LEGISLATIVE ASSEMBLY OF ALBERTA

Tuesday Evening, October 16, 1973

[Mr. Speaker resumed the Chair at 8:00 o'clock.]

GOVERNMENT BILLS AND ORDERS
(Second Reading)

Bill No. 59 The Occupiers' Liability Act

MR. GHITTER:

Mr. Speaker, I am pleased to move Bill No. 59, The Occupiers' Liability Act, seconded by the hon. Member for Whitecourt.

Mr. Speaker, as the House is aware, this bill was first introduced in the spring session of the Legislature in order to allow suggestions to come from the parties involved, and particularly the legal profession. I would say, Mr. Speaker, at the outset that we are dealing with an important area from its implications to the legal profession, and also from its implications to the public at large, from the point of view of those who suffer injuries as a result of entering upon lands or premises where the owner or occupier of those lands is negligent.

I think also, Mr. Speaker, it should be said that because of the complexities of the subject the sum total of all the input we received from the public over the summer was a big zero. I am not surprised, mind you, because the law of occupiers' liability has really been a haven for the legal academic, as those lawyers in the Legislature would be well aware. It has been a veritable horror for the layman and lawyer alike when it comes to an understanding of the very artificial distinctions and categorizations that have grown through the many years of legal precedent, throughout the common law, when dealing with occupiers' liability.

I think, Mr. Speaker, in order to deal with the general principle which is involved in the bill before the Legislature this evening, it would be necessary for me to take the members of the Legislature through a short but hazardous trip down the road of the law of occupiers' liability. I will be brief and try to keep it as clear and concise as possible, considering the nature of the topic.

Firstly, it should be understood, Mr. Speaker, that the rules of occupiers' liability which have been set down by our courts of law over the years have been those rules of law which have set out the liability of an occupier, be he the owner or tenant of premises, for injuries to persons who come upon those premises. Historically, the English courts, and subsequently the Canadian courts, in dealing with the principles relating to occupiers' liability, embarked on a strange pattern of a pigeonholed approach, which resulted in the creation of many inconsistent, ambiguous and complex laws.

Anyone who has studied occupiers' liability will indeed, in a very short period of time, have his head spinning with such terms as invitees, licensees and trespassers, because when our courts looked upon these three basic categories an entirely different segment of law and responsibility grew up as a result.

If, Mr. Speaker, a visitor was an invitee, the occupier was held to be liable for unusual dangers of which he should have known, which, in fact, means that a very high standard of care was imposed upon an occupier when an invitee came upon the occupier's premises. An invitee, for example, would be someone who buys a ticket to go to a baseball game, or a ticket to go to a movie house, or someone who goes into a shop to purchase some goods. That person, then, is

an invitee and as a result there is a very high standard of care imposed by our courts upon the occupier.

The next category that our courts dealt with, Mr. Speaker, was the category of the licensee. In the case of a licensee, the standard of care imposed by the courts upon the occupier was of a lesser standard. A licensee, for example, would be if you go to visit a friend in a house. Then you are a licensee because you are not there expressly by payment of invitation; you are there in a visitor's sense and you are a licensee, but the standard of care would be less to that licensee.

Then, Mr. Speaker, there was the third distinction, and that was the distinction of the trespasser. The trespasser, of course, is the person who is unlawfully or inadvertently on someone else's property. The standard of care that an occupier must have to a trespasser is very low, unless that trespasser may be a child.

As a result of this, Mr. Speaker, many cases grew in our common law precedent from many years back in English law. Let me give you an example of how ludicrous the situation can be from the point of view of the interpretations that our courts can place upon these artificial categorizations and distinctions of invitee, licensee and trespasser.

In 1941, the defendant was an occupier of part of a building premises, and operated a lunch stand and a cigar stand. An individual entered the premises, looked around and then went to use the toilet, but on the way to the toilet he fell into a trap door which was inadvertantly left open, and was seriously injured. As a result, the injured party sued the owner of the store, who was the occupier, on the basis of negligence.

The critical point of the law however was, was that person who went into the store an invitee or a licensee? Because if he was an invitee, then the owner would be responsible to pay but if he was only a licensee, then the owner would not be responsible to pay.

So the courts battled and battled to determine if a person going into a business location to use the toilet was an invitee or a licensee. Originally they decided that he was a licensee and as a result the occupier did not have to pay any damages. Subsequently this was appealed and on an ambiguous legal distinction damages were awarded.

This is an example of the artificiality which crept into the law and the ambiguity that is created in the law of occupiers' liability which resulted in great unfairness to the injured party; a great ambiguity and uncertainty in the legal profession as to where the rules should be.

That, Mr. Speaker, is the very reason why I'm pleased to introduce The Occupiers' Liability Act, for I believe the essence and the principle behind this bill before this Legislature for consideration this evening is to remove these ambiguities, to remove the artificial categorizations and distinctions that I have referred to.

Mr. Speaker, our courts on many occasions, have referred to the difficulty of occupiers' liability, the rigidity of our law and the use of this black and white technique. One legal jurist wrote:

> Facts are made to fit the conception instead of having the conception fit the facts. The three categories are preserved intact, even though reason and experience be sacrificed in the process.

This is our courts talking in terms of their problems.

In England, as a result of this extreme feeling of unrest with regard to the law of occupiers' liability, in 1952 a law reform committee was constituted to consider the problems of occupiers' liability. The law reform committee reported in 1954 with its recommendations, the basis of which was to remove the distinction of invitee and licensee, abolish it and raise a general negligence concept. In other words, if the owner of land is negligent in dealing with people he can reasonably expect will come on to his property and someone is injured, then the owner should pay. As a result of the recommendations in 1958, in England, the Occupiers' Liability Act was passed and is now the law of that land. Once the law was clarified and the ambiguities removed it had an amazing effect on the few cases which have come before the English courts.

As a result of the great success enjoyed in England, similar laws were passed which quoted occupiers' liability in Northern Ireland in 1957, Scotland

in 1960, New Zealand in 1962, New Guinea in 1962, even Fiji and Jamaica. Hopefully, Alberta will be the first province in Canada to have the good sense to pass legislation of this nature in the bill before the House this evening.

In 1969, in the Province of Alberta, Mr. Speaker, the Institute of Law Research in Alberta issued its report on occupiers' liability. I know all the members of the Legislature have a copy of this report. In 23 basic recommendations, I believe the committee showed expert understanding of the dilemmas faced by our courts in dealing with the law of occupiers' liability and recommended an approach based on the English and New Zealand concept.

I know all members have the report and have read it. I certainly don't suggest that you understand it because, quite frankly, even as a lawyer I have a lot of difficulty understanding the complexities of it. But the basic principle we're debating tonight is indeed sound.

You will note, Mr. Speaker, that the effect of this act is to remove the invitee and the licensee categories. It sets out a general principle of negligence. It defines who the occupiers will be from the point of view of law. It gives special treatment to children who are trespassers upon land. For example, when an owner of land can reasonably anticipate children coming on to his premises there is a responsibility contained in this act to protect the innocent child who inadvertantly strays on to another's premises.

Mr. Speaker, I think the bill is sound. It will be another example of legislation in this province which would be a forerunner of legislation that will appear elsewhere in Canada.

In conclusion, Mr. Speaker, I think I express the views of all the members of this Assembly when I offer the thanks of this Assembly to the Chairman of the Institute of Law Research and Reform Committee, Mr. H.G. Field, and to Mr. W.F. Bowker, Mr. D.T. Anderson, Mr. S.A. Friedman, Mr. W.H. Hurlburt, Mr. J.S. Palmer, Mr. W.A. Stevenson and Mr. A.G. McCalla, the members of the committee who prepared the report which has been of such great assistance to the government from the point of view of drafting this difficult bill for presentation to this Legislature.

MR. LUDWIG:

Mr. Speaker, I wish to compliment the hon. member, Mr. Ghitter, for not only raising an interesting topic and presenting a bill that is very necessary, but for doing such a scholarly job of presenting it. It isn't very often we get from that side a job as well done as in this case. Sometimes they throw a bill at us and try to table it before they move it, and often before they understand it.

I am quite convinced that the hon. member has done his homework. This is an interesting bill and I am urging the members on this side to support it. It is one of the better presentations we have had in this House and it's a good job - no reflection on the rest of the ministers, but I would recommend to some of the ministers on the other side that if they get tangled up in some simple statute the hon. member who just spoke can straighten them out very effectively. As that is a compliment to one, I hope I don't create one ingrate and a lot of enemies when I say that.

MR. GHITTER:

Mr. Speaker, I learned some time ago to beware of Socreds bearing gifts.

MR. LUDWIG:

You know, Mr. Speaker, I might be accused of not being objective in dealing with the opposite side, but anybody would admit it isn't very often we have an opportunity to compliment somebody for doing a good job. I hope that isn't a reflection on me, because I try, where possible, to give credit where credit is due.

If I were like the Premier, I would try to get some credit out of this myself and I'm not entitled to it.

AN HON. MEMBER:

Agreed.

MR. LUDWIG:

Now that I have said all this, I have only one little thought. I don't think there is a problem with this bill, but I would like the hon. member to tell us where there might be the least little bit of change in the approach of insurance companies. I think that with the increased liability for children, which is one of the major sections in this bill, there might be some changes, but I don't think that should be any deterrent.

There might be a second look taken by insurance companies that insure occupiers against liability for any injuries, et cetera. There just might be this one little point the hon. member can tell us but that wouldn't deter anybody from supporting the bill.

Once again, Mr. Speaker, the hon. member, Mr. Ghitter, has shown how it can be done. It's a pleasure to hear his presentation.

MR. FRENCH:

Mr. Speaker, in rising to make a few remarks on Bill No. 59, I would like to say that I certainly appreciate the remarks of the Member for Calgary Buffalo in his explanation of the bill. I must confess that I had some difficulty in reading some sections. I also note the Member for Calgary Buffalo indicated that one of the parts of the bill is to protect the innocent child in certain circumstances. In looking at the definition section of the bill, I find no definition of the word "child". So I presume that the definition would be anyone under the age of 18, as defined under our Age of Majority Act.

When I come to one of the particular sections dealing with the protection of an innocent child, I see that in determining the award to be made, the age of the child is taken into account. If we're going to protect some innocent child, then why shouldn't this apply to all ages of children, providing they are under 18, if this is the intent of the act.

I must confess, I have no knowledge of the legal background in this whole area, but if we're going to protect innocent children, it seems to me that we should protect them all, or maybe we should have a definition of the word "child" in the definitions section so that we'll know whether they are referring to a child of 10 or 12 or 14 or 16. I would feel that if there is any doubt in this section then the doubt should be in favour of the child and not the owner of the property. I would hope that the hon. Member for Calgary Buffalo, in his wisdom, will be able to give me some assistance in my dilemma in this particular case.

MR. TAYLOR:

Mr. Speaker, there is just one point I would like to raise in connection with the bill, and at the same time congratulate the hon. mover on his very excellent presentation.

One of the items which concerns one or two constituents of mine is the matter of gross negligence. While the bill appears to provide no responsibility on the part of the occupier for a trespasser or for a trespass, it goes on to state that if a person is killed or, I suppose, badly injured, there then seems, through something on that land, that gross negligence might be considered. Then it does hold the occupier somewhat responsible.

At one time in the province if you picked up a hitch-hiker on the road - I realize these are barred under this particular act - and there was an accident, the hitch-hiker would have to prove gross negligence in order to successfully claim against the driver of that vehicle.

The matter of gross negligence is something that worries a great number of people. For instance, a farmer has a dam well in from the road and which is not fenced. If a trespasser went in and was drowned, would the occupier be held responsible for not having fenced that particular dam, or would gross negligence have to be proven?

I'm not expecting the hon. mover to deal with every possible eventuality, but if he could give us some words arising from his experience and his knowledge of this type of legislation in regard to gross negligence, particularly in an area of trespass, I think it would be well worth while.

MRS. CHICHAK:

Mr. Speaker, in reviewing this bill I, too, feel that it is a very timely one and a very important one for us to consider favourably.

I noted as well that there was no definition insofar as a child was concerned, and so perhaps we would consider a child as being an individual under the age of 18 years. In considering where the age of a child might be concerned, I am pleased to note that it was set out in the manner in which it was under Section 13, subsection (2), of the proposed bill. We specifically indicate here "in determining whether the duty of care under subsection (1) has been discharged consideration shall be given to the age of the child."

I think the important subsection here is (2)(b) "the ability of the child to appreciate the danger..." because if we set an age, any age figure under 18, that does not automatically determine that a young individual can appreciate the danger he or she might be entering into simply because of what we might expect socially, that particular age is one where it should be expected that the young individual would appreciate any forthcoming danger.

Let me cite an example of what I mean because it is somewhat complex. We can have a 14 year old child of normal intelligence and ability recognize when he is entering upon a dangerous area. On the other hand, we may have a child of the same age, 14 years, who through some mental or other deficiency, may not be capable of recognizing any danger that he might be entering on. I think that the manner in which this particular aspect is covered in the bill is really a very accurate one, and a very good method to apply. I think that it would have to be determined on the capability and the ability of such a child.

I think that in the entirety I would support the bill wholeheartedly and I would hope that we would not make any amendment as to age classification of the child, but deal with each on its merit.

MR. BENOIT:

Mr. Speaker, when I first read this bill, I had never read anything like it before, and I couldn't figure out where it came from. I am glad the hon. Member for Calgary Buffalo came up with this good hard sell program before I got up tonight, because I might have said something more foolish than I'm going to say.

I have often wondered how it comes that the law seems to always be in favour of the criminal and against the poor fellow who is being molested. This didn't help me when I read this first.

As some hon. members know, I am very strong on some kind of workable trespass act that could be enforced effectively and successfully in the court, so as to protect the property owner from the people who are always trespassing and running over him. Then we come up with a bill like this which suggests that the fellow who is run over is the fellow who is liable in the first place anyway, and it kind of bothers me.

I followed carefully what the hon. member was saying in the second reading of the bill. He points out that after discussing it for a while he forgets the trespasser and talks more or less only about the invitee and the licensee. That made me feel a little better, gave me some hope that maybe the trespasser would get his just reward somewhere along the road.

I only hope that this bill, with the general principle of which I am in favour, doesn't conflict with The Trespass Act that is being proposed, or hopefully proposed in the future. I hope there is some kind of medium between the two that we will be able to reconcile. So, I'll go along with the bill in the hopes that it will not contradict The Trepass Act, whenever that comes in.

MR. GHITTER:

Mr. Speaker, may I close the debate?

MR. SPEAKER:

May the hon. member close the debate?

HON. MEMBERS:

Agreed.

MR. GHITTER:

Mr. Speaker, if I might deal with some of the points raised by the hon. members, who I certainly thank for their comments on the bill, which is not an easy one to work one's way through.

From the point of view of the hon. Member for Calgary Mountain View pertaining to the insurance companies' position, I think it's somewhat unknown just what position the insurance companies may take. It seems on one hand, the costs will be reduced. From a legal cost point of view, there will be fewer cases going through our courts because the rules of law will be more defined. The lawyers might not do so well, but the insurance companies might do a little better, and a lot of people - the hon. Minister of Agriculture will be happy to hear, the lawyers won't succeed on that particular.

From another point of view there could be areas where the liability could be extended, which is meaningful, I think, under certain circumstances. When we remove these artificial distinctions there may be a better break from the point of view of the innocent party who comes on the premises and is injured, be he an invitee or a licensee.

Only time will tell just what effect this will have on insurance rates. I think it would be meaningful, but we have no Canadian experience by which to judge this. Any comments I have read from the point of view of the English experiences have treated it in such a minor way that only time will tell, although it is certainly a point well raised.

With respect to the hon. Member for Hanna-Oyen's concern as to children. I think this is probably the most difficult area of occupiers' liability that the courts have had to deal with, and the courts have made some very unusual decisions.

The hon. member might find interesting a case in the House of Lords which goes back to approximately 1944. It is one of the leading cases dealing with child trespassers. In this case, which is well-known to at least students of occupiers' liability, the situation was that the plaintiff's son was killed by by a colliery wheel on the defendants' land. The wheel was started up by one of the defendants when the child was trespassing on the land. The court dealt with it and determined the parent entitled to damages for the injuries to the child, the child being a trespasser, getting on to the colliery wheel and then being killed, on the basis that the cwner knew that children came upon those premises and didn't take precautions. But oddly enough the House of Lords held that there was no liability because of the fact that no negligence was shown from the point of view of the owner and the operator of the colliery wheel, even though they took no precautions knowing that children would be lured on to the premises to look around. That was really a most unfortunate decision and it was highly criticised at a later stage by the legal academics.

But it shows the turmoil in which the law of trespassers and children particularly is involved. I would suggest that the quotation of the law set out in Section 12 of the bill would get around that in many respects. Firstly, if there is a trespasser on the land, and this relates somewhat to the hon. Member for Drumheller's point, the occupier is only responsible for willful or reckless conduct which is basically a gross negligence concept.

So, in other words, if you purposefully want to injure someone, be he a trespasser and he is injured, then liability will follow. But only under those circumstances. Then a special category is set up from the point of view of children, which brings in your other point with respect to the age of the child.

Now the recommendation of the committee - and when you have an opportunity you may want to read this on page 55 of the institute's report - specifically stays away from stipulating what age a child should be. Because of the difficulty, is a seven-year old child more aware than an eight-year old child, from the point of view of knowing the danger on that property? In other words, the moment we put legislation down, and that relates to the point raised by the hon. member, Mrs. Chichak - the moment you categorize the age you run into difficulties. So a court of law must look at all of the facts surrounding a situation, must know something of the child, the awareness of the child, the intelligence of the child, the circumstances of the situation, and then must determine, when all of those facts are before it, whether or not the occupier should have been aware and whether or not the occupier did, in fact, show a reasonable standard of care.

I think that is a much better situation for the protection of the children, but also in reasonableness to the occupier in a very difficult area where there

is no black and white. Quite frankly, in situations like that, I would prefer to leave it up to the courts to decide, rather than categorizing it as to say no responsibility to eight-year olds but a responsibility to seven-year olds. It's not that there is a problem at the topside, with the 18 or 19 year olds. That's not the problem. I refer the hon. member to pages 55 and 57 of the report. That will give you some additional information as to the recommendations of the committee, why they made the specific recommendation the child not be defined within the bill. And as a result, that has not been done.

With regard to the point raised by the hon. Member for Drumheller about gross negligence - of course, we've dealt with it from the point of view of the trespasser and from the point of view of any visitor on land. Ordinary negligence is sufficient, not the gross negligence, the wanton and reckless disregard.

I think you've raised another interesting point in the sense of gross negligence in a driving situation, where an innocent passenger in a car is injured due to the negligence of the driver of the car. That law cannot succeed in damages unless gross negligence is proved. I think that's foolhardy law. I think that's archaic law, and I would hope that in the long run even this Legislature might have the judgment to change the law under insurance so that this responsibility of negligence would also apply from the point of view of a passenger in ordinary negligence.

I think our courts are doing whatever they can to get around that concept. If they can find any negligence they call it gross negligence, whether it be gross negligence or not. I think that an excellent debate could well take place in this Legislature about the removal of that archaic principle of law which still sits in our insurance area. However, as you have mentioned, that isn't exactly within the ambit of this bill but it's an interesting offstep from the bill.

Lastly, concerning the points raised by the hon. Member for Highwood, I think that rather than encourage the criminal or make it easier for the trespasser or anything of that nature that is your concern, you are making it more difficult from the point of view of the owner of land or the occupier of land. I think in the end result it clarifies the law to such a stage that if an occupier is concerned about what to do with his land he can now possibly go somewhere for advice. A lawyer can reasonably tell him; look, fence that land or get rid of that allurement, or drain the water from that culvert where a child might drop in, because the law is here and this is what it says.

I think he would have a lot of trouble walking into a lawyer's office in Alberta and getting advice right now because of the nature of the law - no disrespect to the profession - it is just too complicated and ambiguous in its present state. So I think when we can more clearly define the laws as they are in this particular situation, both the injured party as well as the occupier are better off because they understand the law better and it is clearer. I think that, hopefully at least, the points you have raised will not crop up too often. Again, only time will tell in Canada.

Mr. Speaker, these are the only comments I wish to make. I thank the hon. members for their comments with respect to the bill.

[The motion was carried. Bill No. 59 was read a second time.]

Bill No. 64 The Human Tissue Gift Act

MR. CRAWFORD:

Mr. Speaker, I move, seconded by the hon. Minister of the Environment, second reading of Bill No. 64, The Human Tissue Gift Act.

Mr. Speaker, the legislation proposed by Bill No. 64 is not entirely new to the statute books of Canadian provinces, but one aspect of it is new to the statute books of the Province of Alberta. This is, of course, a very humanitarian form of legislation. The purpose of it is to enable persons who are willing to do so to provide, for the benefit of others, a transplant of part of the body of the donor, either during life or after death. As well, in dealing with the question of transplants after the death of the donor, the well-known provisions that relate to the giving up of all or part of a human body for research, medical education and the purposes of the universities in research and teaching are also covered by this legislation.

The major change that I referred to in the drafting of this legislation at this time clarifies the whole area of gifts of organs given during the lifetime of the donor and prescribes the various ways in which any possibility of abuse

of a consent of an owner, or a donor - pardon me, I suppose he would be both an owner and a donor of the tissue being donated to the recipient - any abuse of his willingness to be a donor is guarded against in the safeguards that are provided around the form of consent and the terms of validity of the consent, once given.

Now, Mr. Speaker, the act is one that has been prepared in consultation through the Commissioners for Uniformity of Legislation and has been recommended by that body to the Canadian provinces generally. That is also true of the earlier Act, The Human Tissue Act, which is already on the statute books and which would be repealed upon the passing of this act. I mention that because it is a reflection of a concern which has been more current all across the country over the last few years than it was some time ago, that this sort of humanitarian act be made more possible. The benefits which might occur to the recipient would more likely be attained in keeping with the steadily advancing skills of the medical professicn to perform that type of operation.

Mr. Speaker, those are all the remarks I wish to make in moving, as I have done, the second reading of this bill.

DR. PAPROSKI:

Mr. Speaker, in rising to speak to this bill, The Human Tissue Gift Act, I would like to make a few brief comments to put this bill in perspective.

In 1887, Mr. Speaker, William Halsted transplanted the hind leg of a dog from one side to another. In 1912, hon. members of the Assembly, Alexis Correl, a surgeon, a physiologist, and a biologist said, "It would be very convenient if a surgeon had arteries, cartilage and bone stored in banks to be used at his convenience when necessary."

Mr. Speaker, and members of the Assembly, this semi-prophecy is well on its way. Today hospitals have banks of bones, cartilages, vessels, corneas and so on. Mr. Speaker, I am sure we all agree with the technique of replacing injured and diseased organs and tissues. Present day surgery has moved into a territory which was science fiction not very long ago. We know that modern medicine with its antibiotics, blood, the automation which has prevented many serious accidents, as well as the various preventive measures which have taken place in medical circles and the education regarding health, has prevented surgery and the need for transplantation. I feel we all recognize and accept the fact that a human being is subject to disease and bodily harm and will undoubtedly require a surgeon to mend those parts. Until such time as modern medicine has ways of preventing serious problems such as arteriosclerosis or hardening of the arteries, congenital defects, and discovers the ideology and, in fact, treats these problems, I am afraid the surgeon will have to play his role and replace certain body tissues and parts.

Mr. Speaker, it becomes more and more important that we recognize the success made over the past few years in the transplanting of tissues and organs into the human body. This success has been recognized not only in research and teaching but, in fact, in extending and prolonging life and making people happier. There is no doubt in my mind that until such time as artificial organs are available, artificial and mechanical means of replacing human tissues, live or post-mortem, will be necessary.

Mr. Speaker, a commonly-known transplanted organ is, of course, the kidney. To quote a few statistics from a clinical review in Modern Medicine of April 1973, it has been stated by the Human Renal Transplant Registry, which encompasses, for a point of interest, the United Kingdom, the United States, Europe and Australia, there have been some 8,333 kidney transplants going back 20 years from 1972. The important point that I want to make here is, of the total cases, 90 per cent were first transplants, but there were many second, third, fourth and fifth transplants, and so on. The other point I would like to make is that for living transplants, that is transplants inter vivos from a living human body to another living human body, the ratio of success in the transplants was a lot higher, 70 per cent of a live transplant as compared to 40 or 50 per cent success, in one year, if the donor was a post-mortem transplant.

Mr. Speaker, at our university the foresight and progressive thinking of Dean W. C. MacKenzie have attracted very able and capable men like Dr. John Dossetor, who is an immunologist well known across Canada in the area of tissue transplant. His abilities have indeed brought this field of knowledge and treatment into the University of Alberta. We should be proud of this.

The limiting factor, ladies and gentlemen, in transplant is the ability to get donors and adequate donors with the appropriate tissue typing.

Members of the Assembly, this type of advancement, coupled with the tissue typing for which Dr. Dossetor is well known, the fact of having donors, and the recognition that we do this at the University of Alberta in the Faculty of Medicine are, I think, of great importance.

Thus, as I conclude and make a few specific remarks to the bill, Mr. Speaker, I would hope the members of the Assembly will indeed extend their hands and lend support to such a bill.

This act, Mr. Speaker, as the hon. minister has mentioned, is a model act drafted by the Conference of Commissioners on Uniformity of Legislation. That there was such a conference was brought to my attention for the first time. I think we should have more conferences like this for uniformity of legislation, not only in this particular area but for other legislation across Canada.

To mention the highlights and aims of this model act contained in Bill 64, may I say this. First, the bill will state the circumstances under which anatomical gifts may be given. The new part to this is the inter vivos or the gift from one living person to another. The post-mortem aspect of it is well-known and contained in the previous bill. But these parts may not contradict the wish of the deceased. If no wish was made, then it specifies quite clearly the order of the next of kin who may give permission for the post-mortem part of the body.

Another new part in the bill that I heartily support, and I hope the ladies and gentlemen here will support this too, avoids the conflict of interest in the transplanting. This means that one physician is caring for the donor, another physician for the recipient, and another physician may be caring for the transplant procedure. This is ideal, but unfortunately from time to time the physician may take care of one or more aspects of this. Here the two physicians who determine the fact of death of the donor cannot, in fact, be associated with the recipient or the procedure itself.

The third aspect is the civil liability of a physician and those who give consent. This is protected in the bill.

Another new aspect of the bill is that it prohibits the sale of tissue other than blood and blood constituents, and it is a serious offence to sell that tissue. It protects the anonimity of those who give consent and who refuse the consent for donation of the deceased, and also of the potential actual recipient.

Lastly, and I don't think the least of it, it promotes the transplanting of tissue across the province as we get uniform legislation developed across the country. It is interesting to note that Newfoundland, Ontario, British Columbia and Nova Scotia have this model act.

Ladies and gentlemen, I urge all members of the Assembly to support this bill. I would like to have permission, Mr. Speaker, to table a donor card of a type that could be used and I encourage the minister to consider this. This donor card could be a legal document. It can be carried by citizens and be utilized by those who need transplants.

Thank you, Mr. Speaker.

MR. STROM:

Mr. Speaker, I don't intend to debate the principle of the bill, but I would like to raise a question to the minister who has introduced it. It is a question that has been bothering me for some time. The hon. Member for Edmonton Kingsway doubted it slightly, yet I do not think he covered it fully. That relates to the matter of determination of death.

It seems to me this is an area which we are going to have to look at carefully to come up with some definition that will be understood by and acceptable to the general public.

I do not believe, Mr. Speaker, that there is any general question of it at the moment, although I know that in some discussions I have had with the odd doctor or two they have expressed to me that there is a concern in this area of determining when an individual is actually dead, for the purposes of removing organs that will be used for someone else.

As I indicated earlier, I appreciate that the hon. Member for Edmonton Kingsway, who is a medical doctor, has covered it in part, but I would like to

ask the mover of the bill whether there has been adequate consideration of this particular phase of the problem I can see society having to face.

The medical profession may be concerned to a greater degree than any other group within society. I am sure that it is something that cannot be passed over lightly, but will have tc be given very serious consideration, and I am interested in knowing to what extent the medical profession or your department, hon. minister, has looked at this particular problem.

MR. KING:

Mr. Speaker, I would like to make a few brief comments about the bill this evening.

I will begin by saying that I support the principle of the bill but, for a number of reasons, I believe, our discussion or our dealing with the bill at this session is probably the last time that we, as Legislature, are going to be able to deal with the matter without seriously considering some very important moral issues.

One of these is the question that has been raised by the hon. Member for Cypress. I would draw the attention of the members to the fact that, coincidentally, we have before us a bill, one of the important questions of which is the determination of the commencement of life. This is a private member's bill that has been sponsored by the hon. Member for Edmonton Ottewell. The government finds itself increasingly in the position of having to make, as the hon. Member for Cypress suggested, or create definitions of life and death that are going to be legally effective, medically sound and subject to the concurrence of the majority of the population of the province; a million and a half people who hold widely-varying beliefs.

Aside from the questions of determining the commencement of life or the end of life, there is another important issue that I think is shortly going to be before us in a very practical way. I have read that experiments have been successfully concluded at a medical school in the United States where they transplanted the head from the body of a monkey to the body of another monkey, and the body and transplanted head had survived for 36 hours. The researcher who was carrying on this medical program said he was convinced that the transplanted heads of humans could survive longer than had the transplanted head of the monkey; that unlike other transplants there had been no evidence whatsoever of rejection by the one party, of the body of the other ... pardon?

[Interjections]

MR. KING:

Thirty-six hours is all some people want.

AN HON. MEMBER:

With a monkey's head.

MR. KING:

... and that the only things that would preclude immediate further developments in this line were moral and legal constraints in the jurisdiction in which he was operating.

I have a question which the minister himself may not be able to answer this evening but which I think we and other jurisdictions are going to have to consider in the future, and that is whether or not, when we make an act about the transplant of tissue, we are in a position to make any exceptions to it. What might we do, a few years down the line, if a similar program of research is developed at the University of Alberta or any other Alberta university?

As I say, Mr. Speaker, I support the bill and I think that we have gotten through it rather easily this evening. I think that it is the last time that we are going to deal with the issue as easily as we have.

MR. BUCKWELL:

Mr. Speaker, I was going to ask the minister, in the cases where we have had heart transplants throughout America and South Africa. A great deal of interest was aroused, particularly when they couldn't find a donor and then all of a sudden a donor came along, through some accident, and his heart was transplanted and the person went on. Great publicity was given not only to the person who

received the transplant but the poor person who had donated it. I can see cases where a man, say a truck driver or someone, is badly injured and he knows he is going to die in a matter of hours. He could donate, say, his heart to somebody who is waiting to have a transplant.

In Section 11, and maybe I'm out of order in taking a section, but in Section 11 it says that no person shall disclose or make known any of these things, but they become known publicly. I was wondering, in the future, what if a person donates his heart or his kidney, or whatever it is, and doesn't want it known? Quite often, through the press or even hospital staff, it gets quite widely known who the donor was and it could be an embarrassment to the person who received it. Perhaps, for example, the Social Credit heart might help the Conservative person, but I don't know how it would work the other way around.

MR. TAYLOR:

I'd like to commend the minister for bringing in this act. I think that it is very timely and it's a wonderful thing indeed when persons are prepared to donate part of their body, particularly when they plan to continue to live, and even when they know that death is imminent. I think we have to commend these people for doing that.

There are some aspects of this, if it is carried too far, that may create some pretty serious legal problems. I sometimes wonder, if the transplants continue and a man gets the kidney of one, the heart of another, the brain of another, the stomach of another and the leg of another, who is he? It is complicated even more if it happens to be the heart of a woman and the stomach of a woman. You say, who is she, or who is he, or who is it. I can see some pretty serious complications. Perhaps it is a good thing the hon. minister has also brought in Bill No. 65 because there if it happens that the sex is changed, we could at least get our names changed. I say that facetiously, but I think it has some tremendous possibilities.

For instance, if a very clever doctor came and wanted to build the perfect minister, and looking over the cabinet I think he probably could, because some parts are in the brain. If he took the heart of the Minister of Health and Social Development, the smile of the Minister of Consumer Affairs, the tolerance of the Premier, the thrift of the Provincial Treasurer, the tenderness of the Solicitor General, the kindness of the Minister of Mines, the determination of the Minister of Agriculture, the coordination of the Minister of Federal and Intergovernmental Affairs, the cowboy hat of the Minister of Highways - there would be a tremendous minister.

MR. LUDWIG:

Probably be a Social Creditor.

MR. TAYLOR:

On the other hand, I'm not going to try to find that doctor, because I think the cabinet as it is is going to be difficult to defeat without building up perfect ministers. However, I say that facetiously too.

I do think that the preservation of life is tremendous, is really a wonderful thing. I think we have to marvel at what medical men have been able to achieve in being able tc take the heart of one and place it in the heart of another - in the bosom of another - and continue that life.

I would like to pay tribute, while I'm on this, to an Alberta doctor, Dr. Callaghan, whom I saw repair the heart of a little girl a few years ago. He took the heart out of this little girl, patched up the hole that shouldn't have been there, and made another incision where the hole should be, with artificial respiration going on all the time, and a team of doctors and nurses, of course, so that the blood would come arcund to the lungs and then be purified and go throughout the rest of the body. As a result, the B.C. doctors said that girl only had months to live. She is now living a normal life. Before, she could not run, dance, skate, ski; as a matter of fact, she could hardly even walk very far. Now she takes part in all activities because of the tremendous ability of our medical men.

I think we have to pay tribute to our medical men in this province as well as those around the world. It is a tremendous thing indeed, when we are able to extend the lifetime and make life livable for other people because of the skill that our doctors have been able to achieve. So I commend the minister for bringing this bill up before the House.

MR. DIXON:

Mr. Speaker, speaking to the principle of this bill, I believe that we could call it a "motherhood bill" because I think there would be hardly anyone in the House who would be opposed to it.

I was pleased, Mr. Speaker, to see the hon. Member for Edmonton Highlands get to his feet because I remember he gave quite an emotional talk on The Sexual Sterilization Act and what they did to people who weren't able to make decisons for themselves.

There are parts in this bill where we could run into a similar situation. There is also the weakness, too, in the bill, of foregoing any action against a person unless he is negligent. It's awfully hard, I think, for the lay person - I think we've all heard it, and this is no reflection on the professional people we have in the House. The average man on the street says, well, you can't fight the medical profession, or you can't fight the lawyers. Therefore, I think it is up to the Legislature to spell out wherever possible and to make it easy for the lay person to take action, in the case of negligence by a profession, and to make it easier for them at least to have professional witnesses testify on their behalf, which many many people tell us is not possible. I don't agree fully with that, but this is what the general public are stating and have stated over the years.

When you ask a person to give consent to have something done to a person who at the particular time is not able to make his or her own decision, that is a very, very serious decision fcr anyone to make. I am sure that all of us here in our lifetime, many who have served in the services, and many of the professional people here whc work in the hospitals, have been around patients who have been badly injured, or when death is near. If it happens to be a loved one or a close friend, I think we'd all have to admit that we are not really in the state of mind to make the clear decision that we could make in other circumstances.

I don't know what the hon. minister could do to protect the injured person, or the person where death is imminent and the physcian has so stated, but I think that is one principle we should go out of our way to protect so that there is no reason at all to believe - and I know that it is covered under one of the sections - that no person who is in that condition should sign a statement offering the body or parts of the body of another person. What I'm trying to state is that I feel when you make those decisions you should make them at a time when there isn't the emoticnal strain that exists when death is near, or someone who is close to you has been badly injured. So I would like to see if we could - it may not be possible because of the fact that maybe the transplant is needed fairly quickly - but if we could, maybe, have a period where this wouldn't come into effect for, say, 24 hours after the signature.

Maybe, Mr. Speaker, the hon. minister could point out that they are going to make it a definite part of the forms to be signed, and challenge the person, at the time, that they have reascn to believe that the person whose body or parts of the body they are consenting to [donate] on his behalf cannot make [the consent] himself. They are challenged at that particular time on the seriousness of donating that person's body, or part of that body, without his or her consent, at the time that that person is injured. Because, after they've thought it over for a while and they think back, they may say that person, two or three weeks ago or years ago, decided; no, he did not want his body handled in this way. So I think we had better be very, very careful.

The other point, Mr. Speaker, that I pointed out before, was that any bill which takes away a lot of the liability on another person and denies the right in many cases to take action is a bill that any Legislature should be very, very cautious of. As I stated, I don't think anyone here is going to argue with this bill. I think it's a good bill, provided that all the parties concerned have full knowledge of what is going on.

I noticed in one of the sections that there is no liability even if a young person has signed something and he finds out that he isn't going to be of the age of majority. No action can be taken against him. Well, I think in a bill like this we should take extra precautions that we do establish that the person who is giving a consent is of the age of majority. We have to go out of the way to find that out. This is what the bill should spell out.

Thank you, Mr. Speaker.

MR. SPEAKER:

Could the hon. minister conclude the debate?

MR. CRAWFORD:

Yes, Mr. Speaker. I do want to thank hon. members, all of them, for their contributions to the debate and for the number of considerations that were raised by each of them. I noted that the remarks of the hon. Member for Drumheller, for example, hark back to the sort of language traditionally used when we wish to pay a high compliment to some person, and we refer to him as a man of many parts.

I think any one who agrees to become a donor is indeed a person who should, in all seriousness, Mr. Speaker, be complimented. I don't think that anyone could do anything that would be more appreciated by a person in need of a transplant than of being one of those rare individuals who would be ready and willing, knowing I think, in almost all cases, what they are doing, to make a bequest like that, or to make an inter vivos gift of that type.

I want to deal with a few of the questions that were raised.

The hon. Member for Highlands and the hon. Member for Cypress both raised a question which, as a matter of fact, has had recent publicity in another jurisdiction. It's a question of the moment at which the death of the donor is calculated.

The hon. members will recall a recent news report of a case where the issue was the question of withdrawing a life support system from an injured person whose death was a certainty if the life support system was withdrawn. If the life support system was left, the question of his death, although perhaps a matter of time, was not a certainty. In that case, the survivors who were the parents, if my memory serves me correctly, made the very difficult and tragic decision to say to the doctors, we know what your advice is. We can see the effects of the injury. We believe that if he does survive in the technical medical sense he will never regain conciousness, will never ever again function as a human being. We therefore give our consent to withdraw the machinery. It was not the person's normal life being continued in any normal sense at that point, but the withdrawal of the actual technical machinery of life support. That was done and the donaticn of the organ went ahead.

I don't underestimate th difficulty to which the hon. Member for Calgary Millican referred when he said how hard it must be for people to make a decision on an occasion like that. I think so long as people are willing make a donation in such a humanitarian way and in such a cause of generosity, perhaps even the actual giving of life itself tc another person, we should, we must, we have and we will, I think, facilitate that sort of thing taking place.

This does not take away from the question of protection being required for the person who would be the donor, in the case where the consent is not given by him in writing in advance but is in fact given by a survivor. That is the aspect of the bill which caused me the most concern in giving consideration to it. I do think that in the proposed form of the bill it is workable and abuses will not occur. If circumstances of one or another case in the future make it appear that abuse is possible, some further change in the act would have to be made at that time, but I think it is probably not possible at this time to guard against every possibility of misadventure in the future application of the act.

The hon. Member for Calgary Millican had a suggestion about whether or not there could be a waiting period. Well, I think that sort of thing can always be considered and taken into account, although I think it goes against a couple of things. It goes against the presumption which I am certainly willing to make, that those people involved in the case at the time, the medical men and the survivors of the injured person, will exercise the difficult judgment they have to make in the best possible way, and not presume that that won't happen, despite the pressures of the moment. I think it is possible for them to exercise that judgment remarkably well sometimes.

The other thing is purely a medical and technical matter. No doubt the hon. Member for Edmonton Kingsway, who spoke and shared with us his knowledge of medical matters in this area, for which I do thank him, would probably indicate to us that the critical timing of the transplant is also at issue when you come to the question of whether or not there might be a waiting period.

Before I conclude, Mr. Speaker, I just want to say to the Member for Macleod that I believe Section 11, which he raised, will probably change some of the

sensationalist practices that he referred to. As we all know, he has mentioned that reverberating around the world from Moscow to Cape Town to San Fransisco to Montreal are stories of people who are receiving transplants, and occasionally the names of those who were the donors. I think that section will cause a greater degree of confidentiality than has existed before in cases like that. Of course, I don't have to say, the application of that section only applies in the jurisdictions where it is enacted.

In conclusion, Mr. Speaker, the feeling I have for this bill is that if it could commend itself solely on the grounds of humanitarianism it would be well on its own, but there is the protection for the donor, that it is after all a purely voluntary thing. All anyone need do if he wishes not to have any part of his body disposed of in any way by any survivor at any time, is record in writing prior to his death a statement to that effect. Then it would be illegal to use any part of his body in that way.

Mr. Speaker, I again thank hon. members for their contributions to the debate. I have already moved the second reading.

[The motion was carried. Bill No. 64 was read a second time.]

Bill No. 65
The Vital Statistics Amendment Act, 1973

MR. CRAWFORD:

Mr. Speaker, I move, seconded by the hon. Minister of the Environment, second reading of Bill No. 65, an Act to amend The Vital Statistics Act.

I note that one hon. member has already made reference to the first of the only two principles in this amending legislation. For the record, that reference was to sex change. I think we agreed that this particular provision of the bill might receive a relatively infrequent application. Therefore, for those extraordinary and extremely rare cases where that might occur, this now makes appropriate provision for registration of the change of sex. It makes provision for it both within and without the jurisdiction of the province; the reason for that being, of course, that a record may be in existence with regard to a person showing his sex in more than one jurisdiction - a birth certificate in one jurisdiction, a marriage certificate in another. Don't ask me to unravel the problem of whether the marriage takes place before or after the sex change.

Mr. Speaker, perhaps of more immediate interest to the population generally is a slight clarification of another part of the bill and the introduction of an expanded principle that relates to the confidentiality and availability, despite confidentiality, of certain records of births, deaths and marriages.

I don't disguise the fact at all that the only reason for putting this forward at the present time is the large number of representations made over the past couple of years to the government, several of them directly to me, that people who are interested, primarily as a matter of religious faith, in doing geneological research on their family members, need this type of clarification of the legislation in order to seek out and get the records. Hon. members will note that it relates only to family members and therefore it is not of assistance to the type of inquisitor who would like to find out information, which is none of his business, about members of other people's families.

I understand that more and more people are inquiring into their family trees. I see no reason why it shouldn't be possible to do so in the province. In our neighbouring provinces and many other jurisdictions that information is readily available and I see no difficulty here.

Thank you, Mr. Speaker.

MR. TAYLOR:

Mr. Speaker, I would like to make one comment on the bill. The hon. minister mentioned that sex change would probably be very rare, and I thought it was probably non-existent until last summer when I met a lawyer in Vancouver. During the course of the dinner, he was telling me that he had two clients, both of whom were born male and both of whom were now female following extensive operations of some kind or other. He was having a most difficult time getting the names changed in Victoria.

Perhaps it isn't as rare as we might think it should be. I would like to suggest to the hon. Member for Spirit River that he might send a copy of this

bill to Victoria to help the lawyers of B.C. get these name changes in cases like this.

MR. BENOIT:

May I make the comment again - the hon. minister is aware of the question that I raised the other day and the problem involved - I would hope that if it is possible for an amendment to be made to include this so it would come up before we came to Committee of the Whole on the subject.

MR. CRAWFORD:

Mr. Speaker, if I may close the debate, I'll just comment on the matter raised by the hon. Member for Highwood and indicate to him that I believe the matter he has raised to me, which relates to changing of records of children who are adopted from outside the jurisdiction, can perhaps be handled without a specific amendment if we have the proper understanding in each case with any foreign government.

I fully understand the importance of that case to the people on behalf of whom he has already made representations to me. If any assistance can be given by a further amendment, we would be pleased to recommend it, but at the present time my view is that we may not require it.

The only other thing, Mr. Speaker, I might mention is that to my knowledge there was one case in Alberta in regard to sex change where registration was sought and was not possible. That was about a year ago. Whether or not we have caught up to British Columbia yet, I don't know.

[The motion was carried. Bill No. 65 was read a second time.]

Bill No. 66
The Alberta Lord's Day Amendment Act, 1973

MR. LEITCH:

Mr. Speaker, I move, seconded by the hon. Minister of Municipal Affairs, second reading of Bill No. 66, The Alberta Lord's Day Amendment Act, 1973.

Mr. Speaker, as the matter now stands, municipal governments, following a petition procedure which is set out in The Lord's Day Act, may pass by-laws providing for the holding on Sunday of games, contests, sports, exhibitions of an educational, artistic or cultural nature, any theatrical performance, concert, recital, lecture or other performance, and any exhibition of moving pictures. In fact, pretty well all activities might be included within such a by-law, except for horse racing, dog racing or boxing contests.

The principle of this bill, Mr. Speaker, is to pass to the municipal governments the jurisdiction to enact the by-law governing whether or not those three activities may take place on Sunday.

I may say, Mr. Speaker, the request for this change came principally from people in the northern part of the province where I understand they have a fairly active amateur boxing program. It is vital to the success of the program that it be permitted to be held on Sunday, because otherwise it competes with other sporting activities within the community. This particular amendment or bill will permit the local governments to make the decision.

It seems to me, Mr. Speaker, that there can't be any logical reason for permitting the local governments to make the decisions in all the areas I've earlier mentioned and withholding from them the authority to do so on these three areas. For that reason, Mr. Speaker, I urge passage of this bill.

MR. BUCKWELL:

If I might ask the Attorney General, Mr. Speaker; would this mean, for example, that the City of Calgary and the City of Edmonton could authorize racing on Sunday with pari mutuel betting ... [Inaudible] ...?

MR. LEITCH:

Yes, Mr. Speaker, providing the local municipal government followed the procedure set out in the Act which provides for petition. There are [provisions] in the Act whereby that by-law can be applicable to certain parts of the muncipality and not to others. That wouldn't be of any great moment in the urban centres but it might be in the rural centres.

MR. BENOIT:

Mr. Speaker, I don't propose to discuss the moral matter involved in this bill. I have done this on several previous occasions. There is a principle involved that needs to be mentioned and I wish to draw this to the members' attention. That is the principle of getting the foot in, of opening the door wider and wider.

I have only been in this Legislature a short ten years. When I came, The Alberta Lord's Day Act was in full force. Gradually we whittled away at it. When the first attempts were made to put into effect some of the things that had been prohibited on Sundays by the Act, a number of members were opposed to it and said that once we started doing this it wouldn't be long before the whole Lord's Day Act of Alberta would be repealed.

Gradually we came to the matter of entertainment. We let in one at a time, and now, in the passing of this bill, which I presume will be passed under the circumstances, we will have taken out, as the hon. Attorney General says, all the restrictions with regard to Sunday activity.

This isn't the only area where this happens. I think if the members have convictions about anything, they ought to remember that while we let a little bit go by today, and a little tomorow, eventually all is gone. It is a very easy thing to do. Mr. Speaker, I am not personally in favour of it. I think we ought to remember the principle that once the foot is in the door, it is not long before the door is wide open and all is gone.

MR. SPEAKER:

Are you ready for the question?

[The motion was carried. Bill No. 66 was read a second time.]

Bill No. 67 The Public Health Nurses Repeal Act

MR. CRAWFORD:

Mr. Speaker, I move, seconded by the hon. Minister of the Environment, second reading of Bill No. 67, The Public Health Nurses Repeal Act.

Mr. Speaker, I can describe in very brief terms the principle of this bill; it being to repeal the Act, that is the principle.

I just want to advise hon. members of the House of these few details. This legislation was first enacted in 1919 and was included in the Statutes of Alberta up to 1942. It was not included in the revisions of Statutes that were done in 1955 or 1970 and the provisions of the Act have long been superceded by other acts, including The Nursing Service Act, The Health Unit Act, The Public Health Act, and legislation establishing The Alberta Association of Registered Nurses. That association has been in touch with us in regard to our intention to repeal the Act and has expressed their concurrence.

Mr. Speaker, there is no difficulty over cleaning up what amounts to one or two pages in the old statute book.

SOME HON. MEMBERS:

Agreed.

[The motion was carried. Bill No. 67 was read a second time.]

Bill No. 68
The Public Service Vehicles Amendment Act, 1973 (No. 2)

MR. COPITHORNE:

Mr. Speaker, I move second reading of Bill No. 68, seconded by my colleague the Minister of Industry and Commerce.

This bill deals with the ability to prorate charges for licensing fees and gas rates according to the amount of travelling done by an out-of-province truck in the province of Alberta. It also enables the provincial trucks of Alberta to travel in the jurisdictions that belong to the prorationing agreement in which we made application for Alberta to take part at the American Motor Association meeting in Victoria last spring.

Mr. Speaker, this deals with some 18 different states, mainly in the west, and we did not have reciprocal agreements with some of these in the past. It also is involving states such as Alaska, Arizona, Colorado, Idaho, New Mexico and Nevada, and with British Cclumbia, with which we did not have reciprocal agreements in the past.

The following states are the states that will belong to the prorationing agreement which would become effective on March 1: California, Illinois, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, Oregon, South Dakota, Washington, Idaho, North Dakcta and Utah.

The following states are not in the prorationing agreement but do not have reciprocal agreements with Alberta: Arkansas, Connecticut, Delaware, District of Columbia, Florida, Indiana, Ohio, Kentucky, Louisiana, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Oklahoma, Pennsylvania, Rhode Island, Texas, West Virginia, Wisconsin and Wyoming.

Also, Mr. Speaker, we have just completed meetings with the ministers across Canada on this agreement on various problems that are faced with the trucking transportation and travel in the extra-provincial authorities throughout Canada. We have urged Saskatchewan and Manitoba to join with us in this agreement and they are looking very seriously at it.

I think it will help the Alberta truckers in their endeavours in extra-provincial carriers. It will certainly bring extra revenue to Alberta because from the American side and the restrictions that are held on Canadian trucks going into the United States, the number of trucks entering Alberta from other jurisdictions are about 30 to 1. It will make some revenue extra to the province and this will be in line with the number of miles that are travelled by foreign jurisdictions when they are in the province. It also includes a prorating of the amount of gasoline tax that might be used while the trucks of other authorities are in the province, as well as prorating their license fees to the province.

This will be a good act for the trucking industry of Alberta. It will be a good act for the consumers. The trucking industry will not have to raise their rates because in the past on a reciprocal agreement they still had to buy license plates in those jurisdictions where reciprocal agreements were not in effect. We had reciprocal trucks coming in from other jurisdictions, as I said, nearly 30 to 1, in which the province gained no revenue for the wear and tear being exercised on the road.

Incidentally, Mr. Speaker, one of the reasons why there is heavy American traffic is that now Alberta is a natural corridor for American trucks to come up through Canada to Alaska. When this reciprocal agreement takes place it will also help our truck drivers and our trucking authorities to negotiate with the trucking authorities in the United States.

At the present time we do not have a fair balance of trucking authorities in the United States and this agreement will certainly help our position in dealing with the international commerce in this regard. Mr. Speaker, I urge all hon. members to support this enabling legislation.

MR. TAYLOR:

Mr. Speaker, I have long been an advocate of free movement of trucks between provinces in Canada and between Canadian provinces and American states. We have that in automobiles today. An automobile properly licensed in the province or state of its domicile may move freely into or through any other state or province. I envision the day when the same thing would apply to trucks, limited only by the weight restricticns of each jurisdiction.

We were able through the years to get many reciprocal arrangements with American states, probably more than any other province in Canada. As a result, the trucking industry became quite a booming industry in this province, with trucking firms, particularly from Manitoba and Saskatchewan, moving into Alberta.

I realize, however, the difficulties the hon. minister has outlined in obtaining full reciprocity amcng the provinces of Canada. As a matter of fact, we had it with very few provinces in Canada. British Columbia would never enter into a full reciprocity agreement. Saskatchewan and Manitoba would go part way, Ontario went part way, and the Maritimes of course, would go the whole way. But the full reciprocal agreement with the Maritimes was somewhat meaningless as far as practicality was concerned. There were also some American states that would not enter into full reciprocal arrangements.

I can understand the hon. minister not wanting to continue to hit his head against a brick wall by getting into the prorationing deal in which probably every province and every state will be glad to join. There isn't much to be said about prorationing. It does give revenue according to the mileage. It doesn't depend on the use of gas only. Although I think that with full reciprocity between every state and every province, we will probably have lower prices for the consumers in all states and provinces, it appears almost impossible to achieve at this time, so I'm hoping that the entrance of Alberta into the prorationing deals will be a temporary move, eventually leading to the free movement of trucks, certainly among the provinces of Canada.

There are too many things in Canada today that tend to make each province almost a state of its own. I think the more we can act as a nation, rather than ten individual provinces, the better it is. That doesn't appear to be possible at the present time. I agree that the prorationing is probably the best way to achieve this in the long run, so I'm going to vote for the bill in the hope that it will be a step toward getting full reciprocity, certainly among the provinces of Canada, during our lifetime.

MR. DIXON:

Mr. Speaker, one or two short comments on the bill. Like the hon. Member for Drumheller, I am in favour of the bill and congratulate the government for bringing it forward.

There was one point of clarification I'd like to have the minister either answer tonight or take under advisement to inform the House before the bill is finalized. It has to do with leased units. I understand the practice of the Motor Vehicles Branch at the present time is to discourage a tractor unit being used as an extra unit wherever possible, because they say they should have another carrier rather than have a particular carrier add leased units. We can run into the case where leased units are running in here. You only have to go to Calgary tonight and you can see several American trucks coming here with cattle. It's very busy and most of those units are leased. They are allowed to run back and forth, and yet our own Alberta trucks would find difficulty if, for example, one of the transport companies is running from Edmonton to California. It could run into the same difficulty as the person running from Edmonton to Calgary if he was using a leased unit.

I was wondering if the department, through the minister, is giving any consideration to coming out with a policy on leased units because the leasing business is becoming a very, very substantial part of the trucking industry. Could the minister inform the House of what progress, if any, has been made toward solving this problem, because I have had a number of the leasing companies enquiring whether there would be a policy in this field.

MR. SPEAKER:

May the hon. minister close the debate?

HON. MEMBERS:

Agreed.

MR. COPITHORNE:

Mr. Speaker, I appreciate the support that I have been given by the hon. members who have taken part in the debate.

In regard to the question of leasing. There is a policy in Alberta, which will be also applicable to other jurisdictions, of bringing trucks into the area - that the leased trucks cannot be used on routes that are authorized trucking authorities within the province or as extra-provincial ones. This is a hard area in which to have a firm policy because quite often the trucking companies find themselves with extra loads and extra trucking to be done, and consequently they turn to the leasing areas. We have taken the policy that there are other truckers with authorities in the province that could do this work at this time. However, we just came through a period of extreme pressure on the trucking industry when the rail strike was on. It caused most unusual conditions. Normally these conditions do not exist and have not existed, only in extreme cases like this.

[The motion was carried. Bill No. 68 was read a second time.]

Bill No. 71
The Attorney General Statutes Amendment Act, 1973 (No. 2)

MR. LEITCH:

Mr. Speaker, I move, seconded by the hon. Provincial Treasurer, second reading of Bill No. 71, The Attorney General Statutes Amendment Act, 1973 (No. 2).

This bill, Mr. Speaker, amends a number of statutes. The amendments arise out of the passage of The Alberta Bill of Rights and The Individual's Rights Protection Act. The principle of the bill is to amend those provisions in the Statutes of Alberta which we feel may be in conflict with one or both of those acts.

Mr. Speaker, I'll briefly run through the acts that the bill amends and indicate the reason for the amendment.

The first amendment is to The Alimony Orders Enforcement Act. This is merely a companion amendment because later on we amend The Domestic Relations Act to provide that wives may be liable to maintain their husbands. This act provides for the enforcement of any such order that may be made.

HON. MEMBERS:

Hear, hear!

MR. LEITCH:

It's easy to tell, Mr. Speaker, that there are more men than women in this House.

The Coal Mines Regulation Act is amended to remove the distinction between male and female. The Credit Union Act is amended for a similar purpose and The Dental Association Act, Mr. Speaker, is also amended to remove the distinction between "he" and "she".

The majority of the amendments in the bill, Mr. Speaker, deal with the amendments to The Domestic Relations Act and as I earlier indicated, the prime amendments impose obligations on wives that they didn't formerly have. One of them is the obligation to pay a husband maintenance.

In addition, Mr. Speaker, the husband under the law as it now stands has certain rights under that Act which are not granted to the wives. For example, a husband can sue for loss of consortium. That was an action which originated in rather ancient English law and enabled the husband to sue for damages for the loss of what was perhaps quaintly described as "the comfort and society of his wife".

The discriminatory piece of legislation, Mr. Speaker, has been changed so that the wife can now sue for damages from anyone who deprives her of the comfort and society of her husband. I should quickly point out that that doesn't apply to such cases where the wife may be deprived of the society and comfort of her husband while he is off watching a ball game. It has to be something a little more serious than that.

Another amendment, Mr. Speaker, is to The Dower Act and the purpose of the amendment is the same, that is, it removes the distinction between husband and wife. There is a similar amendment to The Exemptions Act.

The bill also amends The Forest and Prairie Protection Act and there the amendment is to enable, I believe it is the Minister of Lands and Forests, to conscript women to work as well, whereas before he was restricted to conscripting men.

The bill also amends The Individual's Rights Protection Act and the purpose of that amendment is to remove some uncertainty. The Individual's Rights Protection Act had provided that no woman could be employed at comparable employment for less pay than a man. It wasn't absolutely clear that the reverse situation was true. The purpose of this amendment is to ensure that no man can be employed at equal work at less than the women are being paid.

There are similar amendments, Mr. Speaker, to The Land Titles Act, The Married Women's Act and The M.L.A. Pension Act. The Municipal Election Act is

also amended to remove the distinction between male and female, as is The Municipal Government Act and The Nursing Aides Act.

The Nursing Service Act contains a similar amendment which was required because of a discrimination based on sex in that Act. The last Act amended by this bill, Mr. Speaker, is The Religious Societies' Lands Act which removed a discriminatory provision in that Act restricting its application to the question of religions.

MR. DIXON:

Mr. Speaker, more for a point of clarification to the hon. the Attorney General regarding the bill. Recently we had a case that has been hitting the news across Canada regarding the rights of women. I am referring now to the Murdoch case where apparently, it has been alleged at least that Mr. Murdoch assaulted his wife and threw her off the property. She attempted to have the situation rectified by suing for part of the property. The Supreme Court in its judgment ruled - if the news reports are correct and I have no reason to believe they aren't - I think some of the judges at the time stated that the Alberta Legislature would have to take action in order to provide any compensation to the wife. I am just wondering whether the Attorney General has had any representation or if there is anything in this bill that he was talking about to take care of a situation like that.

MR. LEITCH:

To answer the question, Mr. Speaker, I have not had a representation. I think it a little dangerous for me to comment on a case that I have heard about but am not familiar with all its facts. It is not my impression that there would be anything in this bill which would affect that case. My memory is that the argument there was over whether there had been a contribution to the building up of the estate by the wife.

There would be nothing in this bill that would affect that, although we do make a change here to enable the wife to sue her husband for damages to her personal property. That, as the law now stands, is restricted to the husband. He could bring an action but the wife can't. Now in this bill we have made it so that either one can bring the action.

MR. FRENCH:

Mr. Speaker, I would like to ask the Attorney General a question. There is a provision in this bill for the division of matrimonial property following a separation or decree of divorce for adultery. In view of the fact that we had quite an extensive debate and resolution in this Legislature requesting a study be made in a more general field of the division of matrimonial property following divorce, and the Institute of Law Research and Reform had been given this whole subject to give a report to the department, I am just wondering what position this study has taken and whether this is one of the recommendations from the study that is now under way.

MISS HUNLEY:

Mr. Speaker, perhaps I could comment on that because it happens to be something in which I am extremely interested. I have received many submissions from women's groups concerning the disposition of property on the dissolution of a marriage. I have been following the study which has been undertaken by the institute.

I understand they have made some decisions. They are reaching the end of their study and are ready to present a report. They have asked for an additional public opinion survey which has been arranged for them. I am extremely hopeful that this will be forthcoming before too long because there has been a great deal of pressure in my particular office to have some changes made in this particular legislation.

MRS. CHICHAK:

Mr. Speaker, I would like to make a few comments and observations with respect to the change in this bill.

I think it is interesting and perhaps quite fair that what is sauce for the goose is sauce for the gander, and that husbands should as well be able to apply for alimony, if you like, in the case of a marriage breakdown, or support where it may be applicable. However, it will be interesting to observe whether the changes in the application of law will be made much more equitably or consider a

little more the kinds of problems that women have gone through in order to collect on the entitlement that has been ruled in their favour by the courts.

There have been many devious kinds of attempts made and carried out on the part of husbands and men who have paternal and other responsibilities to avoid the payment of their debts to their estranged spouses. I wonder whether now, in fact, the husbands will be eligible to apply to the courts for support or whether, in fact, the courts will be far more lenient and considerate in how the rule of law applies. Traditionally, it has been shown that estranged wives have not been able to claim additional expenses such as babysitters and housekeepers, because they have attempted to go out to earn a living to support their families as a result of the difficulties faced in collecting the indebtedness from their husbands.

It is hoped that the courts will not suddenly reverse the position and allow consideration for husbands to provide the kind of support that a husband may suddenly feel he needs simply because he has to have the assistance of a housekeeper, a babysitter and whatever else may come into consideration.

Those are some of the comments I wish to draw to the attention of the House and the Attorney General. There are areas with regard to domestic relations and the dower rights that need to be reviewed and amendments brought forward. The example of the loss of protection of The Dower Act that comes into being as a result of a divorce having been preceeded with and concluded prior to the disposition of a property settlement, in many cases this disposition has been delayed intentionally on the part of the husband, knowing full well that the ball game would be different insofar as the distribution of the homestead assets. This is an area long overlooked and certainly some decision and action on that part is long overdue.

MR. TAYLOR:

Mr. Speaker, they say if the pendulum swings too far one way, it may then swing quite a way the other way on the swing back. I don't know whether the Women's Lib Movement has gone too far in that this is the backlash. But with all these benefits now accruing to men, it almost tempts a man to get married ...

[Laughter]

I say "almost" persuaded.

I would like to say that I was rather horrified when I heard a CBC broadcast which outlined the case referred to, I believe by the hon. Member for Calgary Millican, in which the wife who was in partnership for some 25 years was found by the court to have no right to any of the estate. I don't know anything about the details of the case, but it certainly sounds horrifying over the radio to hear that one of the partners who helped build up the estate would now be denied any part of that estate. The hon. Attorney General, I believe, has indicated that that case is not covered here. I do think that if the statement heard over the broadcast, namely that it's something to do with Alberta law responsible for this, it should be checked. While I am fully in agreement with men having equal rights with women, as set out in this act, I do think that if a man and woman spend 25 years building up a ranch or estate of any kind, both partners should have a share of the estate and one should not be denied a share of it.

I would strongly recommend that the Attorney General look into this to see if there is something in Alberta law responsible for that decision.

MR. GHITTER:

Mr. Speaker, I would like to rise to defend first the male side of matrimonial problems that exist in this province, which are numerous. Times have changed in the world of matrimonial law in this province. It seems that there are just as many female protagonists as male, and just as many females in the Province of Alberta who are just as anxious to severe the matrimonial bonds as males. It may be an unfortunate indictment upon the society in which we live, but there's no doubt that new approaches and attitudes towards marriage are prevailing in this province.

I've seen many situations where an overgrasping wife has been able to hammer a poor man down, from the financial point of view. He's had no opportunity whatsoever in the future sense to be able to recapture the lost life and lost emotional factors that have entered into some very disastrous things for many men in this province. As well, and I think that...

AN HON. MEMBER:

How about that.

[Laughter]

MR. GHITTER:

I knew I would find some support for that.

I think that our courts are using the best judgment available in very difficult circumstances in order to sever the matrimonial bonds in as fair a way as is possible, taking into consideration the many difficult problems that arise when you try to break up the assets of an estate that has grown over a number of years. That's not easy. You will find areas which, when you don't know all the facts or circumstances, look difficult to the naked eye out in the community. When they come and look at it in a closer sense in the courts and see operation of law, I think that the judgment that prevails in our courts is generally sound and is a practise that should be followed in our changing society.

I would be interested to hear the Attorney General's comments with respect to The Domestic Relations Act. It is a very practical problem and probably a result of some of the comments the hon. Member for Calgary Millican stated. When our divorce act changed and our courts were able to grant the lump sum settlement award this resulted in a situation where a court could make a judgment whereby the husband must pay a lump sum settlement to the wife, in lieu of or alternatively to monthly payments. The result has been that a female petitioner in a divorce action who is awarded a ten or fifteen thousand dollar lump sum judgment is placed in the position that she cannot, unless she goes through some manipulative legal procedures, force the matrimonial property to come into her name very readily.

In other words if the property is owned in joint tenancy by the husband and wife, and should a judgment be obtained by the wife in a divorce action for a lump sum settlement, the amount of the judgment can be filed against the husband's equity in the property, but that's about as far as it can go unless other legal proceedings are commenced. It has caused a considerable number of difficulties from the point of view of procedures and rights and determination of these lump sum settlements. I think it can eventually result in the wife ending up with the property, but I have seen many situations where great difficulties have arisen.

I would be happy to hear the Attorney General's comments with respect to whether we are doing something in that area, or whether something has been done to my lack of knowledge, but I would just like to see what his viewpoint is as to whether we could create a better situation in that area than presently exists.

MR. SPEAKER:

May the hon. minister ...

MR. LUDWIG:

Mr. Speaker, I believe that in the beginning when man and woman were created the good Lord endowed women with certain charms and powers that left the man somewhat handicapped. Through centuries and through centuries man was trying to equalize the whole thing by passing laws to protect himself. All this went on and on and just at the time when we are about to reach equality - I still say that the woman has powers over men that men cannot possibly cope with, which is true ...

[Interjections]

...because we've known that a man, in order to bring a government down, needs to be some kind of whiz or he needs an army. But a woman has been known to bring a government down single-handed. It's happened in this province.

AN HON. MEMBER:

That's some woman.

MR. LUDWIG:

It's happened in this province. Well, not all of them, but they have been known to bring a government down.

So man is not on an equal footing with woman, as most men who are married or even the single ones know. So all that this legislation, all this debate about the equality of sexes will establish, in my opinion, is that, we used to hear the expression "kept woman" and now we'll probably occasionally hear the expression "kept man". I believe that perhaps this bill has merit, but I agree with the hon. Member for Calgary Buffalo, that the male was handicapped in the beginning and it took all this time to somehow put himself on an equal basis with women. I think it won't be long now, with legislation like this, [before] we're going to have lib movements with men organizing the movement because I believe this thing may have gone far enough. The women are laughing at us while they are crying for equality. Just look at them.

MR. KOZIAK:

Mr. Speaker, I just want to enlighten the members of the House on one particular aspect. We find quite often that members of the legal profession sometimes take for granted that all those being spoken to know the meaning of all the legal phrases being used.

I notice that during the contribution of my learned friend for Calgary Buffalo he used the phrase, "lump sum settlement" and I thought I perhaps should enlighten the members of the Assembly about the meaning of that phrase. Now, Mr. Speaker, the meaning of that phrase is this, in a lump sum settlement the woman gets the settlement and the man gets the lumps.

MR. SPEAKER:

Are you ready for the question? May the hon. minister close the debate?

HON. MEMBERS:

Agreed.

MR. LEITCH:

Mr. Speaker, I'm sure our hon. members, after listening to the comments of the Member for Edmonton Norwood and the Member for Calgary Buffalo, will understand my reluctance to get into these issues of what are the rights of the wife and the rights of the husband. Certainly the Member for Drumheller, the Member for Edmonton Norwood and the Member for Calgary Buffalo raised very important matters which should be very carefully considered. But there are two reasons why I don't feel they should be considered and shouldn't have been included in this legislation.

The first is that this bill was designed merely to remove from the Alberta Statutes those provisions which we feel may be in conflict with The Bill of Rights or The Individual's Rights Protection Act. The second reason is that the matters they have raised are under review, as was mentioned by the hon. Solicitor General in response to a question asked by the Member for Hanna-Oyen. I think, Mr. Speaker, that all hon. members would want to wait until that report is completed before we pass legislation in those areas.

The only last commment I wish to make is in response to a note I received from Mr. Speaker. The note says, "Does this act permit a maternity suit?" The answer to that, Mr. Speaker, is that the legislation may permit it but I doubt that physiology would.

[The motion was carried. Bill No. 71 was read a second time.]

Bill No. 72 The Department of Telephones and Utilities Act

MR. FARRAN:

Mr. Speaker, I move second reading of The Department of Telephones and Utilities Act, seconded by the hon. Member for Drayton Valley.

Mr. Speaker, I apologize for such a mundane and boring act after the very entertaining half-hour we've just had. This act is structuring a department which might be compared to a marriage. Certainly the telephones and utilities have been together for some time. If this is the wedding day I don't know if any conjugal rights or whatever are involved but ...

AN HON. MEMBER:

It's the proposal.

MR. FARRAN:

It's the proposal.

Actually, this department has been operating under the wing of the Executive Council and in effect, the government added to the former responsibilities of the minister for Alberta Government Telephones the responsibility for what are known as utilities. As defined in this act, these include telecommunications, which means transmission of all signals, visual and audio, the conveyance of goods over public transportation systems, and the supply of water, heat, light, power and gas to the public.

Even though Alberta Government Telephones, one partner, is Alberta's largest corporation, the rest of the department is very small. It is presently largely engaged in implementation of a new rural gas program and problems of rural electrification units, planning for power generation, and in supply for the Public Utilities Board. It also acts in a sort of liaison mediation function to solve numerous day-to-day problems which may arise between the public and the privately-owned utilities. Through the office of the minister, the department is also engaged, in conjunction with the Department of Federal and Intergovernmental Affairs, in continuing negotiations with the federal Department of Communications over areas of jurisdiction in the telecommunications field.

MR. ANDERSON:

Mr. Speaker, I have several concerns with regard to Bill No. 72, on which I would like the minister to comment. My concern is with Section 5, which reads as follows:

The Minister may in writing

(a) delegate to any employee of the Department any power, duty or function, including those required to carry out an agreement entered into by or on behalf of the Minister, but excluding the power to make regulations;

(b) authorize any employee of the Department to enter into an agreement on behalf of the Minister.

Mr. Speaker, the public is always worried and complaining about the way the minor and often autocratic employees use delegated authority. It would seem appropriate for the act to specify, as far as possible, to whom authority can be delegated, and particularly, how far an employee may go in subdelegating authority.

Also, Mr. Speaker, with regard to Section 6, and the minister's authority to establish boards. Does the minister contemplate there will be representation from municipal governments and other concerned organizations appointed to this board?

MR. FARRAN:

As to the first comment, this is a similar format ...

MR. CLARK:

Point of order.

MR. SPEAKER:

Possibly the hon. minister might deal with all the points that are raised in the debate when he's concluding the debate.

MR. LUDWIG:

Mr. Speaker, I would like to make a few comments about this bill. The hon. minister stated that this is something like a marriage bill. I thought it was more a bill to legitimize the minister.

I'm concerned about these new departments being set up, not so much in this case but in the case of another department, a new department being opened by the government. Every time we turn around, they are advertising all over the place for more staff. I'm not sure that they probably have too much in this case, but every time the government makes a move to create what is in fact a department, the taxpayer has to carry the load. The load has been rapidly getting very much heavier under this government. In fact, I believe it is obvious to the people who watch the performance of this government that it has no concern, as far as spending is concerned, when it comes to hiring more people.

I also believe that the minister ought to be responsible for signing contracts. You can delegate this thing to employees. The minister may not be aware of what is going on in a very large department, and before you know it, somebody can get to the employee. I believe a minister has a responsibility, and is responsible for the actions of the employee. Delegating the power to sign contracts ought not to be done lightly. If it's that large a department, that many contracts, then somehow the minister ought to see to it that he personally can sign contracts. To have to delegate this - perhaps some other means ought to be permitted. Perhaps we could have an alternate minister sign when he can't. To have civil servants enter into contracts, which may mean multi-million contracts, the way is open for getting to the employee. No doubt that hasn't happened, but I'm not saying that it can't.

I would like the hon. minister to explain when he answers or before we close the debate, whether this will require more facilities, more staff, more spending of public funds. Why is it that this menage, this department, stayed the way it was for all these years? Is this an improvement, or is this an accommodation for the minister?

MR. HINMAN:

Mr. Speaker, there is a section I would like to refer to in this bill. Section 7(a) says the minister "may compile, study and assess information directly or indirectly related to matters pertaining to telecommunications ... " Is the review going to be research itself, since the second part of the bill says, " ... shall promote the co-ordination of such research and of facilities used for such research;"? Perhaps those two could have been a little better coordinated.

I point out again that in the matter of research, there is the greatest opportunity for duplication and waste that you can imagine. So I was rather happy to see the clause "... conduct a continuing review of research ..." which eliminates that particular difficulty.

I call attention, too, to Section 8(2). Perhaps my exposure to regulations on the committee on regulations has made me a little bit sensitive. But I'm wondering if there is any way of including in the bill those regulations which appear to be essential in the provision for regulations in all the bills, this one included, that it be limited as much as possible.

In telephones and communications particularly, you are going to find a great deal of bureaucracy whether they are good or bad regulations. I am concerned that such an item be considered before the bill is finally passed by the House. I wouldn't like to hold up second reading on account of that because we can discuss it in the Committee of the Whole.

MR. SPEAKER:

May the hon. minister close the debate?

HON. MEMBERS:

Agreed.

MR. FARRAN:

Well, Mr. Speaker, as to the first comment about the delegation of powers, I should remind members that this is really a standard form of departmental bill and very similar to other departmental bills that have existed for a number of years. I don't claim any originality for the wording, that has been stolen from other bills in the Statutes.

MR. CLARK:

That's no excuse.

MR. FARRAN:

As far as delegation is concerned, one of the departments, the Rural Gas Branch, will have the duties of buying and selling gas for rural gas co-ops. There will be numbers of small agreements which have to be carried out in the interests of furthering the rural gas distribution plan. It would be impossible for the minister to look at every invoice and negotiate every small agreement with a capped well or a tap and a pipeline.

There are many other small agreements that I think it would be reasonable to delegate as other ministers delegate in other departments.

With reference to Section 6 - I think really these should have been dealt with on a clause-by-clause basis when it goes into the Committee of the Whole. Since they've been raised tonight though and you've asked me to respond, I will respond.

Mr. Speaker, the establishment of boards doesn't mean independent boards and commissions in the sense the hon. member may take it. You will notice that in the words at the beginning of the section, the third line, it says "... to act in an advisory capacity ... ."

In the reference to subsection (f) under Section 7 on Page 3, concerning the "... continuing review of research ..." research is an extremely important part of this department's functions. We are already into the question of coal versus gas for the generation of power, where we will be establishing future power generation facilities in Alberta. This type of thing - national grade for electricity interconnects with British Columbia and Saskatchewan - is very technical. I believe it is important to draw attention to the need for research in this particular department.

As for regulations, there will be numerous rather small regulations connected with the operations of gas utility systems just as there are within Alberta Government Telephones.

I don't know why the hon. member should suggest at this stage that every small regulation should be printed in the act when Alberta Government Telephones have been functioning for several decades under a former system. I think it would be a very, very thick act indeed. It would probably have to be about two inches thick if it contained all the regulations pertaining to Alberta Government Telephones.

[The motion was carried. Bill No. 72 was read a second time.]

Bill No. 73
The Attorney General Statutes Amendment Act, 1973 (No.3)

MR. LEITCH:

Mr. Speaker, I move, seconded by the hon. Minister of Municipal Affairs, second reading of Bill No. 73, The Attorney General Statutes Amendment Act, 1973 (No. 3).

This bill, Mr. Speaker, also amends several of the statutes of Alberta and again I propose to go through each of the acts that it is proposed to amend.

The first one, Mr. Speaker, is The Infants Act. This bill specifically authorizes the court to authorize the sale of the personal property of an infant. As the legislation now stands, it specifically authorizes the sale, or specifically empowers the court to authorize the sale of an infant's real property. I think that probably in English common law, which is applicable here, there is authority in the Supreme Court to approve the sale of infants' personal property, but in order to make the law clear and certain this provision is included in the statute.

The next act the bill amends, Mr. Speaker is The Juvenile Court Act. Here it simply provides for the laying of a complaint in respect to a juvenile before a Justice of the Peace. This is again a matter of convenience for those areas of the province where a judge of the juvenile court appears only on circuit or rather infrequently. As the matter now stands they have to wait until he appears before they are able to lay a complaint before him. This proposed amendment would not in any way alter who hears the case, because it would still be heard by a judge of the juvenile court. It simply enables the complaint to be laid before a Justice of the Peace.

The Legal Profession Act is also amended in two respects. The first authorizes the articling of a student at law with a member of the Supreme Court of Alberta or a member of the Supreme Court of Canada. The second deals with the accounting procedures for the law foundation which was created by legislation passed at the last session. As the legislation now stands, the books of the foundation must be audited by a chartered accountant. This amendment removes that restriction and permits the board of the foundation to retain any qualified accountant to audit its books.

There is also an amendment, Mr. Speaker, to The Mentally Incapacitated Persons Act. The purpose of that amendment is to authorize the court to approve the settlement of litigation.

The last amendment, Mr. Speaker, is to The Summary Convictions Act. It merely provides for the issuing of a summons with respect to offences committed under The Off-highway Vehicles Act.

[The motion was carried. Bill No. 73 was read a second time.]

Bill No. 74
The Alberta Government Telephones Amendment Act, 1973

MR. FARRAN:

Mr. Speaker, I move second reading of The Alberta Government Telephones Amendment Act, seconded by the hon. Member for Whitecourt.

This is a small but important act, Mr. Speaker, especially in the light of the distressing events south of the border, known as the Watergate affair. The revelation that wiretapping and illegal eavesdropping with electronic aids has been rampant in some countries has come as a shock to the public, although perhaps not a total surprise.

The intrusion on privacy that is made easy by electronic and wiretapping gadgets represents a subtle menace to our way of life. In yesterday's daily newspaper, The Calgary Herald, there was a story on the front page that U.S. Supreme Court Justice, William Douglas, said the late President Lyndon Johnson thought his White House phone was tapped. He also claimed the conference room of the court itself had been bugged.

Mr. Speaker, the principle of respecting the right of privacy, of privileged communications, is well-established in British law. We have laws prohibiting even a peace officer from searching or entering premises without a proper warrant. There are countless precedents in jurisprudence which protect the sanctity of communication between such people as a citizen and his lawyer, between a husband and wife, between even a sinner and his confessor, the priest.

If technological inventions are to wash out all these checks and safeguards against prying, snooping and spying on a neighbour, we are very close to the conditions which people like George Orwell and Huxley forecast for 1984. "Big brother is watching you," is what they said would happen, or perhaps listening to you.

Well, the thought, Mr. Speaker, is abominable to every free-thinking Canadian. Worse yet, if we had the sort of police state that exists in some countries where neighbour spies on neighbour, where neighbour informs on neighbour, where state spies conjure up plots, then it wouldn't be the sort of Alberta in which we all take pride.

However there must be consideration that the police and guardians of the people, guardians of the rule of law, should not be denied the same modern tools for fighting crime. The modern tools are available to organized crime and sophisticated criminals. They [the police] should be allowed the use of these modern tools, but only under very unusual circumstances with the permission of the highest law enforcement officers of the land. Hence, the first clause in the bill - which envisages the passage of a bill presently in the committee stage in the federal House of Commons whereby the police would be allowed to carry out such things as wiretapping with special permission of the Solicitor General.

The federal bill also aimed at surreptitious eavesdropping as is this one. Even the police are not presently allowed to tap the Alberta Government Telephone system under Section 29 of the Act. This system can only be tapped for obvious service reasons, like an engineer to test the quality of a signal, or an operator to find out why a line rings busy all the time and see if people are still talking - just a momentary cutting in. If there is any abuse of the

rules there is instant dismissal. There has been in the past few years disciplinary action taken against employees who happened to break these regulations.

Another concern in the bill, apart from the question of eavesdropping, is the development of what are properly called "phone phreaks" who have developed a very clever new form of theft which confounds the billing system of telephone companies. They also tie up lines and could even invade computers to make computers operate in a manner to benefit the criminal - perhaps to issue a cheque that should not be issued, and so on.

These prohibited devices can now be seized by a peace officer, whether they're actually being used or merely in possession or likely to be used. It's essential that we should have these powers.

The bill also provides for an increase in penalties from $100 or 30 days, to a fine of $2,000 or 6 months.

That, Mr. Speaker, is a summary of the bill.

MR. TRYNCHY:

Mr. Speaker, in speaking on this bill, I'd like to bring the members up to date on what the "thing" is. I notice in the bill that the "thing" is mentioned five times. I have before me today two "things" I'd like to speak on so the members may know what the "thing" is.

AN HON. MEMBER:

Table it.

MR. TRYNCHY:

Can't do it.

This first box is called a black box or the muting system. I might say this was invented by a 13 year old with very little education so it's very easily made. By tying this into a telephone, you can get free phone calls to anybody whom you want to associate with at a precise time or somebody that you call - and I'll explain how it works - and at no cost to the sender and, of course, no revenue to the government.

This little box consists of just a battery and a few odds and ends. It's even beyond me, but it costs less than $5 to build and it sells for around $50.

The report by the RCMP who picked this up says:

> The "Mute", in operation, is difficult to detect by the telephone company, especially if conversations are kept under five minutes. By using a false person-to-person long distance call or pre-arranged time, any person can talk to the "Muter" at will over any direct distance dialing system. Not only would they circumvent toll charges, the device also eliminates any record of a call having taken place.

What this really means is that you can dial somebody in California, person-to-person, by using your own name. Of course, the party you're calling knows what this means so they'll say, no, he's not there. Before you hang up you press a button, turn this thing on to "mute" and you eliminate the operator. You can speak to the party back and forth for as long as you want without any recording. So that's number one. That's the first thing that can get you a call to somebody at a prearranged time. You could phone somebody in California at, say, the precise time of 2:00 o'clock, they would pick up the phone, you would set this on "mute" and there would be no recording at all of your call taking place.

The second thing is what they call a blue box. This is a little more complicated, costs around $50 to build. It has 13 buttons on it. It has the frequencies of the telephone. This box sells for around $1,500. I'll show you how it works.

As a matter of fact you can take this thing, put it on the receiver, phone England at no charge, phone around the world or back to yourself, have another phone ring and talk to yourself at no charge. There is complete evasion of any charges or record of the call being made. I'd like to point out to the members how this works.

It's unfortunate, Mr. Speaker, that we don't have a phone here. I could call England. I have a friend there who is waiting for a call.

[Laughter]

I phoned him yesterday.

I have to give this stuff back. The RCMP have already checked it out and that's why I'd like to show it to you people before the police come in.

You can make this thing work in two different ways. You can call information by dialing 1-555-1212 and before the operator answers you press this button. With that button you eliminate the operator. It fools the system and you are hooked onto the tandem of the telephone system. This is what they call knocking off the operator. I said "knocking off".

Once you have done this you have the system to yourself. The next button you would press would be your cycle button. That's a different tone. Once you have this and you listen on the other end of the phone, to the hearing end, and you have the system to yourself, then you would dial the country code for - well, first you would have to get the overseas centre if you were going to England. So then, you would press number 1 - just a minute, I'll get this on - 188, would get you the overseas centre. You've got the overseas centre, then you want England, which is 44. That gets you England. The area code is number 1. You've got the area code. Then, my friend - 759-9126.

AN HON. MEMBER:

Hello.

MR. TRYNCHY:

I've got him!

Mr. Speaker, in less than half a minute, or a minute, you have England on the phone. You could do this by dialing information, but you have to be very careful when you dial information because the telephone system keeps a record of all these calls. If you stay on the phone too long it shows a recording on their computer that you've been using this number. So your calls should best be made from a phone booth where you can travel up and down the road and of course, there's nobody there.

You can use this thing. I'd like to state that in Indiana alone, the loss of revenue was over a half million dollars in one year. In England, where they really have it bad, the loss of revenue was $4,000,000 in one year.

You know they have this thing perfected so well that one operator in the States was making 1,000 of these boxes, had them ready for sale at $300 apiece in the underground. Of course, the police came in and they got the boxes away. You can, with this thing, actually sit in a phone booth, dial all the way around the world, back to the phone next to you, pick it up, answer yourself, and get your dime back.

That's right.

AN HON. MEMBER:

That's good to know.

MR. TRYNCHY:

Mr. Speaker, these are some of the things that this bill will enable the minister to have powers to confiscate. I just don't like the part of the bill, under Section 4, where he hasn't got the power to keep these things. They can be returned to the owner, and I don't think they should be. What really got me interested in this was, the minister asked me to speak on this bill and I said, well, I don't know anything about bugging or the things, so he gave me some information. Here's something that was in the Edmonton Journal, and that's where it all started. I think maybe some of you hon. members have seen this. But that is what the "thing" will do.

Mr. Speaker, the two things that I have outlined are just a few of the things that are encountered in this day and age, and I am sure once we stop these, we'll have something else.

The minister mentioned that with this thing you can regulate computers and they have found where a man, with this machine and the frequency of the computer, can get into the computer from outside; can make the computer act to his attention, issue cheques to himself and to anybody else without detection. So its a serious thing, Mr. Speaker, and I commend the minister for bringing it in. I just wish that it had a few more teeth. I hope that we get all the "things" before the things get out.

MR. KOZIAK:

Mr. Speaker, might Hansard record that the evidence given by the hon. Member for Whitecourt was given under the protections of the Alberta and Canada evidence acts.

MR. ASHTON:

Mr. Speaker, after the Member for Whitecourt and the Member for Edmonton Strathcona, anything I may say might be anticlimatic. In addition to the provisions controlling blue boxes and like devices, the amending act mentions those sections of the existing Act dealing with wiretapping, eavesdropping and so on on Alberta Government Telephone lines.

As the members are probably already aware, the existing Act, as the minister mentioned, does prohibit wiretapping. There is a fine of up to $2,000 and up to six months in jail. I'd like to commend the minister for bringing in the act at this time because it is so timely with regard to the events in the United States.

In Alberta we are protected against wiretapping already, except in the City of Edmonton there is not quite the same protection because we have Edmonton Telephones; under their by-law, the way I read their by-law at least and perhaps the Member for Calgary Buffalo could help me to interpret this, it would read to me that there can be tapping with the permission of the general manager. There can't be recording unless they have a court order. The by-law says that the police in Edmonton can record and wiretap provided they are authorized by law and the procedure following. The practice is that they will apply for a court order and if the judge is satisfied that they can't get the evidence, or if they've tried to get the evidence in another fashion and if it is a very serious crime, the order will be granted. So we do have the exception in Alberta for Edmonton Telephones.

The hon. minister also mentioned that the parliament of Canada is considering this issue at this time. They have a bill which is back to the house of parliament for the third time. The two previous times it died on the Order Paper. I believe the hon. minister is correct in suggesting that there should be sections in the act which anticipate that the federal parliament may pass its privacy law some time in the next year. If Mr. Lewis decides that the bill should go ahead, perhaps we'll have some privacy legislation in Ottawa.

It's one of the wonders of our parliamentary system how much power can be had by one party when it receives such a small portion of the vote. One of the things that amazes me, it also appears that Mr. Lewis writes the energy speeches for the hon. Member for Spirit River-Fairview. He's a very active man.

The federal legislation in effect is amendments to the Criminal Code and the courts which are within the jurisdiction of the federal government. We quite properly are excluding any provisions that they might make from interfering with our bill. Parliament is considering that there will be some exceptions to the prohibition against wiretapping and other types of electronic surveillance, eavesdropping and so on, and there can be judicial authorization, similar to the system used by the City of Edmonton for its telephone system or for court orders and so on to permit wiretapping.

A rather interesting development could happen. Although in Alberta we presently cannot wiretap or eavesdrop on the Alberta Government Telephones, if the federal parliament passes the act that it now has in its present form, it appears some limited wiretapping will be permissible. It is an interesting twist because the very argument they are using to promote the federal legislation is in the name of maintaining privacy but it may have a reverse effect in Alberta.

I would like again to commend the minister for bringing this bill in at this time. I think it does confirm this government's commitment to the need for individual privacy in this province. It's something that I believe all the members jealously guard. One significant thing he has done is to increase the leverage of the police force or peace officers to enforce the law, by allowing

them to seize any equipment. Now it's not just the blue boxes that they can seize. The peace officers can seize anything that's being used to wiretap or eavesdrop in the telephone system.

The amendment is very well worded, in my opinion, because it offers ample protection to the individuals who might have their property seized to get it back in circumstances where it was not justified. The procedure is quite tight for this.

So I would urge all members to consider that this bill is very timely, in view of what is happening in the United States. This is the time for us to confirm our beliefs.

Thank you.

MR. LUDWIG:

Mr. Speaker, I'd like the minister to advise, when he closes debate, whether there have been any violaticns or any encroachment on the system, any lose of revenue in this province and whether there have been any prosecutions or location of this kind of equipment in private hands. I understand that the deparment has all sorts of bugging equipment, perhaps for the purpose of education if nothing more.

I would also like the minister what precautions are taken; are there any restrictions on permitting wire or telephone tapping equipment to be used by employees? Are special employees authorized to have this equipment or is it quite easily obtainable by employees who work on telephones and check the lines? I believe that random permission for employees to use equipment even if in the course of their employment, could cause some concern. I'm wondering whether only special people are allowed to take this equipment out.

MR. SPEAKER:

May the hon. minister close the debate?

HON. MEMBERS:

Agreed.

MR. FARRAN:

Mr. Speaker, I would like to say first of all that the sort of research included in the departmental bill was not really meant to cover the sort of thing that the hon. Member for Whitecourt was telling us about. It was not that sort of research.

The hon. Member for Calgary Mountain View asked the last question, what security measures were there tc make certain that employees of AGT don't moonlight with equipment. The rules are very strict. The only ones who can have a sort of an alligator pliers for going into a line are service engineers. They have to be returned to the security department after they have been used.

So far as thr girls cutting in are concerned, this is a special switch which is contained right in the exchange. Even security personnel of AGT can only have their service reason use by special permission of a director of the commission. He goes to a special room and the room is locked at all times.

The other question was, how many cases have there been of phone phreaks? I wouldn't like to get into particulars because I believe there are two charges pending at the present time. But I think, in all, there have been records of five cases in Alberta.

[The motion was carried. Bill No. 74 was read a second time.]

MR. HYNDMAN:

Mr. Speaker, before moving adjournment for this evening, Tomorrow afternoon we will continue with second readings beginning with Bill No. 75, The Child Welfare Amendment Act, continuing down page 2 and the two bills on top of page 3, except Bill No. 80 and Bill No. 83.

I move the House do now adjcurn till tomorrow afternoon at 2:30 o'clock.

MR. SPEAKER:

Before the House adjourns, in order to anticipate a possible difficulty which might require a ruling from the Chair, it should perhaps be pointed out to the hon. Member for Whitecourt that his privilege and immunity as a member, when he carries out these devices which he has, may not extend beyond the confines of the building.

Notwithstanding that Hansard has no sound track, there is no way by which we can restrict its circulation.

Having heard the motion for adjournment by the hon. Government House Leader, do you all agree?

HON. MEMBERS:

Agreed.

MR. SPEAKER:

The House stands adjourned until tomorrow afternoon at 2:30 o'clock.

[The House rose at 10:51 o'clock.]