipal District.

And what I'm suggesting is that it's a twofold thing. Not only do you move from rural to urban, but I think it's implicit in that statement that when you move to the urban, you also get the normal city services. And what we're saying is that although this property may have for all intents and purposes moved to an urban use, it didn't get normal urban services as referred to in the order, and the clause . . .

MR. WRIGHT: But it got the benefit of a lower assessment.

MR. MILLER: That's the effect, yes. But I admit that's pursuant to the clear terms of the order.

MR. WRIGHT: Well, your client has never carried on any rural activity on this property?

MR. PURDUE: We carried on our radio and television operations on the properties. That was it.

MR. WRIGHT: And since 1961 you've had the water, which you put in at your expense. And since 1982, is it, the sewer?

MR. PURDUE: Yes. Now, I should correct myself on that. I did mention 1985, I think, on the sewer; it was 1982.

MR. WRIGHT: Which again you put in at your expense?

MR. PURDUE: Correct.

MR. WRIGHT: And where was the municipal sewer line at that point?

MR. PURDUE: It was some way off of our property boundary. I have a small map here that would show the sewer connection. The approximate distance would be a quarter of a mile.

MR. WRIGHT: From the boundary of your property?

MR. PURDUE: Yes.

MR. WRIGHT: And, Mr. Miller, the thing that woke up your client to the possibility they'd been overcharged under a correct reading of the Public Utilities Board order -- now, if they had gone through the same thought process that whoever discovered this anomaly went through, it would have been obvious to them, or the same argument could have occurred to them in 1961?

MR. MILLER: Mr. Wright, I couldn't answer that because I would have to presume the basis on which other parties became aware of the circumstances, and I just honestly couldn't do that. There may have been circumstances that again may have raised a red flag that I just couldn't allude to at this time.

MR. WRIGHT: Yes. Well, all it boils down to is that someone realized they'd been missing a trick in all those years.

MR. MILLER: I wouldn't characterize it that way. I think we would expect that no matter what order was in existence, as long as it's a legally established order, whether it be an order of the LAB or some other proper authority in the province, one is, as a citizen of Alberta, entitled to assume that it's being properly administered and that it is being handled in accordance with the law. The allegation of CFCN is that the lands which were subject to the order were not being taxed in accordance with the order.

MR. CHAIRMAN: Mr. Sigurdson.

MR. SIGURDSON: Thank you, Mr. Chairman. I'm wondering how many assessments under the Public Utilities Board orders that are outlined in section 2 have been challenged and are before the courts? Can anybody answer that? Have you any rough idea?

MR. TOLLEY: Perhaps I could give you some indication, sir. There are two outstanding legal actions, if I am correct, that have challenged and attempted to recoup back taxes already paid. My understanding is, if my memory is correct, that there are two outstanding actions. CFCN's is one; there is another that I believe has been commenced by Cascade limited, and Mr. Hope represents that firm.

MR. SIGURDSON: After December 31, 1985?

MR TOLLEY: Mr. Hope's action, the Cascade action, has been commenced prior to the cutoff date, so that action would continue to flow. The action of CFCN has commenced after that date and would therefore be foreclosed by the proposed Bill.

MR. SIGURDSON: Thank you.

MR. CHAIRMAN: Mr. Musgrove.

MR. MUSGROVE: Just a simple question, Mr. Chairman. During the time when you were considered not receiving normal city services and you had your own pipeline which you were paying the maintenance and operation costs on, were you also paying an off-site levy to the city for water services at that time?

MR. PURDUE: We would have been paying our normal water bill every month, if that's what you mean.

MR. MUSGROVE: Well, normally a subdivision or some part of services that are offered generally have to pay an off-site levy that pays for the other portion of that water line in the city. You didn't pay that though, I presume?

MR. PURDUE: No, I don't think we did. We built our pipeline to the point where the city had ended their lines -- to, I think, the community of Westgate -- so they would not have built any pipeline or any infrastructure to supply anything to CFCN; it was to supply those urban developments. We built ours across private property and across a main highway, to tap into the existing water structures.

MR. MUSGROVE: You were in fact getting the advantage of the water line in the city being there at that point.

MR. PURDUE: We were able to tie into it.

MR. MUSGROVE: Without any cost to CFCN?

MR. PURDUE: Just the capital cost of our pipeline and the normal monthly water bills that we were paying.

MR. G. ANDERSON: To answer the question perhaps, because I think it's very important to enlighten the members: the city can answer that question as to what CFCN paid. And while we don't like to interrupt, I think that Mr. Facey, because the city is well aware of what costs CFCN have to incur -- would you explain to the members of the committee just exactly what liability CFCN had when they tied in in '61 and also in '82?

MR. FACEY: Yes, Mr. Chairman, this is really what that deferred services agreement was largely about. In 1961 when CFCN tied into the city's water, they were not required to pay any off-site levies, or acreage assessments as we call them. It wasn't the practice at that time. For some reason, which I'm not quite sure, they weren't either when they hooked into the sewer in 1982.

However, when they took out a development permit, I believe 1985, for an expansion to their building -- that is what triggers this sort of thing. So at that time they were asked to pay acreage assessment for both water and sewer, and because their building only occupied a relatively small part of their site, the city agreed that they need only pay that acreage assessment in respect to approximately four or five acres of that site, and the deferred services agreement deferred the payment of the balance until some future date.

MR. YOUNIE: We seem to be getting two very different pictures of what this Bill presents to us, depending on which side the person presenting the opinion is on. One is that we're being asked to help the city do an end run around the courts and avoid litigation over whether or not assessments were done properly. The other is that in fact in its original wording the LAB orders were extremely fuzzy. It made it possible for people who were running urban businesses to not pay the kinds of taxes that urban businesses should normally pay, and they were in fact paying much, much lower taxes, and by using the wording very carefully in the LAB orders they could go from a cheap ride to an almost free ride. The city wants to make sure that after the fact, in this case several years after the fact, that can be done.

Now, if in fact I'm being asked to help somebody make an end run around the courts, I would be very reluctant to do that. But if, on the other hand, I'm going to make it possible for people who have for a number of years been paying lower taxes as a business than they would have been if they'd been a mile or two over and in the city rather than in a a newly annexed area, I'm not too sympathetic, and I don't want to leave the city open to much higher taxes. So what I want to know is which one of you is correct in all of this.

MR. CHAIRMAN: Mr. Younie, you can't ask that question. That's the decision that we have to make.

MR. YOUNIE: The thing is that eventually we're going to have to look at all the opinions we've been given, because we've been given a plethora of opinions and a modicum of . . .

MR. CHAIRMAN: Mr. Younie, I have to ask you to ask a question, because this is all very interesting, but we do have a time constraint too, and I don't want to use it up on our musings about what we have to do.

MR. YOUNIE: [inaudible] in expression of frustration.

MR. G. ANDERSON: [inaudible] I think I can carry a position, I hope fairly well, if we go beyond.

MR. MILLER: Mr. Chairman, might I just comment in respect of Mr. Younie's . . .

MR. CHAIRMAN: Not at any great length, because I'm afraid we can't have comments going back and forth while we still have people who want to make presentations and have something to say, because we are getting close to 12 and people have come a long distance.

MR. MILLER: I'll be brief. My point is that it's not a matter of trying to do an end run around the orders or anything. What I suggest to you is that if the city had not in -- let's take '86 as being the time of the extension of the city's facilities -- if that hadn't happened, I'm suggesting to you that CFCN would still be within the operation of the new LAB order. A hearing was held last year, and after the city has had an opportunity to address the wording of clause 9 as it presently exists, they would still get what you refer to as a tax break.

MR. CHAIRMAN: I'm just going back now. Mr. Hope, do you want to make a presentation?

MR. HOPE: Yes, I would, Mr. Chairman.

MR. CHAIRMAN: Would you like Mr. Lyons sworn as a witness then?

MR. HOPE: Mostly people asking him questions rather than a presentation. I was basically going to do the presentation

myself, but Mr. Lyons is perfectly able and capable of answering questions from members.

MR. CHAIRMAN: If he has to answer questions, he should be sworn.

[Mr. Lyons was sworn in]

MR. HOPE: By way of introduction, Mr. Chairman, my name is Hope, Steven Hope. I'm also a lawyer, although some of you may look upon that with some chagrin. I'm with a Calgary law firm of [inaudible] Zenith Klym Hookenson, and we have been retained by Canfarge Cement and CBR Cement.

These two particular property owners were never made aware of this particular Bill until one week ago today. They were never given any sort of information. They did not read the newspapers, unfortunately. Unlike the situation at the LAB hearing last year where they received an individual letter, this was not the case. Consequently, my submissions that I've rendered to this committee were only sent to you I believe on Monday and handed out this morning. I had already submitted a letter on Monday which I believe you should have amongst your materials, April 27, and a little fuller brief of April 28. In some ways they succinctly put together a lot of the items.

Now, just as a way of clarification here, I can understand some of your confoundedness in this, because if I were not a person conversant in what was happening with this particular Bill or even these matters surrounding these public orders, I would be likely confused as well. What I see happening here today, Mr. Chairman, is a Bill that's got two aims. Remember that there are two things going on in this Bill. What the city has done is taken a very simple thing, made it confusing, and tried to make it simple again by melding the two of them together when the two of them are unrelated.

The first point, which is the first part of the Bill, is to confirm an order from the Local Authorities Board last year which amended certain things in those various orders that we have been talking about. That LAB order was confirmed and varied by cabinet to backdate it to 1985, December 31, in order that the city would not have to pay back 1986 current taxes. Now, that particular point I'm not really having too much trouble with, because Canfarge and CBR and even CFCN, I believe, are not affected by that particular order.

The second point, which is extremely distinct and which I think should give great concern to you, members of the committee, is this legal thing, this thing regarding the Constitution, the Charter of Rights and Freedoms. What the city is attempting to do is asking this Legislature -- in fact, one of the first Legislatures in Canada -- to specifically earmark the Constitution and specifically extinguish certain legal rights. That is the point that gives me the greatest concern, and traditionally Legislatures are very reluctant to extinguish normal common law and statutory civil rights. Furthermore, it's even rarer in Commonwealth history to make it retroactive, which is what the city is asking us to do today.

Now, as I indicated, Canfarge and CBR are quite large landowners in Calgary, and of course there's going to be some regard to the equities in this matter. But just to put this in perspective, as I've indicated in my submissions, for instance, Canfarge owns over 420 acres in Calgary and CBR owns over 300. Let's keep in mind what type of properties these are. These are raw, vacant, undeveloped land. They make no profit from them. In fact, as Mr. Lyons has indicated to me, they're running one of them at a loss, because they leased out some of the property to a farmer and they've lost money on it. Otherwise, the properties are left undeveloped and sometimes used for dumping. These properties were owned by CBR and Canfarge as original parents, or in the case of Canfarge, I believe they've always owned this property, prior to the annexations in 1961.

In this particular case we are dealing only with PUB order 25860, which came into effect in December 1961. Until 1981 the city of Calgary's assessment department was assessing those lands according to that order -- that is, as rural farmland -- because it wasn't being used. In 1981, as Mr. Judd has indicated previously, a general reassessment came through Rocky View. It was at that time that the assessment department deliberately decided to take those particular properties of CBR and Canfarge out of the protection of the board order. Their taxes went up from approximately $2,000 or $3,000 that year to, in some cases, up over $100,000 the next year.

This continued for the years 1982 and 1983. In 1983 CBR thought there was something wrong with this. They approached the city, and before any of these legal suits came out, the city said, "Yes, we are wrong; we'll put you back into the order." And they did that with CBR. In 1984 Canfarge continued to pay the higher taxes, and only then did they realize something was going wrong. Again, they approached the city; again, the city said, "Yes, we've done you wrong." In any event, the city put them back into the board order in 1984.

Keep in mind that these events occurred before the Court of Queen's Bench came down with its decision on Cirrus land, before the Court of Appeal came down with their decision on Cirrus land, before the Alberta Assessment Appeal Board came down with their decision that removal of these properties from the board order was incorrect. These were deliberate acts by the city of Calgary.

As I've indicated also in my notes here, at the recent LAB hearing in October, Mr. Facey, who is here before you today, agreed that all urban reserve lands designated as such that were under the board order would not be affected by the amendments to the LAB hearing that occurred in October. He confirmed that under sworn oath. These properties of Canfarge and CBR are urban reserves, and consequently their assessments have been reduced and still are, but the city knew this before this hearing came along last year.

Now as I've indicated to you, I think I've tried to clarify the two aims that the city is pursuing here. It wasn't until yesterday that I realized what was happening. I couldn't understand some of the comments about wanting to confirm an LAB order and confirm an order in council. I understood that there are apparently two minor, relative actions. To quote the city, two owners of relatively small properties mainly unaffected by the provisions of this order sought leave to appeal the Local Authorities Board decision. The city then decided that they would take this opportunity, to use Mr. Younie's terminology, to "end run" and try to stop further court actions.

Now, remember that these are two distinct things we're dealing with here. One is overturning that old LAB hearing, that old order they brought down, as well as the cabinet order, and I'm not really at odds with that. But they thought they would take this opportunity and say, "Well, let's cut out all those other people that are trying to get back taxes which they didn't have to pay." Again, let's put this in perspective. CBR and Canfarge overpaid taxes in those early '80s because the city did something illegal. What the city wants to do now is a double wrong. They want to say: "Okay, we taxed you illegally. Now we're

going back to our Legislature and we're going to say to the Legislature, 'Let's confirm that illegality and stop you from coming back at us.'"

This is all very interesting, and the baseline that the city tries to get to the Legislature is money, because you members of the Legislature know that if the city has to fork out tens of millions of dollars, it's possible that you as a Legislature are going to have to look at that -- in fact, everybody in this province. This has given me great concern. They throw around $36 million; it's what they may have to pay back.

On Friday afternoon Mr. Miller and myself sat down and talked to Mr. Tolley and Mr. Judd and said, "Substantiate your statistics; prove them to us." They didn't. They refused deliberately. They said they would only reveal that information to you as members of the committee. However, we still see nothing before us, and in fact those statistics are wrong. According to our property tax consultants, the city's maximum exposure should really only be $5 million or $6 million, and that's only if everybody sues. Come July 1, 1987, and assuming that section 30 is illegal, 1981 is wiped out, so people won't be able to sue for that. So by 1990, if nobody sued, then the city is forever protected in any event.

The other thing they like to throw out at you is this business about shopping centres, which I find very curious. The suggestion and the implication is that some of these old shopping centres are getting away under the board order with paying farmland rates. Again, that's not true. Attached to my submissions you will see a chart which references those very same shopping centres which they indicated to you. If the city were to assess and tax according to the rules and the laws that this Legislature has given to them, in every one of those shopping centres except one the city would be making more money. Mr. Judd's reply to me is, "But there aren't any shopping centres in Rocky View." And of course there are not, but that doesn't mean that Rocky View wouldn't say, "We have to tax shopping centres as farmland." What Mr. Judd is supposed to do is go to Rocky View and say, "If you had shopping centres, how would you tax them"?

And assuming that you take fair market values and you follow regulation 522/81, the city will find that they will end up collecting more taxes from those shopping centres if they keep it under the PUB order than if they took them out and put them under their own system. Again, the city has not substantiated their claims with respect to these shopping centres. So consequently, if we're dealing with $5 million to $6 million at the maximum -- okay, let's deal with that situation. How is the city suggesting that they're going to have to end up paying that back? They're suggesting that there's some new threat that's loomed on the horizon. They say that there's an Ontario case out there that came down a few months ago. It involves the city of Winchester, and basically what it said was that according to our Charter of Rights and Freedoms, section 15, if you're going to set up limitations, you should make them apply equally for everyone.

In that particular case, a little lady got hurt in a car accident, and she was blaming the city for it. There was something like a six-month limitation in which to sue the city; she missed it. Normally, I believe in Ontario it's six years or something to that effect. What the court said was that if you're going to sue for injuries, you should all be given the same right.

In this particular case, the municipality is being given six months after payment of taxes in which they may be exposed to somebody suing them. We don't know what the case of the law is right now, and no Alberta Court of Queen's Bench has dealt with this. We only have this one case from Ontario. No appellate court in Canada has ever dealt with this, Mr. Chairman, and of course the Supreme Court of Canada, which is the last repository of all interpretation of our Charter, has never even looked at this thing. So why should we be presuming that the law is going to go against the city when nothing has been settled?

Furthermore, Mr. Chairman, when you get down to brass tacks on something like this, if the city is exposed to some payment of moneys back, they can realistically deal with this solution by dealing with the aggrieved taxpayers, and they can work out arrangements to set off taxes in the future.

So in conclusion, Mr. Chairman, what we have here is a situation where the city is seeking a very quick political solution to a problem that is solely of their own creation. None of us would be here today if the city was interpreting their orders correctly, was assessing correctly according to the Municipal Taxation Act and the various regulations thereunder. It's only because they did the illegal act that we're here. Secondly, they complain that if we don't get this thing through now, they may be exposed to a potential liability that they can never sort out for years to come. But let it be known that hearing was in October last year, October 15. The LAB came down with its decision on November 17, and cabinet confirmed it on December 18. We're only talking two months.

I am a bit concerned at the pace at which this Bill is moving through this House, Mr. Chairman. On March 27 this Bill was introduced; it's already had two hearings. It's now April 29 and we're into committee hearings. If we hadn't found out about this thing by chance, this thing may have received Royal Assent by June, in which case a various amount of civil and legal rights would have been affected. Consequently, I pray that the committee take into account the fact that there aren't many people here. Perhaps you'll be seeking further submissions from everyone that's affected by directing that they all be contacted and be given an opportunity to voice any concerns that they may have. I respectfully submit that is the only democratic way in which to deal with somebody who is affecting civil, legal rights.

Thank you, Mr. Chairman.

MR. CHAIRMAN: Mr. Wright.

MR. WRIGHT: Yes. You have said, Mr. Hope, that the city has done something illegal. What is that?

MR. HOPE: The illegality in the case of Canfarge and CBR was deliberately removing their properties, these particular properties, from the preferential treatment of the board order when subsequently, as it turned out, the AAAB said it was illegal, the Court of Queen's Bench said it was illegal, and the court of Appeal said it was illegal.

MR. WRIGHT: So it is what you could characterize as a mistake on the basis of assessment?

MR. HOPE: I recently thought that it might have been a mistake, Mr. Wright, but as it turns out, it was a deliberate action on behalf of the city assessment department. Now, they will say to you, "Well, that's the way we interpreted it." But let's look at the facts. The evidence is that all the authorities in this province say it was wrong.

MR. WRIGHT: At any rate, it's the wrong basis of assessment, according to interpretation that was later received, that you say is the illegality. Was there any reason why your clients couldn't have challenged that at the time?

MR. HOPE: They did.

MR. WRIGHT: I know they did -- not quite at the time, but . . .

MR. LYONS: Exactly at the time. They wrote it on the back of the assessment notice and sent it in on the current 1981 assessment notice.

MR. WRIGHT: Well, what's different about this from just about any other challenge of a basis of assessment? I mean, I suppose there are some in which you're just arguing about value, but there are some challenges in which you say there's a wrong principle. Where's the difference?

MR. HOPE: The PUB order in question says very specifically that parcels that were brought into the city in 1961 that were larger than 20 acres and that were not subdivided and were basically used as farmland, or should be interpreted to be used as farmland, should be assessed according to Rocky View mill rates after they've been assessed as farmland. And what the city had done, I understand, is they had removed those parcels from those provisions.

Mr. Wright, it also occurred to me that there were some other comments you'd made to Mr. Miller as well Mr. Younie, and there's this concern about equitable and preferential treatment given to some of these large landholdings. Let's put this thing back in perspective. In 1961 when this PUB order came through, this was not something that was imposed on the city. This was an agreement by the city of Calgary and a bunch of landowners in fact represented by one of your former members, Merv Leitch, who is now a partner with Mr. Anderson and MacLeod Dixon. And in fact . . . [interjections] Isn't that correct? Well, we'll do that [inaudible]

MR. G. ANDERSON: I've heard a lot of inconsistencies in your presentation, Mr. Hope. I am not a partner of Mr. Merv Leitch.

MR. WRIGHT: Mr. Hope, I do understand this, and because I'm questioning you, it doesn't mean to say that I'm unsympathetic to your case, particularly the part about lack of notice to people who are affected. I'm just trying to get to grips with what you've said accurately. You say that so far as your information goes, the city's maximum exposure is some $5 million or $6 million. You, for your part, don't have any calculations to put before us, obviously.

MR. HOPE: When we've assessed this, we've tried to use the material the city supplied at the LAB hearing. Not all lands affected by that PUB order in October last year are able to possibly offset or attack the city for some of the things that they did. We're only dealing with a very few parcels of land, usually the very large acreages which haven't been developed and which were taken out of the PUB order. And what we have tried to do -- because we've never really had all the statistics; the city, of course, is the one that has everything. If we knew exactly what pieces of property the city was doing, I could probably sit down and go through that and assess it according to the assessment manual and determine for you which properties would possibly be able to sue the city for recovery of overpaid taxes. But you see, until we get that information from the city, it's very difficult. We've tried to guesstimate which parcels the city is relying upon, and what they're saying is that a lot of these vacant lands would be assessed as farmland, which is not correct. A lot of these vacant lands -- well, not all the lands, but a lot of these large parcels -- would have developments on them, and accordingly you would assess them and tax them according to the rules and regulations which this Legislature has given them.

MR. WRIGHT: So I take it your consultant was equally in the dark about the exact limits of the areas and people who would be affected?

MR. HOPE: No more in the dark than the city has tried to place this committee.

MR. WRIGHT: Well, that's an argumentative answer, Mr. Hope.

MR. HOPE: That's correct, sir, and I don't wish to befuddle that point, but I think we've got to keep these things in perspective, as Mr. Miller has indicated. The onus is upon the city to come up with the information to satisfy you, and if they're suggesting to you that the bottom line on this thing is $36 million which they'd have to pay, I think that it's rightful that they should substantiate that other than saying, "Well, this is what we said at the LAB hearing."

MR. WRIGHT: I do agree with you on that, but I'm just asking for your substantiation too.

MR. HOPE: As I say, the only way we came up with those figures -- I can show you how we calculated it. It was by taking those properties which we believe the city was relying on from their LAB hearing.

MR. CHAIRMAN: Mr. Wright, I think I'm going to have to interrupt here. It's now past 12 o'clock. I had hoped that with the added time we might be able accommodate everybody who came, but I notice that some other people who haven't been heard yet were nodding in agreement with Mr. Hope. I suppose some of their points of view have been expressed, but as I said at the outset, with the limitation of time it would appear that we're going to have to continue this hearing next week. Therefore, I ask the committee, would they wish to adjourn at this time? I'm asking for suggestions from members of the committee, and I am prepared to receive any motion that . . .

MRS. HEWES: Mr. Chairman, just a question. Have any of the intervenors indicated that they can be available next week for a further opportunity to be heard? I'm not going to be able to stay -- I'm sure other members are in the same circumstances -- but I do think they should have their opportunity to be heard.

MR. CHAIRMAN: Yes, I would like to also ask everybody in the Chamber now whether they would like to have the opportunity of pursuing this matter next week, and if so, whether they're able to come next week.

Mr. Akins.

MR. AKINS: I'll stand up because I'm not used to sitting this

long at any one time. But to me, there's been a question asked: why there aren't more people here? I was at the Local Authorities Board meeting in October, and they had to change the facility because there were so many people that couldn't get in. Now this is subsequent to that, so I think if these same meetings were held where the people concerned didn't have to go 200 miles to that, take a room, hotel, and so forth, especially when they start at 8 o'clock or at 8:30 in the morning, you would find a far, far different representation.

MR. CHAIRMAN: Okay, we've heard your suggestion. The committee will take that under advisement.

Mr. Chisan, would you like the opportunity of pursuing this further next week?

MR. CHISAN: Yes, I would like the opportunity. I would like to -- I don't know what the proper procedure is here, but I would like to put it before the committee, and somehow if you could get a ruling on notices to people . . . I think you are embarking on trying to settle selectively a local dispute, and it's a dispute that involves quite a few taxpayers that know nothing at all about this.

MR. CHAIRMAN: Mr. Chisan, I understand that you're amongst the people who feel there should be a wider notice given. We've had that representation, but as far as you're concerned personally, would you like to have the opportunity, whether it's next week or later, depending on what the committee decides about notice -- you would like to carry on? And if necessary, if the committee decides not to widen the notice, you'd be prepared to continue this next week?

MR. CHISAN: Well, if I have no other choice, what can I do? I will. I want to speak to the matter, yes, whether it be next week or three weeks from now, but I think some time should be in there.

MR. CHAIRMAN: I would like to hear from others. Mr. Klippert?

MR. KLIPPERT: Yes, I would like to pursue it.

MR. CHAIRMAN: And are you available next week if necessary?

MR. KLIPPERT: I think so, but I'm not sure right now. I'd have to check back at the office.

MR. HOPE: Mr. Chairman, do you wish us to reattend again?

MR. CHAIRMAN: I beg your pardon?

MR. HOPE: Do you wish us to reattend again for possible cross-examination?

MR. CHAIRMAN: I think the members didn't have a chance to respond to your submission, Mr. Hope. My sense is that they would like you back next week.

MR. HOPE: If you so desire, I will make myself available.

MR. CHAIRMAN: Mr. Younie?

MR. YOUNIE: I'm sure other than asking one at a time, it might be faster just to say how many will not be able to come next week.

MR. CHAIRMAN: Is there anybody here who will not be able to attend next Wednesday?

MR. MacPHERSON: I can't say [inaudible]

MR. CHAIRMAN: Well, all right. We've got the position of the people. Now what is the will and pleasure of the committee as to what -- we will adjourn or . . . About next week. Mr. Wright?

MR. WRIGHT: I move that we adjourn to 8:30 a.m. next week to continue this, Mr. Chairman -- 8:30 next Wednesday, of course, of next week.

MR. CHAIRMAN: That's the motion before the committee, that we adjourn now and resume our hearings for all those who will be interested in the matter next Wednesday at 8:30 a.m. All in favour of that motion?

[The committee adjourned at 12:10 p.m.]