

Legislative Assembly of Alberta

Title: **Tuesday, June 5, 1990 8:00 p.m.**

Date: 1990/06/05

[The House resumed at 8 p.m.]

[Mr. Speaker in the Chair]

head: **Government Bills and Orders**

Second Reading

Bill 33

Metis Settlements Accord Implementation Act

MR. ROSTAD: Mr. Speaker, it gives me great pleasure to move second reading of Bill 33, the Metis Settlements Accord Implementation Act.

On May 30 of this year I had the pleasure of introducing four Bills relating to our Metis settlements. The four Bills had their foundation and principles initially voiced in Resolution 18, which was unanimously passed by this Assembly in 1985. The second reading of these in detail, and more particularly Bill 33, addresses the process for the establishment of a democratic local government for the Metis settlements as well as defining the criteria for membership and allocation of land. In addition, the Bills also meet the province's commitment to granting the fee simple title to the Metis settlements' lands to the settlements.

It's been a long process of discussion and debate between the government and between the members of the federation of settlements. It was determined also at that time as we were bringing together the framework, that to give the settlements the opportunity to obtain a level of self-sufficiency comparable to other municipalities in Alberta and to successfully undertake responsibilities of a local government, we would need to provide the settlements with a financial assistance package that would effectively address their needs through the transition phase of the implementation of this legislation and the accord and the time when they are self-sufficient and the government involvement ceases, a period now proposed of 17 years.

Bill 33, the Metis Settlements Accord Implementation Act, is a response to this requirement. Bill 33 provides an outline of this financial package. It establishes the Metis settlements transition commission, which is the organization responsible for overseeing the disbursement of funds under the financial package and assisting the settlements in developing the infrastructure and skills needed to successfully achieve autonomous local government in the future. The 17-year financial package will provide them with funding which will assist them in becoming self-sufficient local government entities. The moneys provided under the terms of the legislation are to be used for settlement operations and maintenance, capital projects, and the establishment of a future development fund.

The legislation also provides an incentive for the settlements to generate their own revenues through the creation of a matching grant program. The program will operate during the last 10 years of the 17, and it will match on a 2 to 1 basis revenue they can generate through licences and taxation, taxation which is something unique to the Metis culture but something they recognize they're going to have to deal with if they want to be self-sufficient and get away from government help.

One other important element of the accord implementation Act is that it will place into abeyance the subsurface resource

lawsuits, provided the province upholds the principles outlined in the legislative package.

I look forward to comments and debate on the principles of this Bill. Thank you.

MR. SPEAKER: Calgary-Mountain View.

MR. HAWKESWORTH: Yes, thank you, Mr. Speaker. As has been pointed out, it's a package of Bills that is before the Legislature this evening. They're fairly comprehensive, taken as a package, and there are many ways they work together. It's almost impossible to read one and make sense of one without also looking at the context of the other Bills, so perhaps some of the opening comments that I have to make may stray a wee bit from the principles of this particular Bill and talk generally about the package that's been brought before us.

I think the first point I'd like to make is that generally, Mr. Speaker, we're prepared to support the general direction that the provincial government is going with this package. But having said that, I think there are also some important questions and concerns that need to be raised, and perhaps as these Bills go through the next readings, we can propose some amendments that might respond to some of those.

As far as being a step forward, we agree with that, but what seems to be lacking in terms of this overall package, Mr. Speaker, is that there's no clear philosophy of what is the partnership that the provincial government is seeking with Metis people generally throughout the province. What we have here is a series of Bills that deal with eight existing Metis settlements and the people who live on them. But in this net of people that are incorporated or included into these Bills – for those that are within the net, there are many more that are outside it. So I think the first principle that somewhere ought to be made clear in the process of reviewing these Bills and debating them, Mr. Speaker, is that there should be some way that we hear from the government what principle they intend to follow for looking at securing a land base for those Metis people who are not within the context of the Metis settlements.

It is important, Mr. Speaker, for this: we are building for the future. The legislation here is based on history. Obviously, with the original settlements having been created many years ago and being in existence under provincial legislation for some time, we are building on that past. But we're also building for the future. The concern I have is that within that framework we may be establishing two different classes of people: those who are a part of the settlement framework and those who are not. Unless there's some understanding or some clarification of what that partnership is between the provincial government and Metis people, setting up of the two classes of people may have some serious implications for the long term. I can't say that it will, but as I say, it's a matter for concern. There is no image, Mr. Speaker, of what would happen for those Metis people without a land base. With these Bills the province is assuming responsibility for being a partner with Metis people. In terms of the nature of that partnership, what is it for those who are not members of the settlements or who benefit from these Bills? If there's no hope for any additional land base in the future, it may cause some serious difficulty.

So if it's understood, Mr. Speaker, that these Bills are simply another step in a long process that began many years ago, I think we would feel quite comforted and quite good about this package of legislation in front of us. If, on the other hand, the government sees this as simply being the end, that this is the culmination of a process, the conclusion of a process, then I

think we have some very serious concerns about what the long-term implications might be.

As the minister said in his opening remarks, Mr. Speaker, this had its genesis many years ago and has been pursued in the form of a lawsuit between the Metis settlements and the provincial government for some time. As a result of this package coming forward there's an understanding that that question of what the rights of Metis people on the settlements are, that question in the form of a lawsuit, is going to be set aside. I think it might be seen in a way of Metis people who are involved in the settlements trading off a dream for reality; that is, a lawsuit is uncertain. It's not clear what pursuing that might get them. It might in many ways confirm what they have said; it might confirm the claims that they launched. But it's fraught with difficulties, and that's not at all certain. Even though recent decisions by the federal Supreme Court seem to indicate that they're very receptive and very responsive to aboriginal rights and are interpreting aboriginal rights quite liberally and quite broadly, nevertheless for them to pursue this case through the courts to the Supreme Court or whatever would take a considerable amount of time and expense, and the conclusion at the end of it is not certain.

So what they have agreed to is taking what is reality offered to them by the provincial government in the form of this package of legislation that goes to some considerable extent to secure and protect for them a land base to ensure that in the future the past will not be repeated. The past, Mr. Speaker, has been a history whereby the provincial government has been able to take lands that were originally set aside as settlements and simply with the stroke of a pen remove them as settlements, forcing people to leave the land. That land was no longer a settlement and simply became Crown land. So for those Metis people to secure what they have now, to secure the settlement lands that they have now, is a key objective, and the protection afforded them under this legislation meets that objective for them.

One thing we must be clear about, Mr. Speaker, in reviewing this legislation is to ensure that the accord and the implementing legislation does not abrogate or derogate from aboriginal rights. Now, in many ways, with court cases that are presently being pursued and judgments that have been made, it's becoming clear that aboriginal rights are not something that can be determined by a Legislature alone or removed by a Legislature alone. Certainly those are important precedents and important decisions that are being made, but I think we also have to ensure that in bringing these Bills through the Legislature the protections we give and the protections we note for Metis aboriginal rights are not undermined or weakened as a result of passing these pieces of legislation.

As far as some of the principles incorporated in legislation, particularly Bill 33, Mr. Speaker, there are a number of points about this particular Bill that I'd like to note. First of all, it's not establishing self-government for Metis people on Metis settlements. I think it's clear that what's being followed by the government with this legislation is to establish a form of local government. I'm concerned about the degree to which the minister will continue to exercise jurisdiction and control over the decisions of the various individual councils and the general council; that it's not really a form of self-government in the sense of, let's say for example, recent agreements the federal government has reached with the Sechelt Band in British Columbia, as an example of what the federal government is doing with native people under their jurisdiction as far as

creating the model for self-government; and that this is not being followed in this particular package of legislation.

In particular, Mr. Speaker, "the principle of self-sufficiency and local government autonomy" is the language used in section 10 of Bill 33; and in subsection (d): "the principle of equity with other local governments." This is the form of language and model that's being used by the government in terms of these implementation Acts. It's becoming quite common, Mr. Speaker, as I understand it, to find in federal legislation these nonderogation or abrogation clauses, and the only time that it exists within the package of legislation before us is in a further Bill which we'll be considering later tonight, that being Bill 36, the Constitution of Alberta Amendment Act, 1990. I think in order to be certain that we're not undermining aboriginal rights as they may exist for Metis people, it would be important to incorporate that as a principle in some way or another in each of the Bills as they come through the Legislature, and Bill 33 would be no exception.

Mr. Speaker, the provincial Attorney General has made reference to the funding formula provided under this particular Bill, and I would say that in some ways it's an imaginative approach in that there's a transitional period of seven years in which the government funds a transitional fund. Then after that a second phase occurs where there's a \$10 million amount for 10 years and then matching grants: two dollars from the government for every dollar raised on the settlements, and after a period from 2002 to 2007 the matching grant formula goes to a one dollar for one dollar formula.

I guess a number of questions are raised for me and my caucus in reviewing this financial compensation package. Is the \$310 million over the 17 years sufficient to build the infrastructure that's going to be adequate for economic development and self-sufficiency? I guess it's a question subject to debate in terms of a difference of opinion. Three hundred and ten million dollars is a considerable amount of money, Mr. Speaker, but once it's spread out over 17 years and over eight settlements, it may not be able to provide the kind of base of support that the people who have signed this agreement hope it will provide. I know there is a review under section 9 of the Bill in order to ensure that this money is going to be adequate, but I would like to at least put on the record that were there to be any New Democratic government in those particular years, that sort of review would be taken seriously, and I hope the minister will give a similar indication for his side of the House as well.

There's no provision in the legislation to have this money paid in 1990 dollars. We have noted the increase of inflation in recent years, and I have every expectation that that sort of inflation is going to continue into the years ahead so that in seven years, if there's no adjustment made for inflation, it could be that the dollar amounts we're talking about in real terms, in real 1990 dollar terms, are only half of what they are today. This arrangement in the legislation in front of us, as I understand it, is unlike the Dene/Metis agreement and the James Bay agreement which had adjustment to inflation built in so it didn't require solely a review and leave all of these questions to that review. From the start it anticipated inflation, and they accordingly made compensation arrangements within the legislation for it.

As well, Mr. Speaker, the sources of revenue that the settlements have for claiming their matching grants are limited. One only needs to look at schedule 1 of Bill 33 to know what it is that I'm saying. I have some question about whether this is going to provide an adequate basis for the settlements in terms of raising the money they need and being eligible to get that

money matched by the provincial government. But the incentive there, Mr. Speaker, I think is one that the Metis Settlement Council and the people have negotiated hard over the last few years. It's a concept they like, and it's a concept which I myself as well endorse because it builds into the framework an incentive and a principle of moving from a system of compensation solely from the provincial government to one that becomes more of a matching grant basis and I think provides an incentive for people to build economic development within their own community such that the greater success they have, the more they will be eligible to receive in support from the provincial government.

So it's a model that I don't think has been tried elsewhere – it may have been, and I stand to be corrected if it has – but it's one that certainly as we sit here in the Legislature reviewing these Bills, we hope that for the future, 10 and 12 years down the road, we will have done something wise or worth while with this kind of model, Mr. Speaker. It's the sort of thing that I guess we do our best and think through these things as best we can and negotiate with the people most directly affected and as result of that process hope for the best that the model we've adopted is going to work, so that 10 years down the road, or 12 or five or seven, as this is reviewed, if it doesn't meet the promises and the hopes we have for it, hopefully then at some point that can be changed or is open to amendment. But at the moment it's certainly a model that I think there's considerable support for in terms of the Metis settlements and one that I would add my hopes to as well.

Mr. Speaker, as well under Bill 33 there are a number of powers provided to the commissioner, and it seems to me in reading this that the powers that have been provided are considerable. I hope that as we go through this in a little more detail at committee stage, we can examine these a little more carefully. But it strikes me – and I hope that I'm wrong in this. I certainly hope that my interpretation is wrong, but it's sort of like the old concept of the superintendent under the Indian Act who seemed to take over virtually all the powers of the minister in terms of the total responsibility and ultimate authority for the people under his jurisdiction. I hope that the functions of the commissioner really are to simply be as an assistant, to be as an adviser, to be as a support, to be as a liaison, to be as a background person, and that in reality that person will not be the one that tries to control and operate everything which happens under this legislation on behalf of the responsible minister. So it causes me some pause here in terms of looking at this Bill. Let's make sure that in the implementation of this legislation that doesn't happen, because it certainly is a concern that I have that it may well work out to be that way.

Mr. Speaker, with those opening comments I'll pass the floor over to other members of the Assembly. As I've already said, I know that with the package of legislation, some points that may have been missed in one Bill may have an implication for others and therefore could be addressed later on in the evening or later on during our debate of these particular Bills.

Just in summary, Mr. Speaker, I want to re-emphasize the point that I want the government to indicate to us that this is simply a step in the process. These Metis settlements were established in the 1930s as a result of pressure from Metis people, as a result of what I think was excellent leadership from Metis people. There's been pressure over the years to deal with outmoded legislation, to modernize it, to bring it more into keeping with our understanding of what aboriginal rights are and to bring it more in keeping with the aspirations now of Metis people. Again, because of the leadership of those Metis people within the settlements across the province who have come to the

government, who have taken some initiative here, and who have negotiated and worked hard and I think probably agonized over those negotiations, let's hope that the kind of legislation we're all working for is going to work into the future. But Metis people have been around for a long time, and they're going to be around, thankfully, for a long time. This is only sort of one more station along that line. We've stopped here for the moment to take stock of where we're at, to make some changes to legislation, but if this is the end of the line as far as this government is concerned, I don't believe that's going to be acceptable to us or to Metis people either. As aspirations change, as courts reinterpret aboriginal rights, as society changes, as the pressures of young people in the future press onto us, we have to ensure that the legislation of this province responds to those people and responds to their need.

I don't believe that this Bill is it as far as being good legislation for all time. So I have to say to the minister that while we support the direction they're taking us with this legislation at the moment, we need to be assured that the process *is* going to continue, that it's open for further negotiation, that it's open for further amendment, that it's open for further change as it's implemented, and that it's simply a stopping point for the moment as part of this long journey.

I'd also like some assurance from the provincial government that for those who are not on that train, those who do not at the moment live or benefit from being a member of a Metis settlement, for those many thousands of Metis people who are untouched by this legislation, there will be for them some hope for either an additional land base or some further growth and development in the partnership with the Alberta government. If those two assurances can be given to us as we go through this process of Bill review, I will feel that we've come a long way and feel good about the future that we're putting in place tonight, and I would feel good about those assurances from the government that outstanding issues that still remain unresolved are going to be dealt with in due course.

Thank you, Mr. Speaker.

MR. SPEAKER: Westlock-Sturgeon.

MR. TAYLOR: Thank you, Mr. Speaker. I think I will take a page out of the hon. Member for Calgary-Mountain View's book and try to discuss all four together. First of all, I'd like to congratulate the government. It's very rare that I've had a chance to do that in the last four years. I think they've done an excellent job in a very difficult situation. That doesn't mean that they're perfect. I will probably try to do what the hon. Member for Calgary-Mountain View did: leave a little hole for me to squeeze out a couple years from now and say I told you so. Right now I just don't know where that hole will be. They have done a great Act, and I think it's a credit to the government and also the employees.

I know I've met some and I've worked with Metis a number of years. I know they had a difficult problem of reconciling many different views, but I think they've come a long way in doing that this way. I guess one could never say that we have fully paid the debt or for the mistake we made in the Riel rebellion, but this goes a long way towards it. You might say these people really were the first real Canadians in a lot of respects, who didn't believe that Canada had to be tied to anywhere in Europe or across the 49th parallel to exist. They felt that Canada could exist on its own and with its own culture. To that extent I'm glad to see that they're being knitted into the fabric of Alberta.

Saying that, I will express a couple of concerns, and I think it may have been too much to go. This is the Metis settlement and Metis land base, but there are a tremendous number of Metis off reserves. As a matter of fact, my grandparents were in that category, but I've come so far off that by now that unless there's an awful lot of money involved here, it would be awful hard to prove my connection back there.

MS CALAHASEN: Your true colours come out.

MR. SPEAKER: Order please.

MR. TAYLOR: But I would like to let them know that, of course, Mr. Riel was the first Liberal, Mr. Speaker, and Liberals have been getting into trouble with authority ever since.

But I am a little concerned that maybe the off-settlement Metis haven't got the type of structured attention devoted to them that they should. Now, I know that there is in this opening here that the Metis can go back to their settlement and apply to be in their settlement although it doesn't say which one. Thankfully, from what little I could read, it didn't seem to argue that you had to be of that settlement or that group before you could apply to get back, just as long as you could prove Metis connection, which I think was a wise move by this government.

Nevertheless, there are Metis that through the years – and there are many famous ones around the Legislature. I think even your past Premier would not be . . . We used to argue who had the most Metis blood, and he won one night by being able to prove he could do some things. Well, anyhow we'll go on on that another time. But the fact of the matter is, there are many people with Indian blood out there in society, and some of them are close to Metis and may be able to prove the same amount of blood as a Metis who would qualify for the settlement. Maybe something should be done for them, or not so much for them as possibilities; if they have not yet adapted to the mainstream of living off the reserve, then maybe we could help through special loan funds or special advisory councils or whatever. I'm sure that the ministers may be thinking about that. I know there are plans that apply federally to Metis businessmen, and maybe he could enlighten the House a little bit more on that.

I am a little bit concerned about the aboriginal rights, Mr. Speaker, because if one looks to Bill 36, clause 8 says:

Notwithstanding section 7, this Act may be repealed by the Legislature after the Metis settlement land is protected by the Constitution of Canada.

One thing that bothers me is that the Legislature well may think the Constitution of Canada protects it, but maybe the Metis don't. Consequently, maybe they should be the sole arbiters of deciding whether or not they are being protected down the road. Aboriginal rights maybe should be decided by them and not by our Legislature. Now, the minister, being a learned man of the law, may be able to explain where I've gone wrong there, but I get the impression that the Legislature could be a roadblock between aboriginal rights and the Metis people of Alberta, just the way it's worded.

The rest of the things I have are rather picky, Mr. Speaker. The good mood that I'm in tonight and the fact that I think the Minister of Agriculture might have agreed to return the bet that I made with him earlier today about wagging his tail and running over here. I feel in such a good mood that I'm ready to sit down and allow the minister of Metis affairs to go ahead.

Thank you.

MR. SPEAKER: Stony Plain.

MR. WOLOSHTYN: Thank you, Mr. Speaker. I, too, would like to echo some of the words of the previous two speakers in that I feel that perhaps it's a very, very small step that's very long overdue. Having said that, however, I have some very strong reservations as to the whole setup of the process.

To my understanding, there are eight Metis settlements, six of them are coterminous at least on one boundary, giving us five locations where they are physically located in this province, and those five locations are spread over from the Saskatchewan border to the far northeast corner of Alberta. As of a year or two ago the populations that were listed range from a low of about 300 and some, 388, in Peavine up to over 1,000 in Paddle Prairie. Now, this kind of distribution of people and of the land they are going to get under this . . . In some way trying to help them, put them under a structure of administration – if I follow the legislation correctly – that would start in the ultimate end with the minister responsible for Metis affairs, under whom in some sort of fashion comes a commissioner that would preside over all eight colonies, under whom or parallel to but in some other way would come the general councils, which I would assume would be made up of representatives from all eight settlements. Then again under this general council comes the council for each individual colony. Then, finally, we get the people whom it affects. I find that quite an extraordinary length of red tape to try to get aboriginal people, to teach them in some way to arrive at some form of self-government that is acceptable to them and also works within our provincial and federal structures.

I would suggest also that both on the provincial level and on the federal level in terms of the treaty Indians, a very fundamental definition has not been worked out either on behalf of the government or on behalf of the aboriginal peoples, and that is simply the meaning of self-government. That meaning has to be understood both by the current governments and the people to whom we want it to apply, in this case the Metis.

The Bill does have some fancy formulas – numbers, I think, that were construed in good faith, with all due respect – to arrive at a progression that would hopefully get the colonies onto some road of self-sufficiency. However, in reviewing the package of Bills – and it may be there somewhere; perhaps I've missed it – I have not seen the kinds of references to economic development that could be implemented or put onto all eight colonies or five areas, some kind of development that would occupy, in a meaningful fashion, the time of the residents. As we are undoubtedly aware, the major problem facing the Metis people is a high level of unemployment in their home communities.

Again, I won't question the intent of the Bill, but I can't see for the life of me, the way it's laid out, (a) how there's going to be an acceptable level of self-government, and (b) the business of self-sufficiency. I think it's a known fact that the standard of living on these particular settlements is extremely low. Yet in a mere, short, I believe, 10 years in one aspect and then culminating in the 17 years, we are expecting these people, from a very poor economic base, to start to raise funds in order to match moneys that we are, as a government, going to be involved with, hopefully trying to help them. I would respectfully submit that, unless there's something I'm not aware of here that can be done, to do this to eight colonies in five different ways with the varying levels of population is, quite frankly, unrealistic. Maybe it's a good start, but we have to look at some way of improving it, because I just frankly can't see it in the Bill at the moment.

The other aspect. We noticed the calculations that I have before me look good if you say them quickly: \$310 million. Three hundred and ten million dollars to be split amongst eight colonies, to be further subdivided amongst 5,000 current residents, whose populations will grow. When we get to the other Bills, we'll get into that. That population will grow, and then we take and we divide this by 17 years, the development process. I would submit that the rate of \$3,500 per current identified resident per year to implement all of the expectations that this money is to do, from capital projects on through the operation of the settlements, is far, far too low. I don't know what the real number should be, and I would not suggest for one minute . . . And it's no secret that the Metis colonies between themselves aren't always on the best of terms. But now we have \$3,500 per head without a clear definition of how that money is going to be appropriated. I don't know whether it should be by colony or per capita, because given that we have eight colonies in five different locations, the needs may in fact vary from location to location. In fact, the types of economic development, I'm sure, would be quite different: what would be available, say, in the Elizabeth colony and compare that to Paddle Prairie, for example.

I would suggest that with the process we've put in there or the Bill asks for, a many-tiered veto process, into a situation widespread as it is, into the number of different locations and with a number of different and competing forces to go after this, we are not doing the best that we possibly can at this time for the Metis people. I would very strongly recommend that before this Bill comes back in Committee of the Whole, the hon. minister reflect carefully on the comments made. They're made with sincerity, and I think they are honest observations. The solutions to these problems, as I see them – I may have some suggestions – I don't know what they might be at this time, but I think that the time frame should be changed. I think that the methods of review should be looked at very thoroughly, because, quite frankly, if this Bill is going to be perceived as the end-all for solving the problems that the Metis have, I think it's going to be a miserable failure. However, it is a good start. I think if we put in the proper monitoring processes and give a chance for meaningful dialogue for all the players – and I mean all eight settlements, not just one general council, all eight settlements in some way – then perhaps this is a good first step toward doing the rationalizing as to where the Metis people fit into our Alberta society.

Thank you, Mr. Speaker.

MR. SPEAKER: Summation, the Attorney General.

MR. ROSTAD: Thank you, Mr. Speaker. Starting on the last comments. I'd like to make it very, very clear that this legislation is for all Metis of Alberta. Yes, it's directed to the settlements because that is in fact where the land base of 1.25 million acres is located, on the eight settlements. But any Metis can access membership and the rights to live and follow the Metis culture on these settlements. We have – which isn't particularly germane to the discussion on this Bill or if you're trying to capsulize all four Bills together; it makes no difference. The off-settlement Metis have been working very, very closely with our government, and the Premier most recently, in December of '89, signed a three-year agreement – a framework agreement, as it's called – where the off-settlement Metis are working very, very closely with six mainstream departments in this government so that they can have input into not only our legislation but to develop policy which takes into consideration

the Metis culture. So they benefit as well as the settlement people. But there is access to the settlements by anyone. There are no per capita payments of this money.

Also germane to the whole package is the fact that the government is not imposing any of this on the Metis people. I have been personally involved since March of 1987 and have spent innumerable hours, and my officials and the federation officials, led by their president Randy Hardy, have spent far, far more hours working together to develop this. The government structure that's proposed in these Bills is the structure that the Metis want, not the structure that we are trying to impose on them. The land will be owned by the general council, and there's a unique land title system, aside from the one that we use in our general culture through certificate of occupancy, et cetera, that's unique, as this whole package is very unique to bringing a form of self-determination, self-sufficiency, local government. I don't use, and if I use, I apologize using the word self-government. This is not an aboriginal ploy as the Sechelt Indians would have. This is not an Indian federal jurisdiction, section 96, that might occur to James Bay. This is unique, made-in-Alberta, not imposed by the government of Alberta on the Metis, but developed together to something that we think they can work with, that they think they can work with.

The \$310 million, yes, if you worked it out on a per capita basis over 17 years isn't as much as you might want it to be, but you have to look at it as a substantial enhancement to what the Metis presently get. A substantial enhancement. The accord was developed by getting a consultant, again, with the Metis and the government, an independent consultant to look at what would be required on a municipal basis to operate a form of local government on the settlements and then build from that as to what they're going to need. The \$30 million a year that goes out of this for the first seven years – you have to look at the package. There's an enhancement of the dollars in the first part of the accord. The \$30 million is broken down to \$15 million for capital, \$10 million for maintenance and operation, and \$5 million for future development or economic development, whatever.

In fact, I give credit to the Metis because that \$5 million will not be touched for the seven years. They want to build a heritage fund that they can then use for capital. Some of the capital won't be spent each year, which they will then be planning to again invest, and it could be the same with the maintenance and operational side of it. It's going to vary also from one settlement to another, because some are more sophisticated than others. Some will get far closer to a local government within three years; others it may take the full seven years.

The transition commission is set up specifically to help in the transition period from passage of this Act to a form of self-government. We've targeted seven years, but it's open. If it had to be extended to 10 years, it would be extended to 10 years. But this, again, has been worked out with the Metis. They want it that way. They know that they can't just charge off on passing this Bill and be into a form of self-determination or local government.

Also the general council, settlement council, that's their unique form of government. What is being put into place – again, working with them – is a form of election procedure under the local authorities Act, which is unique to them, not unique to us. As an instance, they want an election every year, not the way we have our elections. But that structure is theirs.

I should make it very, very clear, too, that the aboriginal rights are not affected by any of these Bills. Very specifically, any

aboriginal rights, if the Metis have aboriginal rights – and that's a moot point – are protected under section 35 of the Constitution. This does not abrogate or derogate from there. The Member for Westlock-Sturgeon mentioned the protection because that Act may be able to be repealed after it's protected in the federal Constitution. That's fine because by the time it's into the federal Constitution, all that Act is doing is protecting their land, because the Metis have not had confidence in white men that they weren't going to take away the land once we've given it to them. That's their thrust. Once that's into the federal Constitution with whatever appeal mechanism that comes out of the Meech Lake discussions or anything subsequent to that would have to be dealt with on that basis. So once that's done, the particular Act that he referred to would be of no use, and it really doesn't have that much effect.

Inflation. Sections 9(1) and (2) provide for a review of the funding in '93, '96, 2001, and 2006. They want to do that rather than indexing it; to look at it, because not only would you index and maybe build on that way, perhaps we'll find at those times that the funding isn't adequate and that we'll have to enhance the funding aside from the inflationary factor, just that there isn't enough.

So this is being designed as a made-in-Alberta process, but it's also being designed with an aim that there will be self-determination, self-sufficiency, and a form of local government for our Metis and the Metis of Alberta, to bring it into the context as the Member for Calgary-Mountain View has brought it, that it's important that we realize that this isn't the end of the process. This will be an ongoing review. Now, whether there's future land base for other Metis, I will not stand up and say no, but at this stage I won't stand up and say yes, because we've got our plate full and the Metis community have their plate full in digesting this one and getting this one to work.

As I mentioned in the ministerial statement on May 30, the Metis Association of Alberta, which is more or less the umbrella group for off-settlement Metis, concurs in this process. That in itself is historic because the Metis community have come together on this process realizing that they all win, they all have access to it. So I don't think we're establishing two classes of people. That's not the intent. We're doing this for the Metis of Alberta, and Randy Hardy, the president himself, stands up proudly and says, "This is for the Metis of Alberta."

The comments on self-government. As I mentioned earlier, I don't mean to imply those, and I think we have to divorce this whole process from reference to reserves or Indian Acts or the James Bay. Those all come from a definite jurisdictional responsibility, be it the federal government under a treaty or under aboriginal rights. This is a form where our government, or this Assembly, in a way, has said, "We take responsibility and jurisdiction for our Metis people, and we will work together with them to put forward a form of self-determination." It's a model not tried elsewhere and we're going to have to be innovative, not only in bringing it to the Assembly and hopefully passing it and implementing it but also in working with it.

The transition commission is in place because we've had to have a financial mechanism to receive money even though the legislation hasn't passed. So we have an interim commissioner nominated by the Metis. He is a former assistant deputy minister who's been integral in working this out but has now divorced himself from government employ and is a transition, which is kind of a unique mechanism that the government and the Metis . . . I happen to be the representative on the commission at the moment and the president, Mr. Randy Hardy, is the other member, and then this commissioner works with this

commission. His sole purpose is to receive the money and to help them make the transition and to put into implementation the procedures that were coming, and that's where this Bill 33 is very important.

That mechanism, as I said, is flexible. Yes, it's supposed to cease at seven years. That's the \$30 million a year for seven years. The remaining 10 years have \$10 million a year and in addition to that \$10 million the ability to match on a 2 to 1 for the first five years and a 1 to 1 on the second five years: again, a gradual diminution of government contribution as they become more self-sufficient. If it doesn't work, there's a mechanism of review set up for every five years – '93, '96, 2001, and 2006 – to see whether the money is there. The transition commission can also during this process address whether it's working or not working. Do we need to go slower; do we need to go faster; what are the concerns? Because it's unique not only to us as legislators in this Assembly but to the Metis community. Together we've come this far, and I think we can with assurances know that we'll have to be together for some time after to bring it into effect.

Mr. Speaker, it's my honour and privilege again to recommend second reading of Bill 33.

[Motion carried; Bill 33 read a second time]

Bill 34

Metis Settlements Land Protection Act

MR. CARDINAL: Thank you. Mr. Speaker, in the summer of 1988 the Hon. Ken Rostad introduced Bill 65, the Metis Settlements Land Act. It is my honour to table for second reading Bill 34, the Metis Settlements Land Protection Act.

This Act is one of the most important elements of this legislation package because it provides the framework under which the Metis settlements will secure a land base in Alberta. The essential achievement of Bill 34 and the associated letters patent is that they realize the concept of territorial integrity for the Metis over settlement land. Territorial integrity allows the Metis settlements to gain ownership of all the land within the boundaries of the settlements while the province retains jurisdiction over the land.

Discussed for the first time during the 1987 First Ministers' Conference on Aboriginal Constitutional Matters, territorial integrity was the principle that allowed the entire process of developing new legislation for the settlements to move forward and the province of Alberta and the settlements to come to an agreement that will ensure a land base for the Metis in Alberta for generations to come.

The territorial integrity concept became the basis for the discussions that led to the development of the principles governing the Metis land base, contained in Bill 34. I would like to take this opportunity to explain these important principles. Under this legislation and the letters patent the Metis settlement will own the land and the surface resources, while the province will continue to own the subsurface resources. Furthermore, this Bill clearly states that the transfer of land does not affect any third-party interest in the land held before the transfer date and identified by 1993. These elements of the territorial integrity concept form an integral part of the principles underlying this legislative package.

Three principles were developed to ensure that the settlement land base would remain secure while providing enough flexibility to allow the settlements to operate effectively in the future. The first of these principles is that the patented land making up the

settlements may not be mortgaged, charged, or used as security. The second principle ensures that while the fee simple estate in the land cannot be expropriated for any purpose, a lesser interest can be obtained through negotiation or, failing negotiation, through the Court of Queen's Bench. The final principle relates to the alienation of settlement land and states that the fee simple title as granted in the letters patent may only be alienated with the consent of the Crown and a general council and a majority of settlement members.

By adhering to these principles as originally laid out in Resolution 18, the concept of territorial integrity as proposed by the Alberta Federation of Metis Settlement Associations could be accepted and supported by the province of Alberta. That concept now forms the basis of the letters patent in Bill 34. By ratifying and confirming the transfer of land in the letters patent, the Metis Settlements Land Protection Act places into a legal framework the dream long held by the Metis settlements of obtaining a secure land base in this province. With the land in their control, the members of the settlements and their leaders will be able to concentrate on working towards realizing their vision of the future for Metis communities in Alberta.

In closing, Mr. Speaker, I look forward to comments and debate on the principles of this Bill. Thank you.

MR. SPEAKER: Calgary-Mountain View.

MR. HAWKESWORTH: Thank you, Mr. Speaker. If one were to simply read Bill 34 without any context, one might conclude that sections 3 and 5 essentially sterilize the land on Metis settlements. But once one gets into the context of Bill 35, as the Attorney General mentioned earlier, there is a separate form of land registration system that is set up within this entire context. So whatever concerns might arise by simply reading Bill 34 by itself, in that sense this particular Bill would have to be viewed as part of the overall package, and certainly the concern is much less.

However, it may be a very expensive system to operate, and it's not clear to me, not having drafted the Bill or been deeply involved in its drafting, who would be responsible for the expenses of that, to what extent that would be the responsibility of the general council or the individual settlements or, in fact, the province itself. That's just a question that arises for me in the context of Bill 34.

As well, Mr. Speaker, there is a section here, section 6, that has to do with expropriation and the resolution of disagreements. In the process laid out in the Bill, it indicates that the final determination, if an agreement can't be reached, is to be determined by the Court of Queen's Bench. Now, I have a question or a concern about this particular section and process in that it's not at all clear to me what principles would apply if any judge were to review a matter under this Act and be asked to make a determination under that particular section. After all, the land Expropriation Act in this province I think goes into considerable detail to ensure what the principles might be, how one is to determine fair compensation, and so on. There's no reference made within this Bill to what those principles might be in terms of the Court of Queen's Bench reviewing these matters. It would appear to me, on the surface at any rate, that making some reference to the Expropriation Act and the principles of the Expropriation Act might well be appropriate. It's one that I'm earmarking at the moment, Mr. Speaker, for the minister and the member moving this Bill to keep in mind in terms of later on as we debate this at the next stage.

I guess the question that's of most particular concern in regards to Bill 34, and again in regards to the package of legislation, is what happens with subsurface rights in this sense: have the Metis people who have signed the accord and agreed to this legislation given up their aboriginal rights to subsurface rights if at some future date aboriginal rights are defined to have included subsurface rights? I guess it's one thing to sign an accord which specifies that the surface rights are being transferred and remain silent on the subsurface rights issue. Then at some future date if this becomes an issue, if some court case resolves this matter and says that Metis people in Alberta, whether they live on a settlement or not or those who do live on the settlement, have some subsurface rights, does any of this legislation we're passing tonight protect these Metis people in that event in the future? Here again is an example, Mr. Speaker, where it might be prudent, if we're wishing to build for the future and to keep the door open for the future, to indicate to future Legislatures and future judges and future courts that this Bill is not intended to abrogate or derogate from any aboriginal rights that Metis people might presently enjoy.

The Attorney General took some time in response to the earlier debate on Bill 33 to talk at a bit more length about this package, and I should say, Mr. Speaker, that I appreciate him clarifying a number of points and adding some comments at that particular time, and I appreciate that he indicated then that there's no intention here with the legislation that the government's bringing forward to remove any rights that people might have or that some court in the future might decide they've had all along. I guess, because this is an area that people have raised their greatest concerns about, I'd like to satisfy myself and I know our caucus would like to satisfy themselves that the Metis people have not voluntarily extinguished their rights to subsurface minerals and revenues should that be determined in the future either by a future Legislature or by a future court.

Now, as I understand this statement or this position of the Metis settlement federation, they believe that they have not given up any subsurface rights as a result of anything that's been agreed to with the provincial government. I don't know whether that's the opinion of the provincial government or not or whether they would be willing to entertain some clarification on this Bill just to make it clear that there's no intention in any of this to abrogate or derogate some of the rights that Metis people might have. I don't want to sound like a broken record, but because these are such important principles in terms of the future relationship between Alberta and Metis people, I think we need to go to some pains to ensure that the objectives are being met and that the position of Metis people is not lessened or weakened as a result of having agreed to this accord and as a result of this Legislature passing these Bills.

So perhaps I'd leave these comments on the record for the moment and look forward to any further comments that might be made from the hon. member or from the minister responsible in regards to these concerns.

Thank you, Mr. Speaker.

MR. SPEAKER: Westlock-Sturgeon.

MR. TAYLOR: Thank you, Mr. Speaker. Just a short question or so. It was introduced by my neighbouring MLA; I wouldn't dare cross him in any way. He has so many friends in my constituency he'd probably land on me in a hurry and cause me a great deal of problems.

However, I do think there's one part I'd like to ask him or the hon. minister about because it involves a certain amount of law,

and that is the prohibition that any estate or land cannot be mortgaged or charged or given as security. The reason I bring that up, Mr. Speaker, is that it gets exceedingly hard for any business or group of people to develop if they cannot raise a mortgage or a charge. Now, I know the idea behind present Alberta law is, of course, that you take a mortgage on the land, and if the person goes broke, then the land is taken, and that would defeat the whole idea of a Metis land settlement Act.

[Mr. Deputy Speaker in the Chair]

I would like to ask the minister if he would look into the methods used in Great Britain and also in Sweden and Norway, where the production from the land or the business itself can be mortgaged but not the land itself; in other words, the argument being that the land belongs, as it does in this case, to society as a whole and, therefore, can't be foreclosed on, but you can foreclose on the building or the business that's running there or the profits that come from the land. I'm wondering if the minister had taken time to maybe look into that method, because I think the Metis will be at a considerable disadvantage in the years ahead if banks will not mortgage or lend money because under Alberta law the only way they could get security is to get the land with it.

In other words, just as years ago we passed a change in the Securities Act, in section 83, I think it was, in bank securities in Alberta, where the banks could claim the oil that comes out of the ground, maybe a similar type of setup – and you have many experts there, and I suppose any one of them would be tickled to fly to England to search out the British way of doing it. If you looked at the British and Scandinavian way, it would allow the Metis to be able to borrow money to run their businesses down the road as time develops, without any chance of losing their land.

MR. DEPUTY SPEAKER: The hon. Member for Athabasca-Lac La Biche would like to wind up debate?

Oh; the hon. Attorney General.

MR. ROSTAD: Mr. Speaker, if the minister could just clarify. In the last item the hon. Member for Westlock-Sturgeon brought up, yes, the land can't be mortgaged because the land is being held in title by the general council itself, almost, if I may, a communal basis. However, we are working with financial institutions and the Ag Development Corporation on some mechanism that might be utilized so that the farmer who has a certificate of occupancy will still be able to access funding. If that can't work, we could look at another possibility where the general council will put aside some money, call it a fund, and the security against any borrowing would be that fund and not the land itself. So we are working with the settlements, again, to work at an innovative way that will give them access to capital for those kinds of purposes.

In terms of securing their equipment or any of that type of thing that relates, that happens because this is not a reserve situation where now some credit institutions will not extend credit to people on reserves because you cannot enter a reserve to seize and effect your security if you had to. That is not the situation on the settlements, but we are working with them for some innovative procedure. The land titles system is operated by the Department of Municipal Affairs. That's the department that has the native responsibility attached to it and under the estimates for that department. That system has been operating

four years and has just been part of the operation of the department and would continue to be operated that way.

In the matter of expropriation, the process is that you cannot expropriate the fee simple interest, but you can get a lesser interest. If you can't negotiate it out, it's referred to the Queen's Bench, and there are rules that would help them to effect it. It's just that they'll only get a lesser interest than the fee simple.

The subsurface rights are, as I mentioned before, as Resolution 18, not part of this procedure. However, again under section 35 of the Constitution, if it was found that the Metis had aboriginal rights, of course this legislation would be found ultra vires of the Constitution, and we'd revert to that, and the mines and minerals would in fact go with those rights unless the court found differently, but I doubt they would if they found that. So, again, without abrogating or derogating from any aboriginal rights they had, aboriginal rights, if you have land under that, includes everything under the land as well.

MR. DEPUTY SPEAKER: The hon. Member for Athabasca-Lac La Biche.

MR. CARDINAL: Thank you, Mr. Speaker. I guess just in closing I'd like to also make a couple of comments on this Bill. I think it's definitely an important Bill for the Metis, to use this process as a transitional process towards self-sufficiency.

In relation to using their land as collateral towards business or individual loans, it's something the Metis themselves recognize as an important area, where they do want protection for their land and to ensure that their land is not lost through a default on loans, et cetera. So they were very strong on this, to make sure that it is protected. I know we discussed with them quite thoroughly how businesses may be started up on these settlements and how the settlement members may get loans from banks and other lending institutions. I believe one of the ways they're looking at – and I think it could work, no doubt, because they will have the dollars sitting there – is possibly guaranteeing small business loans from the heritage trust fund they have. So that's one angle they could look at.

The other area that was mentioned by the Member for Westlock-Sturgeon is something I've never thought of personally, but it's something we could no doubt look at.

With that, Mr. Speaker, I'd like to recommend second reading of this Bill.

[Motion carried; Bill 34 read a second time]

MR. DEPUTY SPEAKER: The hon. Member for Lesser Slave Lake.

Bill 35 Metis Settlements Act

MS CALAHASEN: Thank you, Mr. Speaker. Bill 35, the Metis Settlements Act, creates the framework under which the Metis settlements of Alberta will become full-fledged members of the array of municipal bodies that define local government in Alberta.

Bill 35 is a comprehensive piece of legislation that endeavours to deal with the principles of defining fair and democratic criteria for membership and land allocation and the creation of democratic governing bodies for the Metis settlements. I believe that this Bill successfully deals with these two essential Resolution 18 principles. Bill 35 addresses at length processes for the

provision of membership and the allocation of land that have been developed through joint discussions between the province and the Alberta Federation of Metis Settlement Associations. By incorporating such elements as a Metis appeals tribunal, the policy-making function of the general council, and public involvement in the settlement bylaw-making process, the Metis Settlements Act creates a system of checks and balances that will help foster fair and democratic local government.

The general council is a body consisting of an executive and councillors from all eight settlements. Its role is to develop policies that will guide local settlement bylaws on issues of concern to all with settlements. The general council will also represent the interests of the settlements as a whole when dealing with external organizations.

Another important element in this system of checks and balances is the Metis appeals tribunal. The tribunal, composed of government and settlement appointees, is designed to hear appeals from settlement members and others on a number of matters and in particular decisions in the areas of membership and land management.

Alberta's strong tradition in democracy forms the basis of the second principle I would like to emphasize here today: the development of democratic government for the management and governance of the settlements. The Metis Settlements Act provides for a system of local government that meets the guiding principles established in Resolution 18.

One of the highlights of this unique system is the settlement corporation bylaw development process. Settlement members will have the opportunity to be directly involved in developing the bylaws that will affect their communities. Direct participation is achieved through the requirement that all bylaws be approved by a majority of members at a public meeting prior to third reading. This bylaw-making process establishes a new approach to public participation for local governments in Alberta. It should also be noted that the legislation requires bylaws and general council policies to be consistent with the legislation of the province of Alberta except in the areas of hunting, fishing, trapping, and gathering.

While much of the Metis Settlements Act is unique, the inspiration for this legislation stems from the long history of responsive and democratic government in Alberta and the values held by the members of the Metis settlements. This combination of influences has created a system that, if implemented with the same desire and commitment that created it, will allow the settlements to grow and flourish as viable Alberta communities.

Building on the foundation of work that produced Implementation of Resolution 18 and Bill 64, Bill 35, the Metis Settlements Act is a product of the consultative process that has served to make this legislation so unique and innovative. This consultative process involved discussions between provincial and settlement representatives as well as between settlement representatives and the members throughout the development of the legislation. The involvement of the settlement representatives and members has meant that this Act reflects the principles upon which the members of the settlements have built their communities.

It is my honour, Mr. Speaker, to have helped introduce the legislation that will provide the Metis settlements with the opportunity to realize their dreams of self-sufficiency and a position of equity as part of the local government mosaic in Alberta. It is indeed with a sense of privilege that I move second reading of Bill 35.

MR. HAWKESWORTH: Well, Mr. Speaker, because this is part of a package and we sort of agree with the general implementation of the package, we're going to reluctantly go along with Bill 35. But I think it should be noted that there are some major deficiencies with this Bill.

I don't believe it leads to any kind of self-sufficiency, and I don't believe it's going to lead to any more democratic governing bodies on local settlements. What this does, Mr. Speaker, basically, is give the entire power, responsibility, and authority for Metis settlements to the minister. I can go through section after section after section to indicate how it is that everything, virtually, that is done by policy or action or decision by Metis organizations outlined in this Bill is subject to ministerial veto and ministerial approval. In fact, there's not one thing I could find within the Bill that clearly and unequivocally gives power or authority to either the general council or the settlements without some form of potential ministerial interference if that's required under the Act or if that might be considered desirable by the minister. So it's not at all what people may be thinking it is, in the form of providing real independent, self-governing organizations for the Metis people on Metis settlement lands.

Just as an example, Mr. Speaker, earlier I made reference to the Sechelt legislation that was passed by the federal government. I know the federal government has special jurisdictions and special requirements under the Constitution and the BNA Act and all that precedent has created that jurisdiction and responsibility. But it's important to look at how that order of government is managing its responsibilities and the kinds of models it's adopting, because I think it's much more in tune with the 1990s than with the 1950s in regards to the aspirations of native people and the scope and authority which they provide to them. For example, there's nothing in Bill 35 in front of us today which indicates that the Metis settlements have jurisdiction on issues such as education, social welfare, and health. By contrast, under the federal legislation – and it's unique, I suppose, in that it's intended to be the government's first example of what they have in mind when it comes to self-government and how they interpret it. In fact, they've come under considerable criticism from Indian people across Canada for not going far enough, but they certainly have gone a lot further than the government here has with Bill 35. For example, they've been provided powers over property, education, social welfare services, health, natural resources, wildlife management, public order, roads, operation of businesses, et cetera.

What's significant about the federal legislation is that it indicates that all federal laws of general application in force in Canada are applicable in respect to the band and its members and land except to the extent that those laws are inconsistent with the Act. It repeats the same principle in regards to the laws of British Columbia. But what I find interesting in that, Mr. Speaker, is that there's no ministerial veto, with the heavy hand that can come down at any point that the minister deems expedient. I think the principle that's important here is that the government of Canada certainly has moved in a direction different from what it used to pursue under the Indian Act and, in establishing these laws, is setting a model that other governments should take very seriously.

Mr. Speaker, let me give you a few examples of what I'm speaking about here. We take a look, for example, at sections 222 and 223, which by the way is division 2, titled "Making Decisions," which is where one would expect to find the authority and responsibility provided. Under sections 222 and 223 the powers of the general council are spelled out. However, under section 222 all those policies have to be adopted un-

animously, so they have to be a unanimous resolution of all eight settlement councils. Section 223, which deals with special resolutions of general council policies, can be adopted by six of the eight settlement councils. By the way, if we think we're having a hard time amending the Canadian Constitution, with unanimity being required from 10 provinces, I expect we're giving eight settlement councils an equally difficult task in requiring them year after year to make these policies unanimously. But even having done that, Mr. Speaker, even though all eight of them might agree to a particular policy or amend or repeal it, what they have to do is send it to the minister to come into effect, unless the minister decides he doesn't like it. So what we have here is a repetition of what used to be – and still exists – the old band council resolution model where every band council could sort of pass any bylaw they wanted subject to the minister approving it. It created and still creates a very paternalistic relationship between the minister and band councils. I don't see how in the legislation we're adopting here there's anything different, because of the amount of power that's being reserved to the minister.

I've only given a couple of examples. There is another set of categories that also requires not ministerial approval but approval from cabinet. Those are found further on under section 226 regarding hunting, trapping, the gathering of wild plants, and so on. Then under that section, later on:

- (4) The Lieutenant Governor in Council may . . .
 rescind all or any aspect of an approval given under subsection (3)
 and if that occurs the General Council Policy, or the applicable provision of it, is repealed.

So here we have again, with some categories of decisions made by the general council, cabinet retaining unto themselves the right to veto any decision before it comes into operation.

So while I would like this legislation to in fact provide self-sufficiency and a system of government for Metis settlements that is democratic and self-reliant and self-sufficient, I must say that I find the amount of power vested in the minister to be quite extraordinary. For an example, what if a council decided under its policies and the powers provided to it under sections 222 or 223 to adopt, say, an environmental regime regarding development on their settlements that was more restrictive than what this government is following? By the way, it wouldn't take much for them to come up with something more restrictive and, in fact, more environmentally sensitive than the kinds of policies this government is pursuing. Does that mean that by being more restrictive, the provincial minister responsible can step in and veto that sort of regime and override that sort of authority? I mean, we've had considerable debate in the north about pulp and paper projects. Many of the local residents in those areas are very concerned about that kind of development. They may have a different view than the provincial government of how this sort of development ought to be approved. As I read this legislation, the minister will have that total control or power or veto if he or she wishes to exercise it.

What also concerns me, Mr. Speaker: there are a number of other sections, regarding membership for an example – just some anomalies that struck me in going through this Bill. For example, eligibility to vote. There's no indication that there's any age requirement for a person to vote in an annual election or by-election. All it says is "unless that person . . . is a settlement member," and other provisions are outlined in section 14.

When one turns to section 74 to find out how settlement membership applications are dealt with, that's the reference which indicates that a person applies to a settlement council for membership only if they're at least 18 years old. Now, on the

surface of it, that may seem to indicate that this concern has been taken care of. But what about membership for those people who are presently younger than 18 who have lived on a Metis settlement, have grown up on a Metis settlement? Do they have to apply for membership like anybody else? If they don't, does that mean they can be less than age 18 and, under section 14, have the right to vote in elections? This is a question that concerns me, and perhaps it's a little more detailed. However, it does have to do with the governing of the settlements and who's eligible to exercise the citizenship under this Bill.

[Mr. Speaker in the Chair]

Also, Mr. Speaker, under Bill 35, section 239(2), again I'm making reference to individual sections only to illustrate some concerns I have about the overriding powers the minister maintains under this particular Act. This particular section allows the minister to "make, amend or repeal a regulation without a request" from the general council if in the minister's opinion that's required for the protection of the public interest. Well, these are very, very broad, overriding powers being given to the minister, and I don't know that it's entirely appropriate. I'm interested, particularly because of the wording, about protecting the public interest. The recent Supreme Court decision regarding aboriginal rights has to do particularly with the Sparrow decision from British Columbia. The Supreme Court decision indicated that the use of the term "public interest" was vague and gave no meaningful guidance and was not a sufficient reason for interfering with aboriginal rights. In fact, that judgment indicated that there is some question as to whether the provincial legislation can ever extinguish aboriginal rights and whether, since the Constitution Act in 1982, even federal legislation can extinguish them; only changes to the Constitution could do so. So when I see that the whole decision considerably hinged around the term or the phrase "the minister acting for the public interest" and, in that way, denying aboriginal rights – the Supreme Court indicated that was simply not appropriate, and they've struck down that kind of legislation and that kind of wording. So in that context, Mr. Speaker, I think this Legislature ought to be particularly concerned about the rationale that seems to be contained within section 239.

Mr. Speaker, this Bill also provides authority to the minister to dismiss a settlement council, and even though the minister and the hon. member moving this Bill have made reference to the sort of model that's provided by local government, I must confess that I could not find anywhere in the Municipal Government Act the same kinds of provisions which would allow the minister to basically use his own opinion and, in exercising his own opinion, simply dismiss an entire council and establish a transitional person and call for elections in its place. I've not been able to find a similar requirement or similar powers vested in the minister in the Municipal Government Act. It would seem to me that in fact this Bill appears to give the minister considerably more power to interfere and to direct councils and to direct people, much more so than anything I could find in the Municipal Government Act.

As well, Mr. Speaker, I think it's appropriate here to discuss the whole question or problem regarding the distribution of funds. As I understand the question, currently funds are intended to be distributed on the basis that 70 percent are to be distributed equally to all settlements and the remaining 30 percent are to be distributed on a per capita basis. Although the plan is that apparently in the first year of funding, funds are to

be distributed equally among all settlements and thereafter funding will be divided according to some sort of needs assessment, the point is that there's some disagreement within the settlements as to how that money ought to be distributed amongst the eight settlements.

Now, when we look at the making of decisions under division 2, this is a problem that requires under the Act the unanimous consent or the unanimous decision of the general council. What I'm afraid is going to happen, Mr. Speaker, is that by putting it under this section, we may be putting this council in such a difficult bind that by effectively giving a veto to each one of the eight settlements, they may never be able to arrive, at least in the near future, at a unanimous agreement about how that money might be distributed. Even though the large majority of the settlements representing the large majority of the people on those settlements might agree, one settlement could act as a veto, which then means that the minister ends up being given the power under this legislation to make that determination. Because it's a yearly requirement, Mr. Speaker, I can see that this question may well be debated each and every year, and each and every year may arrive in some sort of gridlock in terms of the decision-making, just the way Canada as a whole seems to have found it extremely difficult to work with an amending formula that requires 100 percent unanimity among the provinces for our Constitution. I wish the Metis settlements better luck than we've had and better judgment than Canada has had. But I think, realistically, this is an unworkable section and may result in the minister having, by default, the full responsibility for determining the distribution of funds.

Mr. Speaker, there are all kinds of other sections that we can discuss at committee reading and deal with one by one at that particular point, but I think what my purpose has been in terms of raising all of these examples is to show how much power remains vested in the provincial minister and that this really isn't a devolution of power to Metis settlements at all, because all residual power continues to rest with the minister. I guess it would be a way of saying that the Metis settlements and their council have the right to agree with the minister and to agree with the provincial government, but I don't know that that's really the objective that any of us want to see on this side of the House.

It may be impossible at this point to amend the Bill because of the philosophy that underpins it. It would be extremely difficult to go into the Bill and make the kinds of changes that would be required to devolve real local autonomy to the Metis settlements. But as I said in my opening comments, I have grave concerns about the Bill. If it were here solely as Bill 35 without reference to the package that's been negotiated and agreed to, I would find it impossible to support the Bill. However, because it is part of a package and because we want to see the entire package approved, I guess it has to be judged in that context, the whole package being required, we understand. I still say to the minister and the hon. member bringing this in that while we'll go along with this in principle and find it difficult to make amendments through the process, I have grave doubts that this is going to accomplish any of the things that have been promised for it.

MR. SPEAKER: Attorney General.

MR. TAYLOR: Thank you, Mr. Speaker.

MR. SPEAKER: There's some dispute as to who's been recognized.

MR. TAYLOR: I'm just waiting for the green light.

MR. SPEAKER: Right. I guess it's Westlock-Sturgeon.

MR. TAYLOR: I'm up again?

MR. SPEAKER: Westlock-Sturgeon.

MR. TAYLOR: Sorry, Mr. Speaker. Gremlins were playing with the green light.

I don't have much to add because I think it would be plowing old ground. I think the hon. Member for Calgary-Mountain View covered many of the areas that I wanted to cover, and repeating it would be unnecessary. The only thing I would add is that with respect to, again, the amount of authority handed to the commissioner or the authorities in charge of the enforcement, it bothers me a bit because I notice that even in areas like searching dwellings, there's no need for a search warrant. They can go in there at any – the authorities that the settlement wishes to send in can invade the privacy, at least the way I read it, of anyone's home. It's one thing to be living in a community or on a settlement, but I think there should be certain areas where your privacy is just as great as living off a settlement. I could stand corrected, but the way I interpret it, I get the impression there's even the right to move in without search warrants and to investigate what certain families might be doing. It's maybe going a little too far.

All of this is tempered very much, Mr. Speaker, by the fact that Metis settlement people seem to be happy with this. I would think they of all people have suffered enough as it is by the long nose of the majority telling them how to live and how to do things. So if they are happy with it, who am I to question it? I take some pride in being one of the first political leaders in the province back in the 70s, Mr. Speaker, accusing the government that you and some of the others present at that time were in of being rather niggardly with the Metis, and telling them to go ahead and sue for their oil rights rather than to give them. Nice to see after all these years that the government has gone ahead, and I suppose any congratulations, no matter how late, are nevertheless well deserved. I look forward to further comments at committee stage.

Thanks.

MR. ROSTAD: Mr. Speaker, if I could just make a few comments before the sponsor of the Bill wraps up. I want to make it clear for the third or fourth time that this Bill does not affect aboriginal rights. The hon. Member for Calgary-Mountain View continues to harken back in using examples of instances where aboriginal rights are in effect. This does not affect them. The ministerial power that he alludes to in sections 239 and 240: if he read 241 it spells out in two clauses exactly the public interest at heart. Where the "peace, order and good government of a settlement area" is at risk or if physical harm to the general public – that's when that would be used.

If he had read sections 226 and 222, they relate to the bylaws of the general council which affect the land, which is the basis to this whole thrust: their land and their protection of their land, the patent and how it can be used and not abused, to devolution of it, and to membership on the settlements. So, of course, when the general council is formulating these, if it can't be there to protect these very inherent and penultimate items, it would be foolish to not have it. It's also something that's again not been imposed on the settlements. These settlements have worked together with us on a consultative basis.

I am pleased to hear of his reluctant agreement with the principle of this Bill. I am sure that the Metis people will be very heartened by that enthusiasm. It's their Bill; it's not ours. We worked on it together. I find it inconsistent that he can stand up and repeat four or five times the principles where we are doing too much and we're too paternalistic, and then flip right around and say that we aren't doing enough in other areas and that we don't have enough control. This is their legislation, and I defer to the sponsor of the Bill for closing remarks.

MR. SPEAKER: Member for Lesser Slave Lake, in summation.

MS CALAHASEN: Thank you, Mr. Speaker. Just to follow up on a few points that the hon. minister has brought up: the fact that this Bill and all the Bills that are associated with the Metis settlements have been on a consultative basis and the fact that the involvement of the Metis people has been thorough and a hundred percent. I think that's something that sometimes is forgotten in this House.

I would like to address some of the concerns that were brought forward by the two members and some of the deficiencies that they have, particularly the Member for Calgary-Mountain View in discussing some of the deficiencies. I'd like to address some of those, particularly in dealing with self-sufficiency.

I guess one of the things that I'd like to bring out is the fact that no local government in Alberta is self-sufficient, at least not totally self-sufficient. If they reach about 50 percent, in rural areas particularly, they are really doing well, and this is the standard that they are aiming at. The Metis settlements are aiming at that particular standard, and I commend them for being able to look at that standard.

Regarding democracy, the powers of the minister are similar to those in respect to other local governments. If you look at the other local governments, you will see that the powers that are within that are inherent to the minister, and I think this is really consistent with what is out there already. There is a need to also protect the larger provincial public interest in the utilization of the funds, and I think this is clearly stated in some of the areas that we're looking at.

Talking about aboriginal self-government, I think this is really important, because when we were looking at this Bill, the intent was never to provide a form of aboriginal self-government. Both the province and, most importantly, the settlements have long ago agreed to the application of provincial jurisdiction. Aboriginal self-government would not be within provincial jurisdiction, and I think that has got to be made clear. Because when we're talking about aboriginal self-government, that's a federal jurisdiction, and that has got to be brought home to a number of the members in this Assembly.

When we are talking about jurisdiction regarding health, social services, or education, the settlement representatives by their own choice wanted to leave matters relating to health, social services, and education, among other provincial services, in the hands of the province. The settlements will have representation on various provincial boards that may affect settlement residents on such matters, and I think this is really important, particularly since we have to look at what happens in terms of the general council.

The general council was first proposed by the federation as the Okimawiwinn. The name was changed because of the negative settlement reaction to one of its meanings, which is Lord, and I think they did a good job. The general council is designed to represent the belief that one settlement has an

interest in the other seven settlements and the seven settlements have an interest in the one settlement. So it's looking at it from their perspective rather than from the perspective of people who usually look at it from the higher level, I guess, if you want to call it that, and sometimes I have a problem with that particular word.

The decision about which policies have to be unanimous was made by the settlements. It is recognized that there will be some difficult decisions to be made, but this is what accepting the responsibilities of government is all about.

In respect of policies on hunting, trapping, fishing, and gathering, the veto is because these can be inconsistent with provincial laws, and I think that the Metis have done well in terms of bringing forth those concerns so that they could be addressed from a different level. In respect to the approval of other policies, one of the primary purposes of the approval is to provide some assurance that policies are consistent with provincial laws.

When you're talking about the age of majority, if you want to call it that, age 18, we have in there that people under 18 are not, I guess, considered settlement members. When we look at the voting, though, we have to realize that within that . . . When you look at the two Bills, in section 74 I think it was, and when we look at the other one where we talk about the general council and the age of 18, the membership of 18 years of age, it's always known that 18 is really the voting age. Basically, I think we're looking at some of those kinds of things to consider the voting that the settlements can be on, particularly when they're passing bylaws.

Mr. Speaker, some of the other remarks that I'd like to make are the amendments of the bylaws without a request from general council, and as to dismissing a settlement council by the minister, that can happen, not only in the ID or the municipality. It basically reflects that same kind of theory in terms of being able to be dealt with in all municipalities.

I think with that, Mr. Speaker, I'd like to address some other kinds of questions that have been brought forward. I think that when we're talking about looking at self-sufficiency particularly, I've remarked on some of the ideas and that we would like to make sure that the people have the ability to be able to do what they should do. When we're looking at the payment, the financial structure that was brought forward as one of the comments also, I think that as people who are looking as critics, we forget to see that the settlements are now eligible for a number of programs that they have not been eligible for for a long time. After the first seven years the settlements will be eligible for per capita municipal grants which I think are equal to any municipality that exists now in Alberta. And also the matching grant program, the two for one and the one for one as the years go by, and the future development fund: I think these have been forgotten in terms of looking at all the principles of this Bill.

With that, Mr. Speaker, I recommend second reading of Bill 35.

MR. SPEAKER: The hon. Member for Lesser Slave Lake has moved second reading of Bill 35, Metis Settlement Act. Those in favour, please say aye.

HON. MEMBERS: Aye.

MR. SPEAKER: Opposed, please say no. Motion carries.

[Several members rose calling for a division. The division bell was rung]

[Eight minutes having elapsed, the House divided]

For the motion:

Betkowski	Fjordbotten	Oldring
Black	Fowler	Orman
Bogle	Fox	Pashak
Bradley	Gesell	Paszkowski
Brassard	Gogo	Payne
Calahasen	Hawkesworth	Rostad
Cardinal	Hewes	Schumacher
Cherry	Hyland	Shrake
Chumir	Isley	Sigurdson
Clegg	Johnston	Tannas
Day	Laing, B.	Taylor
Doyle	Laing, M.	Thurber
Drobot	Lund	West
Elliott	McInnis	Woloshyn
Elzinga	Mjolsness	Zarusky
Evans		

Totals: Ayes – 46 Noes – 0

[Motion carried; Bill 35 read a second time]

Bill 36
Constitution of Alberta Amendment Act, 1990

MR. ROSTAD: Mr. Speaker, Bill 36, the Constitution of Alberta Amendment Act, 1990, provides the settlement land with the highest form of protection available to the province at this time, and it provides a commitment to continue to seek the entrenchment of the settlement lands in the Constitution of Canada.

An element of Bill 36 of importance to all the Metis in Alberta is that nothing in the legislative package of Bills 33, 34, 35, and 36 should be construed as affecting the aboriginal rights as defined in the Constitution Act, 1982.

Mr. Speaker, I believe this Bill, in concert with those presented by my colleagues, will be found even under the closest scrutiny to meet the requirements of Resolution 18. I further believe that if the strong partnership between the government of Alberta and the Metis settlements continues through and beyond the transition period, this made-in-Alberta approach is guaranteed to succeed.

I recommend second reading of Bill 36.

MR. SPEAKER: Calgary-Mountain View.

MR. HAWKESWORTH: Thank you, Mr. Speaker. There were . . . [interjections] I'm getting advice from other members in the Legislature, Mr. Speaker. I'd be interested to hear their comments if they wish to get in here.

The protection of this Bill is provided primarily under section 5 to the Metis Settlements Land Protection Act, the letters patent, and the structure of the Metis settlements general council. There are a number of ways that the provincial government could have elected to proceed, one of which would have been to amend section 35 of the Canadian Constitution, which was something that would have required the endorsement of all provinces. Or they could have proceeded with an amendment to the Constitution of Canada under section 43, which

would have required only the House of Commons and the Senate to agree and would have had the effect of making an amendment to the Constitution of Canada. What we have instead, Mr. Speaker, is, I guess, of the three options the one that's the weakest and the one that's been chosen as an interim measure, and that's an amendment to the Alberta Constitution.

Now, I've asked a couple of people if they could tell me what the Alberta Constitution was, never having read it myself, but what I understand it to be is sort of a mixture of written law and unwritten convention. There is no complete list of what constitutes that Constitution. It includes, among other things, the Alberta Act and the conventions that apply regarding the appointment of the Premier and cabinet, as well the Lieutenant Governor of Alberta Act.

So what we're in effect doing, Mr. Speaker, is adding another piece of legislation to that list, this Bill 36. But let's make it clear: it's not an Act to amend or an action leading to an amendment to the Constitution of Canada or to the Alberta Act. Nothing in it stands on its own as doing that. The Bill stands on its own and is not an application or a request or a motion or a resolution to request the federal House to make the changes to the Constitution of Canada or to make changes to the Alberta Act. It hasn't yet been made clear at all to me, Mr. Speaker, why that's not being done. Because if one were to look at the Alberta Metis Settlements Accord, the document was signed the first day of July 1989, and the package behind that signature of the Premier and the president of the Alberta Federation of Metis Settlements and others – the first document one finds in that package is a motion for a resolution to authorize an amendment to the Constitution of Canada. There's the resolution and the schedules attached thereto. So it's odd to me, having had that commitment given, why that's not directly in front of us tonight.

Now, the Bill itself makes reference under section 8 to a repeal section. This Act, the one in front of us, "may be repealed by the Legislature after the Metis settlement land is protected by the Constitution of Canada." But no reference is given in the legislation to how that's going to be accomplished, and no commitment's been given to when an application might be made, how it might be made, what the process is to be followed. Is it the intention of the minister that once this Bill is passed, the motion for a resolution will be brought to the Legislature this session, or will it be a year from now? Or is it something that's being postponed indefinitely now that Bill 36 is in front of us? This is what's unclear to me, and it's one that I find a bit odd given the commitment that has been previously made.

Another sort of odd section of the Act, and I suppose it's consequential or required given the model that the government has chosen, is that of binding future Legislatures. What it does is indicate that a future Assembly, if it is going to change this Bill, would have to follow a certain process outlined in the Bill. I guess if we wanted to look for a precedent here in Alberta, the Northwest Territories legislation regarding French and English and the requirement to publish legislation in both those languages was included in the past, and the Supreme Court ruled on that as being a situation that bound future Legislatures. So it's not unknown to Alberta to have this kind of requirement.

But what would seem to me to be more prudent to do, Mr. Speaker, is in the event – and we've discussed this frequently already this evening. I harp on it because it is an important principle, and I'm sure the Attorney General understands that: about aboriginal rights not being derogated or abrogated under any of this legislation. There is some speculation and thought

that eventually the Supreme Court is going to be faced with a necessity to decide where Metis people fall in terms of aboriginal rights. As the Attorney General mentioned earlier this evening, they may well decide that aboriginal rights as they affect Metis in Alberta have meaning under federal jurisdiction, in which case all of this legislation becomes ultra vires. In that possibility, what would now seem to me prudent for us as legislators is that if this legislation were enshrined either under the Alberta Act or the Constitution of Canada, this would not fall away simply by a Supreme Court ruling it ultra vires. In fact, what we would then be doing is sort of enshrining and giving greater strength to aboriginal claims for Metis people in this province. So I think this legislation is good so far as it goes, but I would like some commitment from the provincial Attorney General in terms of indicating how this is likely to be incorporated under the federal legislation and the federal Constitution, as has been promised previously.

One last point, Mr. Speaker, has to do with again making this Legislature subservient, in a way, to the Metis people regarding protection of their lands. As I say, it's a principle that I think is an important one. How is that principle going to apply to other Metis people who are not presently or will not be members of Metis settlements or fall under this legislation? I think it's an important principle that's being established here tonight, and one that I commend the government – I'll go out of my way in terms of all of these Bills to say tonight on this one that I think it in some ways may be the most significant of the package. One of the reasons we support it is that it, more than any of the others, may really firmly establish some principles here that govern not just Metis people on the settlements but, by so doing, add or extend some principles to Metis people that don't live on settlements. Making the Legislature subservient indicates to me the seriousness that the government is treating this particular matter with, and I think it provides some opportunities and some protections here that really are unique in Canada. I think the heart of the package that's being presented to us really provides some opportunities for Metis people that haven't existed until now.

MR. SPEAKER: The Attorney General, in summation.

MR. ROSTAD: I would like to point out, as I did in my opening remarks, that this is the highest protection we can give at present in our Alberta Constitution. We have made a

commitment in Resolution 18, a unanimous resolution of this Assembly, that the Alberta Act, which is part of the Canadian Constitution, would be amended. We have approached the federal government under section 43 asking that this being a matter that relates to Alberta and Canada only, we amend it through our Assembly and the House. They have some debate as to whether we can do that and suggest we have to go under 38, which is the seven and 50 formula, which frankly is not a desire of the Metis people that we proceed that way. They're afraid for what might happen in the other Assemblies with their brethren and other governments because they aren't ready to move as we have moved in Alberta with the Metis people to give them their due and then to protect it in the Constitution.

That commitment is here unanimously by the Assembly, and I find it very, very vexatious and specious that the member would continually nitpick on this side of the fence and then hop over on this side of the fence to try to satisfy those on the settlements and then some of the people who don't agree. Of course, it isn't unanimity in any activity that's being brought forward, but he should make his stand strongly. To think that section 35 of the Constitution would be an amendment, which, of course, is way beyond the powers of this Assembly and affects aboriginal rights, is preposterous to even think that it would be possible. We have made that commitment in Bill 36 together with the Metis people again, together after consultation made a commitment to give it the best protection we can in our Constitution. Whether the Constitution is one Act or whether it's a number of conventions and a number of Acts is irrelevant. The point is it's the Constitution of Alberta, and it's a pleasure for me to recommend second reading of this Bill which does give that protection to the Metis.

[Motion carried; Bill 36 read a second time]

MR. SPEAKER: The Deputy Government House Leader.

MR. GOGO: Thank you, Mr. Speaker. By way of information, although it may appear we have covered committee stage on some of these Bills, the intent tomorrow is for the government to call second reading of 28 and 42 and then deal with Committee of the Whole with most of the Bills on the Order Paper.

[At 10:33 p.m. the House adjourned to Wednesday at 2:30 p.m.]