Legislative Assembly of Alberta

The 27th Legislature
First Session

Standing Committee
on
Resources and Environment

Wednesday, October 1, 2008
8:32 a.m.

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Standing Committee on Resources and Environment

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Swann, Dr. David, Calgary-Mountain View (L), Deputy Chair

Berger, Evan, Livingstone-Macleod (PC)
Boutilier, Guy C., Fort McMurray-Wood Buffalo (PC)
Drysdale, Wayne, Grande Prairie-Wapiti (PC)
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Bill 23 Sponsor

Mitzel, Len, Cypress-Medicine Hat (PC)

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8:32 a.m. Wednesday, October 1, 2008

[Mr. Prins in the chair]

The Chair: Good morning, everyone. I'd like to call the meeting of the Standing Committee on Resources and Environment to order. Before we get going, I'll just ask everyone to introduce themselves. My name is Ray Prins, MLA for Lacombe-Ponoka. I'll go to my right here.

Mr. Hehr: Kent Hehr, MLA for Calgary-Buffalo.

Dr. Massolin: Good morning. Philip Massolin. I'm the committee research co-ordinator, Legislative Assembly Office.

Ms Staley: Diana Staley, research officer, Legislative Assembly Office.

Mrs. Kamuchik: Louise Kamuchik, Clerk Assistant, director of House services. Good morning.

Ms LeBlanc: Stephanie LeBlanc, legal research officer, Legislative Assembly Office.

Mr. Reynolds: Good morning. Rob Reynolds, Senior Parliamentary Counsel.

Ms Christiansen: Jo-An Christiansen, legislative co-ordinator, Agriculture and Rural Development.

Mr. Laflamme: Paul Laflamme, branch head, pest management branch, Agriculture and Rural Development.

Mr. Mitzel: Len Mitzel, MLA, Cypress-Medicine Hat and sponsor of the bill.

Mr. Griffiths: Doug Griffiths, MLA, Battle River-Wainwright.

Mrs. McQueen: Diana McQueen, MLA, Drayton Valley-Calmar.

Mr. Drysdale: Wayne Drysdale, MLA, Grande Prairie-Wapiti.

Mr. Oberle: Frank Oberle, MLA, Peace River.

Mr. Webber: Len Webber, MLA, Calgary-Foothills.

Ms Norton: Erin Norton, committee clerk.

Ms Rempel: Jody Rempel, committee clerk with the Legislative Assembly Office.

The Chair: Thank you very much. First is the approval of the agenda. Do we have a motion? That's moved by Diana. All in favour? That is carried. Thank you very much.

The very next item is committee discussion and deliberation on Bill 23. I think what I'll do – I believe we all have the documents in front of us – is just turn it over to Dr. Phil. Maybe you can take us through this document. I don't know if you want to go right through it first or if we want to do it item by item and maybe get comments from the department people.

I also see that we have another MLA. Go ahead and introduce yourself.

Mr. Berger: Evan Berger, MLA, Livingstone-Macleod.

The Chair: Thank you very much.

Then we'll go back to Phil. Go ahead and take us through.

Dr. Massolin: Thank you, Mr. Chair. Maybe I'll just start off by explaining the purpose of the document.

The Chair: Phil, just before you start, do we have someone on the phone now?

Mr. Boutilier: Good morning, Ray, from here in Fort McMurray.

The Chair: Okay. Thank you very much, Guy.

Go ahead.

Dr. Massolin: Thank you. The purpose of the document is to highlight the salient issues that came up during the public and the stakeholder consultations. What we have in this document are the itemized issues and a little explanation of what each issue is about. In the left-hand column of the document are suggested items for discussion, on the right-hand additional notes and information.

The purpose of the document is to highlight those so-called focus issues. Also, if the committee comes up with recommendations on some of these issues, that would be the basic material for the report, which is to be produced for the next meeting and, of course, tabled in the Assembly at the end of this month.

Just another point, Mr. Chair. You asked about going through this document piecemeal. I think it's probably best to go piecemeal. We'll explain the issue in full and then maybe ask you to lead the committee through the deliberation on the particular issue if that works for you.

The Chair: Yeah.

Dr. Massolin: Okay. Maybe I'll ask Diana to lead us through the individual issues and then back to you.

The Chair: Yeah. Thanks.

Go ahead.

Ms Staley: Thank you. I will focus on the left-hand column in the document, which provides all the suggested discussion items and poses questions. Then, when necessary, I'll add in any additional notes or comments found in the right-hand column. In general, I will not go over the cross-jurisdictional analysis found in the right-hand column.

The first issue on page 4 of the document is regarding section 21(4) and (5), the recovery of inspectors' expenses and bringing an action in debt. Bill 23 provides three means by which a local authority can recover debt due from any person who is given a debt recovery notice except when the person files an objection, in which case only bringing an action in debt is possible. The first question in the left-hand column is: should a local authority be allowed to recover inspectors' expenses only by bringing a debt in action once a written objection has been filed? Note that all of the submitters who commented on this are listed underneath the question. This particular question was the issue that was commented on the most from the submitters.

We also want to point out that Agriculture and Rural Development stated that this new provision, 14(5), was included as one way of reducing frivolous objections and forcing people to seriously consider if they're willing to go to court for the objection.

The second question is: do the prospects of litigation act as a deterrent against frivolous objections and therefore trigger the provision set out in 21(5)?

Also, Agriculture and Rural Development mentioned at the last meeting that in the current act a person receiving a debt recovery notice does have the ability to object unless it is on unoccupied land, and if the land was unoccupied and the owner could not be located, then the municipality could not put that on the tax roll. So the third question is: can the bill provide a provision for municipalities to impose fines to recover costs for the enforcement of served notices on unoccupied land?

That covers the first issue. I'll hand it over to you, Mr. Chair.

The Chair: Okay. Thank you very much.

I'm looking at the members of the committee and asking if they have any questions or comments on this section. Go ahead, Wayne.

Mr. Drysdale: Yeah. I don't agree with section 21(5). I'd just as soon we remove (5) altogether because in my past experience if a landowner has a concern, he can always go to the municipality itself and appeal it. I've sat there and we've, you know, reduced the cost or waived it if he has a legitimate concern. They can always appeal to council anyway. I think this will just cause a lot of court action for nothing. My recommendation would be just to remove (5) altogether.

The Chair: Okay. Any other comments on that?

Mr. Griffiths: Well, just noting in the right-hand column that every other jurisdiction does add the expenses to the tax roll. Even in Ontario, where it seems a little more convoluted and there are appeals to the Divisional Court, it still ends up that expenses incurred by the inspector and the person who destroyed the weeds are added to the tax roll in every other jurisdiction inspected, which we would have if we eliminated section 21(5).

8:40

The Chair: Anyone else?

If you removed it, does that mean that there would be no ability for a ratepayer to object?

Mr. Drysdale: Well, they can always go to the municipal council and ask for an appeal. That's the way it is now, anyway.

The Chair: Is that the way it is now?

Mr. Drysdale: They can appeal in writing right now.

Dr. Massolin: If you remove (5), you'd still have (3), which is the section that says, "Within 30 days of being given a debt recovery notice, the following persons may object in writing." You still would have that, right?

The Chair: I'm wondering if our department of agriculture people, Paul or Jo-An, would like to comment on the suggestion to remove subsection (5).

Mr. Laflamme: Well, I guess when we were working with the drafter, she didn't give us any option. We outlined the intent of that section, and this was her proposal. She indicated that this was pretty much a standard practice and the way things were done. The idea was that, you know, both parties have a right of appeal that way or a method of objecting, I guess, to a problem. If they're not happy with the costs, they can object, and then they can negotiate those costs. That's the way it was informed to us. We were given no other options by the drafter.

The Chair: If we took this subsection (5) out, in your view, how would that change the ability of the municipalities to collect their charges or fees?

Mr. Laflamme: I guess it would eliminate that action in debt if there was an action. I would have to review the proposal again.

Mr. Drysdale: Basically, the way it's stated there now, anybody who sends a letter in, they can't recover the money unless they take them to court. So pretty soon everybody is just going to automatically send the letter in and not have to pay the costs.

The Chair: The thing is that if you send a letter in objecting, then you will be in court.

Mr. Drysdale: No. The municipality would have to take you to court.

The Chair: They would have to take you to court?

Mr. Drysdale: You know, a lot of them are going to say, "Do you incur $5,000 worth of legal fees to recover $500? Probably not." You know, to me it seems pretty cumbersome. They can still appeal; it's just that the municipality still has the right to recover it on taxes. That's all. They can still appeal, and if they win the case, the municipality probably won't recover it.

The Chair: Len, were you going to comment?

Mr. Mitzel: Yeah. Just a note on that, speaking to what Wayne is talking about there. If within those 30 days the objection is filed, then according to this it can't go on the tax notice. Perhaps you're looking at one side of it. You're looking at the landowner's perspective. I think we've also got to look at the municipality's perspective. I think, in my mind, if we remove 21(5), the municipality potentially could be on the hook for the expenses and not be able to collect them at all.

Mr. Drysdale: It's the other way around.

Mr. Oberle: If you remove 21(5), do you have to say something about what happens when you file a notice of objection? The way I read it here, the municipality could just ignore that and put it on the tax roll anyway, which is kind of a different process. Then I suppose the landowner has the right of appeal through the tax system, the Assessment Appeal Board. That's all available to him. What's the point of the notice of objection if it doesn't trigger this court action clause? That being said, I favour removal of that and dealing with that notice of objection because, as Wayne says, it's going to almost prevent the municipality from collecting because they're not going to incur court costs or legal costs to collect a $500 fee. They'll just wind up waiving them all.

The Chair: Right. They'll never go to court to collect a $500 charge, so anybody can just write an objection, and your bill is cleared.

Mr. Oberle: Right. But if we take away that court action, 21(5), then what's the point of the notice of objection? You already have the right to object to your tax roll, your tax assessment.

Mr. Griffiths: I agree. I think that probably you can't just remove section 21(5) and assume everything's going to be good in the bill. You need to run through and reorganize it. In my mind it's fairly simple. It should say the municipality is not likely going to go and spray somebody's weeds just because they don't like them. They're doing it because the weeds are noxious and creating a problem. When they do, they have the right to recover it.

They can give notice to somebody first. If they don't follow through with their own action and the municipality has to take action themselves, they have the right to recover it without having to go to court and pay what could be potentially double or 10 times as much in legal fees just to recover the cost. Either way they're going to get the cost. If somebody has an objection, they show up at the municipality and say: why did you do this? Eliminate the court stuff.

It seems to me the plan should be fairly straightforward. It might have to be redrafted a bit to get rid of that right for objection to court so that it becomes almost too expensive to collect the cost. But either way, I think the message that most of the members are suggesting is that it doesn't make much sense when a municipality is doing something they have to do after they've given notice to the landowner, trying to control weeds from spreading to other people's farms, that now they suddenly are going to incur 10 times the court cost to do something that is their responsibility.

The Chair: Okay.

Mr. Hehr: I'm going to throw out an idea here, and it might be not a very good one but just for discussion purposes. I'm always leery about taking away a person's final right of appeal to the court. That being said, I hear everyone's complaint here that then this bill we're putting together will have no teeth. How about if we could insert something like that it's going to cost you some minimum fee of $300 to appeal what the municipality has done? Then you pay that $300 appeal to the municipality, you go have your talk with the municipality, and after that step, then you can go to court. So it costs them $300 for the $500 weeds. If the municipality tells him, "No, come on, pal; you had your weeds growing for the last six months; we warned you; this is not going to happen," and then if the guy is still being stubborn and doesn't get the point, he does have the final right to go to court. If there's some sort of step – I realize it's more cumbersome, more difficult, but I never want to take away the person's final right to go to court.

The Chair: Would that be in regulation, or would that be in the bill?

Mr. Hehr: I'm not sure where.

The Chair: Okay.

Mr. Oberle: I think you're venturing very strongly into the Municipal Government Act here. The municipality has the right to set fees for services provided, and I would assume that would be an appeal. The appeal mechanism already exists. If you object to your tax assessment, you can appeal that. There's an Assessment Appeal Board. If you fail at that point, then you have the avenues of the Municipal Government Board, but under the Municipal Government Act, I believe, you always already have access to the court. I don't think you need to specify any appeal mechanism here. Give the municipality the right to recover the fees, and their whole process kicks in. It already exists. So all you need to do is identify that they have the right to recover fees.

Mr. Boutilier: Yeah, Ray. It's Guy Boutilier. I'm more along the line of what Frank had said there. I think that under the Municipal Government Act we already do have an appeal process in place looking into numerous situations, one that Frank talked about being your tax assessment, and it seems to work really well. Are we not trying to reinvent a wheel here that's already invented within the Municipal Government Act for a municipality governing?

The Chair: Yes. Thanks, Guy. I agree. I think that if we have the tools within the MGA, then we don't want to overlap those or duplicate that.

There are a couple more points. Who wanted to speak over here? Diana.

8:50

Mrs. McQueen: Thank you, Chair. Just to kind of support what Wayne was saying, you know, many notices will go out before a municipality will actually do that. This is the last step they want to do. They don't want to have to clean up people's properties, so phone calls, notices go out. The warning has been there already if you don't have some teeth here to put it on the tax roll. We have that with people that don't want to pay their property taxes. Then surprise: when you go to take the properties over, all of a sudden when the deadline comes, they pay those property taxes. The same is with this here.

I support what Wayne is saying. I would like, certainly, our departments to go through and see if that affects anything else, but the intent would be that after the notices are given by the municipalities and after the job is done, the municipalities would have the opportunity to put that right on the tax roll.

The Chair: Okay. Anybody else on that?

Mr. Hehr: I appreciate the explanation as given, and I'm in agreement now with everyone. The way it was described to me, I'm fair with everything.

The Chair: Good.

Mr. Drysdale: I just wanted to add that removing subsection (5) doesn't remove the right to appeal those. All subsection (5) does is remove the right for the municipality to recover taxes. That's all that does. Subsection (6) is still there.

The Chair: Okay.

Phil, I'm just going to ask a question here on this process. If we want to recommend to remove this, does that take a motion or a consensus? What's the deal here?

Mr. Oberle: I just want to add that you still have to deal with that notice of objection. If you're going to take away sub (5), there's no point for the notice of objection. I presume the municipality is going to send somebody a bill. If they don't pay it, then it's going to get added to their tax roll. Then there's a whole assessment process that kicks in with that, and they can object at that point. Obviously, they're objecting by not paying the bill in the first place. You don't need that notice of objection if you're going to take away 21(5).

Dr. Massolin: Yeah. I see your point. I would just add that according to sub (4), though, you still have the recourses of filing a

certificate or bringing an action in debt as well in addition to the tax roll, right?

The Chair: Frank, are you happy with that? Anybody else on this point?

Do we need to reach a consensus on this or have a motion or whatever to deal with this? This, then, will become part of the final report that you produce for a week or so from now. Wayne moves that we remove this. If you remove (5), then (6) becomes (5), and there might be some tweaking on (3), but you know what the intent is: to remove (5). Then when we come back next week, that one will be removed and the other ones will be changed in accordance.

Mr. Reynolds: Mr. Chair, excuse me. You'll have an opportunity if there was a consensus. Certainly, you can pass a motion. The only difficulty is that, you know, I think that if you identify that there's a consensus, that's fine. You'll have an opportunity next week, when you see the report, to pass a motion. The only thing is that, as you pointed out, you seem to be suggesting that there may be some consequential amendments required. It may be best after the consensus just to go back and look at that to see if there are consequentials required so that we can come back to you next week with a report that would be somewhat more encompassing on that point.

The Chair: Okay. We won't deal with a motion, then. It'll just be an agreement in principle or a consensus right now that you guys will look at the removal of subsection (5) here and deal with the consequences.

Then we'll go on to the next part.

Ms Staley: The second issue is on page 6 in the second row. It's regarding section 20(1), an appeal of an inspector's notice and a review provision. Bill 23 contains a review provision for the owner or occupier of the land to request an appeal from the minister. But if the owner was successful in their appeal, the inspector, which is often the municipality, does not have the right to appeal that decision. The question in the first column is: should Bill 23 contain a review provision of an appeal panel for the municipality, or are the ministerial powers to "confirm, reverse or vary the decision of the appeal panel and the decision" pursuant to 20(2) sufficient?

I'll hand it to you, Chair.

The Chair: Thank you very much.

Do we have any comments on this section, or did we partially cover this in the last little discussion that we had?

Mr. Drysdale: It's been noted in there, but the municipality also asked for the right to be able to appeal. Are you going to consider that or change it?

The Chair: Anybody else want to comment on that?

Mr. Berger: I'd just make the comment that a municipality isn't making that decision by just one weed inspector being out there. Normally it'll go to a board. The ag field service board gets ahold of it. They go through it also. The decision isn't taken lightly at any time.

I think that the municipality should have the right to appeal because dragging these things out usually creates a problem for the neighbour. If we don't get in there and act, get it done, keep allowing these appeals and furthering the process, everything goes to seed, and five miles down the road they have the problem next year. You just exacerbate it. This is something that needs to be taken seriously, moved on quickly, and eliminated.

There are lots of people out there right now who feel they are organic and want to hand-pick until it comes time to do the hand-picking. You have to have the right to get in there and fix the problem and get on with life.

The Chair: Anyone else?

Mr. Laflamme: As far as timeliness there are some timelines set out in the appeal, the time to appeal. That was under the present or current act. I believe it was 15 days for the appeal panel to meet and render a decision. We're proposing to shorten that up because we have been advised by weed inspectors that that's a long amount of time. So when we do draft the regulations, we are going to be shortening that appeal time so that it does happen sooner.

I question a little bit. You know, the municipality is the one that's doing the enforcing. They're the ones who are going out there and following the act itself and saying to the landowner: "You have not been controlling your weeds. We've worked with you. We've advised you. You still chose not to consider that advice, so we went in and did the work for you, and now you're appealing the notice." The landowner has the right to appeal, but if the municipality has not done their homework and ensured that everything that they did was correct, then, you know, I don't see why they should have the right to appeal.

A fair comparison would be if a policeman gave you a traffic ticket and you decided to take that traffic ticket to court and you won. Does the policeman have the right to go to court and appeal that you won that ticket? He may have done something wrong. He didn't follow procedure. That's his fault. It's not your fault. So if you're issuing a notice, you'd better be sure that you're doing everything according to the way it's supposed to be done. If not, the owner has the right to appeal. If you've made a mistake, well, you have to live with that, I guess.

The Chair: Okay.

Mr. Oberle: I guess just further on the same comment. The landowner's right to appeal protects him from a municipality and a system which is very much weighted in the municipality's favour. The appeal board is appointed by the municipality, often contains councillors. The landowner's right to appeal protects him from that system. The municipality's right to appeal is protecting them from themselves, which seems somewhat ridiculous. I don't think they need the right to appeal. Their right of appeal is to protect themselves in the appeal board in the first place, make sure, as was stated, that they've done the job correctly in the first place and did their homework and, second of all, that they've laid the right information before the appeal panel. If they don't do so, they're appealing to protect themselves from themselves. It seems kind of ridiculous.

Mr. Drysdale: Well, I think that's true in section 19, Frank, but in 20 this is the right to appeal to the minister the decision of the appeal panel.

Mr. Oberle: But they are the appeal panel.

Mr. Drysdale: But in 20 it's to go to the minister first.

9:00

Mr. Oberle: Why would you want to appeal the decision of your own appeal panel?

Mr. Drysdale: No. It's the decision of the minister. The appellant has the right to go to the minister to appeal a decision of the appeal panel. If the appeal panel says that the municipality did everything right and that the guy should have cleaned up the mess and then the guy goes to the minister and the minister says, "Well, yeah, the appeal panel was wrong; the municipality was wrong; I feel sorry for the guy; he doesn't have to do it," well, then the municipality or the weed inspector should have the right to go to the minister to appeal as well, the way I see it.

Mr. Oberle: In that case, though, once the minister reviews a decision, he's not going to just accept the landowner's information and review it and say, "Oh, yeah, you're right," and then the municipality comes in to appeal it, and they lay a different set of information on the table. The minister, in theory, would review the whole decision, all the information that was laid on the table, and make his decision, which should be binding, I think. If the minister ruled against a municipality, it would be because (a) they've done something wrong or (b) they've failed to table some information to the appeal panel in the first place and then later to the minister in his review, and they shouldn't have a right of appeal at that point.

The Chair: What are you saying? What are your comments on this?

Mr. Oberle: I don't think the municipality needs a right of appeal.

The Chair: Okay. What's your wish?

Mr. Laflamme: If I could maybe just add one thing.

The Chair: Yeah. Go ahead, Paul.

Mr. Laflamme: You know, when this was brought up, I kind of made some inquiries. There has never been, that I'm aware of or from the people that I talked to, a situation in the past where a municipality was not satisfied with the decision of the minister and raised some concerns about that. So I'm not sure where this objection is coming from.

The Chair: What's your suggestion? Just leave it the way it is?

Mr. Laflamme: Yes.

The Chair: Okay. Everybody agrees with that?
Okay. Then we'll go on to the next section.

Ms Staley: The third issue is found on page 7 of the document and is regarding section 25(3), Subsequent Owner or Occupant Subject to Notice, and active notices. Bill 23 states that a copy of all notices be given to a mortgagee or purchaser of land under this legislation, but it does not state that these notices are exclusively active notices. So the question in the left-hand column is: should section 25(3) state that a copy of all active notices be given under this bill?

The Chair: Okay. Any comments?

Mr. Drysdale: I guess I would prefer that the wording was "current" instead of "active." I mean, it could have been given five years ago, and it might not be an active file, but it's current. Just so the landowner knows. You know, I don't want to go back 20 years, but if three years ago there was a notice given and it was cleaned up, it's no longer active, but it's still current.

Mr. Laflamme: If the problem was dealt with three years ago, why would it be of concern to the current purchaser?

Mr. Drysdale: Well, I've had lots of situations with scentless chamomile or something. You think you've got it cleaned up, but three years later it's back again in the same spot. I'm sure you've seen that before.

Mr. Laflamme: Yeah.

Mr. Drysdale: In most municipalities when you've had an issue on a certain spot, you keep going back and rechecking years later.

Mr. Laflamme: I guess, again, this is one where we made no changes from the current act. This is exactly the wording in the current act. It just says: "all notices." We've never had any complaints, that I'm aware of, of someone coming in and requesting all notices that have ever been issued on that piece of land. Generally people are interested in, you know: is there a notice there that is in force and that I may be responsible for if I purchase that land and that may create some added cost to my operation? I think the intent is that it focuses in on notices that are currently active on that piece of land.

Mr. Drysdale: I guess, again, all notices would mean 25 years ago. So how far does the ag fieldman have to go back when you say: all notices? They can spend a lot of time researching. You know, if you say "current," you go back five years or something. The way the wording is now, it says: "all notices." How far does that mean?

Mr. Laflamme: I'm not sure. There is, you know, another piece of legislation that regulates how long you have to keep certain pieces of information, so that would have to be looked into. Again, we'd have to include a definition of what current or active really means pursuant to this section.

The Chair: So that would come up in regulations. Okay.

Mr. Oberle: Maybe we're just getting bogged down in the definition of current or active. The bill currently requires that the mortgagee or purchaser of the land be given "a copy of all notices given under this Act that relate to that land." That could date back however far; it doesn't matter. That's really clear: it has to go right back. That would be a rather onerous requirement on the municipality.

I think the wording is right in that it should be active notices. It doesn't matter if it's 20 years ago. If the action has never been taken or that file has never been closed, the new landowner is liable and, therefore, needs to be notified. I don't even know that you need to define active notices. It's a notice that hasn't been closed, where no action has been taken or insufficient action has been taken. If that is still active, then the new landowner has a liability there and needs to be notified of it. So I agree that it should be exclusively active notices.

The Chair: Okay.

Mr. Hehr: I'm in agreement that it should only be active notices as well. I think active is the correct language for this type of thing. Any notice that's still outstanding, that has not been dealt with, that's active, the new owner will be responsible for.

The Chair: Okay. So we're okay with the wording as it's provided in the bill? I see a consensus.
Go ahead, Phil.

Dr. Massolin: Sorry. Not as provided in the bill but as modified using the term "active."

The Chair: Okay. "Active" is the right word, then? Is that what you're saying?

Dr. Massolin: Yes. "Active" would be the term. Yes, change from "all notices" to "active notices."

The Chair: Okay. Thank you.
Then we'll move on to the next section.

Ms Staley: Okay. The fourth issue is on page 7 of the document, relating to the authority of municipalities to create bylaws. This was suggested by the city of Calgary: should Bill 23 specify that municipalities have the authority to create their own weed bylaws and set local fines for violation of those bylaws?

The Chair: Okay. Any comments on that?
How does it work currently, Paul?

Mr. Laflamme: Well, municipalities have the right to elevate weeds or any plant, for that matter – it doesn't have to be a weed – within their municipality, but it has to be approved by their council and also approved by the minister before it goes into force. That's the current method by which weed elevation is dealt with.

As far as issuing fines, again, that falls under another piece of legislation, which we discussed at our last meeting, I believe. What's that legislation again, Jo-An?

Ms Christiansen: The Provincial Offences Procedure Act, specified penalties. But in this one, with the weed bylaws, I believe that the existing measures can be accommodated. It's just that structurally it's changed in that it's being shifted to the regulation and that there is reg-making authority at section 30(a) regarding the designating of a plant in particular areas. It's not specifically referencing bylaws, but that was the advice from the drafter, that in general 30(a) would allow for the specification for weeds in the regulation and that these types of operational elements – appeals and bylaws – were better situated in the regulation.

The Chair: Okay. So what you're saying is that under this bill and the MGA and the regulations these requirements or this request should be covered?

9:10

Ms Christiansen: That would be my assumption based on advice and looking at the reg-making authority.

The Chair: Okay.
Any other comments? So there's no need to change the bill related to this section, and we'll move on to the next one.

Ms Staley: The fifth issue is found on page 8 of the document and is regarding section 14(4), the power of inspectors and inspectors' notices and the destruction of growing crops of more than 20 acres. The municipal district of Smoky River was concerned that if 20 acres or more of prohibited noxious weeds are found, they would want them to be destroyed as soon as possible and not be required to go through a slower process which would require them to get written consent from the local authority. The question is: should Bill 23 make provision to authorize the local authority to destroy 20 acres of crops without written consent?

The Chair: Any comments?

Mr. Oberle: What's the delay? How hard is it to get written consent from the local authority? It would be a matter of hours.

Mr. Drysdale: I guess it depends what the local authority is, Frank. If it's the council, then they only meet once a month. You know, if you could say that it's from the local administrator, can he write the authority on behalf of? I'm not sure. When you say "local authority," is that the council, or is that the administrator? If it's the council and they only meet once a month and you've got something going to seed, a month is too long.

Mr. Laflamme: I can comment on that. I think a local authority through policy can delegate that authority down to the CAO. It's something that can easily be dealt with through policy, and I don't see it as a major issue.

The Chair: Doug, you had a comment?

Mr. Griffiths: I was just going to say something similar. I believe that could be dealt with. It doesn't need to be written into the legislation. Even though councils only meet once a month, I believe they have the ability to call an emergency meeting if there's something that's that critical. I'm just not comfortable with this request.

The Chair: Okay.
Any more comment on this? Then what I'm seeing is that you want to just leave the bill the way it is on this point. Okay.
Go ahead. Go to the next one.

Ms Staley: The sixth issue is found on page 8 of the document and is regarding land occupant control over publicly used land. As mentioned in the last meeting, the Alberta Forest Products Association states that it occupies public land and maintains a portion of its land for public use but is still held responsible for weed control even though it does not have control over the users of the land. The question is: should an occupant of public land be held responsible for exercising weed control if the land maintained is in public use?

The Chair: Any comments? Is that covered under the bill? This is just a question that was brought up, and we're asked to deal with it, but it's not part of the bill at this point.

Ms Staley: Correct.

The Chair: So you'd have to add it in if we wanted to deal with it.
Go ahead, Doug.

Mr. Griffiths: Well, I paid my way through university being a pesticide applicator, and I know that one of the biggest tools for managing weeds is what you drag onto your property. I mean, we had to clean the equipment before we moved from any field to another field. We had very strict regulations and guidelines. I actually think the Alberta Forest Products Association has a legitimate concern that if they're held financially responsible for maintaining the weeds yet they don't get to control the ATVs and the SUVs and everything that pulls onto the land and what they bring onto it, it's a little bit of an extra burden that right now they don't have control of. I do believe this is a legitimate concern.

The Chair: Okay. Any other comments? Frank, go ahead.

Mr. Oberle: I think a large part of the Alberta Forest Products Association's complaint, the forestry companies' complaint, relates to LOC roads. The majority of the weed problem that happens on those roads is from other industry equipment, particularly the oil and gas industry, that rolls there without washing the equipment or the trucks before they roll on that road. The LOC owner does have a right to manage other industries using their roads. I don't know that you can deal with it right here. That's a significant deviation from the bill. But they would have a point in the case of, say, a recreation area that they were maintaining and somebody was using ATVs on.

If you were going to deal with it, you'd have to give the forest company a right of cost recovery because they're the ones that are out there maintaining the site and inspecting it. They're going to find the weeds. You've got to let them deal with it and have a right of cost recovery. It would be difficult to deal with. They have the right to manage their roads and to refuse access to other industries. I suspect that's where most of the problem comes from. It would be a very rare case, indeed, where a forestry company owned a road, say, that there was a boat launch on and there was a significant amount of trailers and stuff. I don't think it would be so much public use as other industrial use that's causing the problem there.

The Chair: Would this also be covered under section 21, where the ratepayer has the right to object to the municipality if they are being charged for weed control? I mean, they then could go after a third party if they wanted to, except if it's the public. You can't go after them.

Mr. Oberle: First of all, you would never ever know how the seeds were transported in, so you could never go after the person that actually caused the damage. They already have the right of recovery in the case of somebody, another industry, damaging the road. There is the right of cost recovery there. You would never know who transported the seeds in, so you could never chase them down. The right of recovery would have to be against the Crown if we believe that the Crown is responsible for weed control on public land. I don't know. That might be one for future discussion.

Mr. Drysdale: I think you're kind of right, Frank. From what I've seen, the biggest problem in our area and, say, in Weyerhaeuser's FMA is the public land that has corrals for horses and horseback riding. Of course, all the horse guys bring in hay that could be full of weed seeds. When you go to the corrals, there are weed seeds around. They have obviously been brought in by the outfitters or the horse-riding people. Wouldn't it be easy enough that if it's designated for public use, the public land should be responsible for weed control? If the municipality's weed inspectors came to an area like that and it was public use, they could go to public lands and have them clean it up rather than the FMA holder.

The Chair: Would that be in this bill? Currently it's not in the bill.

Mr. Drysdale: No.

The Chair: How do we deal with that? Somebody else?

Mr. Berger: I think you're going to open a can of worms here because you're not just talking about forestry. When we start talking about grazing leases throughout the province, we're going to have everybody that has a lease say: that weed came in there because somebody rode their pedal bike through or whatever. I have that issue. We have a lot of these guys on their mountain bikes and this and that. I agree that there needs to be some way of dealing with that, but I don't think you want to have that broad a brush because 61 per cent of this province is public lands, and you're going to put this thing over the top.

Mr. Hehr: Clearly, some people in this room have a lot more experience with weeds than I do. I just don't see how you're going to work it into this act given what has just been said, that 61 per cent of Alberta is public lands. There are enforcement mechanisms all over the place here. How are you going to track this down? It may be better that this is tailored somewhere else. I don't even know how that's going to be done. I just don't see how it can work right here.

Mr. Oberle: We're sending recommendations back to the Legislature. Maybe we can advise the minister that it was an issue raised in our consultations. We don't believe it can be dealt with in this bill, but it is an issue, and the minister should consider it. I suspect it can be dealt with in enforcement policy. I don't know that it can be written into this bill. There are, you know, a thousand different ways you could envision a problem here that you're going to try to address in the bill, and I don't think you can. But you should highlight it for the minister.

The Chair: Okay. Anybody else on this one? No action required other than just a note.

We'll go to the next section.

Dr. Massolin: Just to clarify, Mr. Chair, then, that the recommendation to the minister was that this is not an issue to be dealt with necessarily in Bill 23; however, it should be looked at.

The Chair: Correct. Yeah. Don't these forestry agreements come under SRD? It's not under ag, anyway. I think maybe if we're making a report, we'll send a little note to the Minister of SRD because they have to deal with these issues within their contracts with these forestry companies. I would think there are probably all kinds of issues dealing with transportation, like weeds and different issues, that are all dealt with in contracts with these companies. Anybody else on that one?

Then let's go to the final point here.

9:20

Ms Staley: The last issue is found on page 9 of the document and is regarding Métis settlement land rights. The Métis settlements are concerned that some plants which may be classified as weeds on the provincial list are used as food or medicine on their land. The question is: should there be a provision in Bill 23 accounting for weeds which are considered food and medicine for aboriginal people? I'll ask my colleague Stephanie to discuss the information found in the right-hand column of the report, which explains some of the relevant powers of the Métis settlements.

Ms LeBlanc: Sure. In the right-hand column of the document you'll see references to certain provisions from the Metis Settlements Act. The reason we looked at this act was to determine whether the settlement councils could make their own bylaws in relation to weed control. We found that section 72 provides that a settlement council cannot make a bylaw in conflict with provincial legislation unless it is a bylaw or resolution to implement a general council policy on hunting, trapping, fishing, or gathering.

The Chair: Thank you very much.

Any comments on this?

Mr. Oberle: Given that a bylaw can be inconsistent with respect to hunting, trapping, fishing, or gathering, wouldn't that cover weeds? They are already empowered to make a bylaw respecting weeds in the settlement area. I don't know that we would need to deal with it at all.

Ms LeBlanc: Yes, there is the allowance to make a bylaw in relation to hunting, trapping, fishing, or gathering, so there is the possibility that it could come under gathering or something like that. But you'll note that it's to implement a general council policy, and those policies are made pursuant to section 224. The minister is given a veto over those policies, so a general council policy would first have to be sent to the minister, who would then have the option to veto it. So that can enter into your considerations.

Mrs. McQueen: Just for my clarification, then, if we were to accept what's being proposed here, the minister still has the final say. Is that correct?

Ms LeBlanc: What's been proposed in the left-hand column is that there be something specifically put in the bill. I don't know what form it could take. It could take something like a consultation obligation or an explicit power. That would be different from the power allotted in the Metis Settlements Act, which is the power to make bylaws. It would be in a different piece of legislation.

Mrs. McQueen: Could we find something that would work both ways? If there are certain weeds that are for their food and medicine, we could propose something that at least would be in the act, but then the final decision would be with the minister so that we're trying to meet the needs of the Métis people as well.

Mr. Laflamme: Basically, I think that right is within the proposed Bill 23. It was in the old act, and it's also in this one. The way the act is written, it says that a weed inspector may issue a notice on a noxious weed. The decision as to whether to issue a notice on a particular weed lies within that municipality. If they consider a certain plant an edible food, something that they want to grow and allow to be grown within that municipality, they can make that decision within their municipality that they will not be issuing notices on these noxious weeds.

Now, it's different if it's a prohibited noxious weed. Then they don't have a choice; they have to issue a notice on it. However, prohibited noxious weeds are not grown in Alberta, never have been. The reason they're on that list is because we do not want them in Alberta. They would not be considered part of their heritage.

I think this is covered already in this act, and I don't think there needs to be any change to accommodate their request here.

The Chair: Good. Anybody else on that?

Mr. Oberle: I agree with that. They already have the power to set local policy that would allow them to have certain weeds growing there under the gathering provision. The minister does in theory have the right to overrule that or to veto that decision, but he does not have the right to do that without consulting with them in the first place. So I think it's covered. I don't think we need to deal with it.

The Chair: Anyone else? I see a consensus that it's okay the way it is.

That brings us to the end of this document, I think. What's your wish from here, Phil?

Dr. Massolin: Well, I guess the next step in all of this, assuming that we're finished the discussion and deliberation on the bill, is that I think I've heard three basic recommendations: one with respect to section 21(5), one in terms of adding the term "active" as opposed to "all," and the third recommendation respecting occupant use and responsibility for weeds on public land. Those are the three, and I can include those recommendations within a report.

I suppose the next step, Mr. Chair, if you agree, is just to get direction in terms of the committee's views on the recommendation to the Assembly, that the bill proceed with those recommendations.

The Chair: Right. I think we have a number of choices: that we don't agree with the bill or we do agree with it exactly the way it is or we agree with it with some recommendations. I think the third one, after hearing what you've said, is probably the right option. Are there any comments?

Mr. Drysdale: It's just that, Mr. Chairman, I had brought up a few points a few meetings back. They were minor points. I know the bill hasn't been rewritten, and I don't know if you plan on changing those points or if they just got forgotten or what the issue was.

The Chair: You're adding more points?

Mr. Drysdale: Well, I brought them up earlier. They're just minor.

The Chair: Why don't you just reiterate them.

Mr. Drysdale: Okay. Sorry to drag this on.

The Chair: No. Go ahead.

Mr. Drysdale: I think I brought up before section 10(1), where it says, "a person who appoints an inspector." If you look across the page at 7(1), it says that a local authority shall appoint the inspector. It's just the wording. It gets confusing. At one point you say that the local authority appoints the inspector, and then on the next page it says: the person who appoints. Wouldn't it be right in 10(1) just to say: the local authority who appoints the inspector?

Dr. Massolin: I think maybe the department could respond to that.

Mr. Laflamme: We had discussed that in the last meeting, I thought, but I can go over it again. Basically, the reason the word "person" was used was because it can refer to the minister or it can refer to the local authority. If you look under the Interpretation Act, person can refer to that. Under general definitions it says:

> "Person" includes a corporation and the heirs, executors, administrators or other legal representatives of a person.

I guess that's why the word "person" was chosen if that's the concern around the word. It's because that section does apply to more than just the local authority.

The Chair: Okay. Any more comments?

Mr. Drysdale: Okay. I guess I missed that. Sorry.

The other one was 13(2), where it says, "growing or spreading." I don't like those words. I brought that up before. I would say we should remove "growing or spreading" because if an inspector finds

a prohibited weed, all of a sudden in court you get: is that thing growing; is it spreading? You know, if they find prohibited noxious weeds, they should be destroyed. I'm not sure why "growing or spreading" was added in there.

The Chair: The thing is – and I'm not arguing for or against this – that if you've already sprayed a crop which has, say, thistles in it, the thistles are stunted. They're still there, but they're not growing or spreading.

Mr. Drysdale: Yeah, but prohibited noxious says they have to be destroyed, I think.

The Chair: Okay. Yeah, you're right.

Mr. Drysdale: You know, I just think you're adding words that a lawyer could find too ambiguous. It should just be: destroy the plant. You could argue that something is growing or spreading or dead or alive.

The Chair: So what's your wish?

Mr. Drysdale: I just want to take those two words out. I'm not sure why they need to be there.

9:30

Mr. Laflamme: If I can respond to that, Mr. Chairman. Basically, when a weed inspector issues a notice, there is a section in that notice where he outlines exactly what he wants done on that piece of land to control those weeds. You know, when we do our weed inspector schools in the spring, we tell them the importance of that section and to be very careful what you put in that section because that becomes what has to be done on that piece of land. It may say growing and spreading in the act, but what actually happens out in the field is what is written on the notice.

Mr. Oberle: This refers to prohibited noxious, so it's not an issue of control; it's an issue of destroy. If you need some descriptive words there, you should be talking about reproductively viable. You know, it doesn't have to be growing or spreading; if it's reproductively viable, it has to be destroyed. It's not an issue of control. It's not an issue of the inspector describing in that section what he wants done. What has to be done is destroy.

Mr. Laflamme: Okay. Destroy is outlined in the definitions. It says, "(i) to kill all growing parts, or (ii) to render reproductive mechanisms non-viable."

Mr. Oberle: Right. So in this section of the act all it needs to say is: if you find prohibitive noxious weeds.

Mr. Laflamme: What section is that?

Mr. Reynolds: It's 13(2).

Mr. Oberle: It says, "growing or spreading prohibited noxious weeds." It doesn't need to have those descriptor words in there.

The Chair: Having those words in there might make it weaker than if you had those two or three words taken out.

Mr. Oberle: It weakens it. That's right.

Mr. Laflamme: But it doesn't really matter because if he finds a prohibited noxious weed, it has to be destroyed.

Mr. Oberle: Exactly. So you don't need to have the words. Nobody can argue: oh, that wasn't spreading or wasn't growing. It doesn't matter. It has to be destroyed.

Mr. Laflamme: Well, if it's there, it's obviously growing, right?

Mr. Hehr: I would agree with Mr. Oberle's suggestion. Just take out the words, and then it's carte blanche. It's done.

The Chair: Okay. Is that the consensus that I see? Then that will be another recommendation for the final report.

Any other comments? Wayne.

Mr. Drysdale: Sorry. Just two more on section 18. I know that in talking to the field men there, it's still not clear enough if an inspector hires a contractor or somebody to do the work for him. The way it's worded in here, the inspector may take any action. But if you get a landowner that's upset and the inspector hired a contractor to go in there and spray, the landowner will come along with a shotgun and run him off because he's got no right to be there. So if we just added "an inspector or any person directed by the inspector" or something like that.

The Chair: Okay. Yeah, that will give the same power to the contractor.

Mr. Drysdale: Yeah, because he's been directed by the inspector.

The Chair: So right after the first two words in 18 there: "or any person directed by the inspector."

Mr. Drysdale: Yeah. I don't know. What do you think?

The Chair: Are we in agreement with that? Any other comments?

I think you understand, Phil, what the comment is.

Dr. Massolin: Yes. Thank you.

The Chair: Anything else, Wayne?

Mr. Drysdale: One more. Section 15(1). At the end there, right where it says, "area that does not exceed 20 acres." I'm not sure why you'd have that in there because there are subdivisions that are more than 20 acres. It's confusing if it goes back to not being able to destroy a crop that's more than 20 acres. The way it's worded, you can't give a notice, then, on a subdivision that's more than 20 acres. That's kind of the way I read that.

Mr. Laflamme: No. It's not the intent of that section. What this section talks about is that there are basically three types of notices that can be issued. There's the inspector's notice, there's the local authority's notice, and there's the minister's notice.

Now, a local authority's notice is just a general notice, and it's sent out to everyone within a subdivision. They will get the same notice. It would say something like: "These weeds have been found within this subdivision. They may or may not be on your property. If they are, please control them." The idea is that it informs people that those weeds are around. It lets them know that they should be controlled and that if they're not controlled, then the municipality can come around and check and enforce further.

If there's no control on that piece of land, even though it's less than 20 acres, then an inspector's notice could be issued on that piece of land. There's nothing in the act that says you can't issue an inspector's notice on a piece of land that's less than 20 acres. I think it's for a special situation. We've been told by weed inspectors and ag field men out there that the local authority's notice – it used to be called a general notice – is a very useful thing. It works very well. Most people in subdivisions tend to be urban folks that have moved out there who don't know a lot about weeds, and if you're giving them that information, then they will go out and control them. You know, it works very well. The intent has never been that an inspector's notice cannot be issued on anything under 20 acres.

Mr. Oberle: What about parcels over 20 acres? Is the intent there that if it's over 20 acres, it's a serious problem and requires an inspector's notice?

Mr. Laflamme: That's correct. On an inspector's notice you can outline exactly what you want done.

Mr. Oberle: Okay. So this local authority's notice is relatively low key, but it's restricted to small areas presumed to not be a problem.

Mr. Laflamme: That's right.

Mr. Oberle: Okay.

The Chair: Is there any need to change this? Are you happy with it that way? That's okay?

Mr. Drysdale: Okay. Yeah, sure.

The Chair: Any more issues?

Mr. Drysdale: No. That's it.

The Chair: That's it? Wonderful.
You've got your direction, Phil?

Dr. Massolin: Yes. Thank you.

The Chair: We'll be waiting for that next report next week, I guess.

Dr. Massolin: Right.

The Chair: Okay. We have a consensus that you will provide that report and deal with any of the recommendations that we made.

Mr. Reynolds: Just one point, Mr. Chair. I notice that most of the recommendations are fairly straightforward with respect to striking out certain words in a section. I was wondering if the committee would give us permission or make a motion that we could work with Legislative Counsel in developing wording because sometimes it's best to talk to the drafters in the event that, you know, you chop out one part of the act and there's a consequential that would be affected and it's sort of left dangling and it just might cause a bit of a problem. If the committee would agree that we

> consult with Legislative Counsel on the drafting of any possible amendments,

that would be very useful.
Thank you.

The Chair: I see Frank is making that motion.

Mr. Oberle: Yeah. I just assumed that would be done as a matter of course, but I'm pleased to make that motion.

The Chair: Okay. Any discussion?

Mr. Boutilier: Just on that point, Mr. Chairman. Having sat on Legislative Counsel, this was beginning to sound like a Legislative Counsel meeting. Of course, the whole point – right? – of Legislative Counsel is to ensure that there's an oversight, that it does not lose the intent of what we as elected officials are doing in terms of the principle and spirit of what we are putting together here. I think it is a good suggestion. If there's any type of consequence based on some of our discussion today, we obviously will look for it, I guess, at the meeting next week.

The Chair: Thanks, Guy.

Mr. Griffiths: I agree. I assumed it would be done. I'd also like it noted that we be made aware of any consequential changes as we see it drafted, just so that we could go through and make sure that we fully understand it.
Thank you. I just wanted to note that.

The Chair: We'll be back next week going through the report again before it's finalized.

Mr. Griffiths: Excellent.

The Chair: We have that motion. All in favour? Opposed? That's carried unanimously.
Unless there's other business that members want to bring up right now, then I guess I'll just announce that the next meeting is October 9 at 8:30. That's a week from tomorrow.

Ms Rempel: If I could just remind members once again that the location of that meeting has been moved from room B to room A, so we will be in this room again.

The Chair: Okay. Back here October 9 at 8:30.
A motion to adjourn. All in favour? That's carried. See you next week.

[The committee adjourned at 9:40 a.m.]

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