Legislative Assembly of Alberta

Title: **Monday, June 11, 1990 8:00 p.m.**

Date: 90/06/11

[The Committee of the Whole met at 8 p.m.]

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

[Mr. Schumacher in the Chair]

MR. CHAIRMAN: Order please. It is now 8 o'clock, and the Committee of the Whole is going to be considering certain Bills.

Bill 55
International Conventions Implementation Act

MR. CHAIRMAN: Are there any comments, questions, or amendments to be offered with respect to this Bill? Does the hon. the Attorney General wish to say anything with regard to Bill 55, or is the committee ready for the question?

HON. MEMBERS: Question.

[The sections of Bill 55 agreed to]

[Title and preamble agreed to]

MR. ROSTAD: I move that Bill 55 be reported.

[Motion carried]

Bill 56
Gratuitous Passengers and Interspousal Tort Immunity Statutes Amendment Act

MR. CHAIRMAN: Is the committee ready for the question?

HON. MEMBERS: Question.

[The sections of Bill 56 agreed to]

[Title and preamble agreed to]

MR. ROSTAD: Mr. Chairman, I move that Bill 56, Gratuitous Passengers and Interspousal Tort Immunity Statues Amendment Act be reported.

[Motion carried]

Bill 19
Financial Consumers Act

MR. ANDERSON: Mr. Chairman, with respect to this Bill the House has before it a series of amendments. Before proceeding to specifically address those amendments, I would like to inform the House that the Bill was introduced here on May 1, as members know. At that time, we asked organizations and interested parties to give us a response with respect to the Bill, it being a new Bill, the first of its kind, and one that Albertans by and large would be interested in. Since that time we've received a considerable amount of input with respect to the Bill from organizations, industry groups, and some individuals, including the hon. Member for Edmonton-Strathcona. I appreciate all of the recommendations that have come. Those have been reviewed carefully and discussed with the organizations that have made suggestions, and before the committee tonight are a series of amendments.

I should mention once again to committee members that the Bill is intended to be passed, if that be the will of the House, this sitting and then held in terms of proclamation until the regulations accompanying it can be worked out with industry groups and consumer organizations. We estimate that that may take six months or perhaps a little longer. There will be a couple of sections of the Bill which would take even longer than that. The section regarding financial planning – there are some members who have expressed interest in that section, and we have worked with organizations regarding that – we will need considerable time to put into effect, as we will with the arbitration section and the plain language section. Both of those will require not just regulations dealing with them but also time for industry to adapt to the changes that have been suggested in the Bill.

With respect to the specific amendments before the committee this evening, most of the amendments are of a clarifying nature; in other words, designed to make more clear this particular Bill or to deal with a circumstance that may have been left out in the initial drafting or to try and give some comfort to organizations and individuals who have expressed concern with respect to them.

I would be happy to address specific questions regarding the amendments proposed, but I would like to draw to the committee's attention a couple of those that are more important, particularly the change to section 7, where we are asking that "is to be taken into account" be taken out and "can be considered" replace that phrase. That is the consumer responsibility section. If I remember correctly, the Member for Edmonton-Strathcona, the Member for Edmonton-Kingsway, and the Member for Calgary-Buffalo raised some concern about the application of the consumer responsibility section. In reviewing it, we continue to believe that that section is an important one. However, we feel the points that were made regarding the individuals who might invest under this Act, who may not have full information or in some other way not be in a position to carry out the specific consumer responsibilities – we gave that the consideration it was due and the benefit of the doubt and are therefore now allowing those sections to be discretionary on. the part of the arbitrator or the court which a consumer may choose to deal with redress or potential redress of a circumstance related to the Act. So that's an important change that committee members will note.

There are some sections, such as section 8, that are rewritten for clarity, which have been discussed, as I mentioned, with industry and consumer groups. Those merely allow for more clarification.

The other particularly important section would be found in 21.1 of the Bill. In that one we take out of the model arbitration clause of the Bill a section that says that the parties should try and resolve disputes between themselves before proceeding through the process and, at the request of some who have made suggestions, have put it up front in the Bill so that that is the first step individuals and organizations go through before they in fact use the option of arbitration or the court system.

The other very important section – there are really two that refer to the same circumstance, and those are sections 22 and 25(1). In both of those the Member for Calgary-Buffalo made the point that we were insisting that consumers go through the

arbitration process, and he mentioned that that could have constitutional questions.

MR. McEACHERN: A point of order, Mr. Chairman.

MR. CHAIRMAN: The Member for Edmonton-Kingsway is rising on a point order.

MR. McEACHERN: Well, perhaps rather a point of procedure. I'm wondering if we couldn't sort of divide this Bill into sections and take it not one amendment at a time. I realize that there are a lot of very small amendments and you've already covered a great deal of them, but it's going to be a little hard to hold this many small amendments in one's head at one time and not lose them in the shuffle. Could we sort of take it by sections or divisions? Like, on page 2, if we sort of stop at L there and deal with those amendments, and then go to the next section and deal with those, at least it won't give us two and a half pages of minute amendments to try and remember all of the comments you might like to make on them. If that would be acceptable to the minister, I would find that a little easier to handle.

MR. CHAIRMAN: Well, the Chair has to say, though, that we've had no notice of any other amendments than those being proposed by the minister. The Chair feels he was just trying to give an overview of . . .

MR. WRIGHT: We certainly handed in our amendments to the Chair, and I have them for distribution here anyway. There are other amendments to be considered.

MR. CHAIRMAN: Well, as far as the order is concerned, though, we will be dealing with the government amendments first and then we'll be proceeding to other amendments. The Chair's comments still apply. The Chair understood that the minister was trying to give an overview of what he was proposing, and then I suppose we will consider the amendments as they arise.

MR. ANDERSON: Mr. Chairman, I'm of course pleased to deal with the amendments as the committee sees fit. As I mentioned at the beginning of my remarks, I feel that the majority of the amendments proposed by the government are for clarification purposes. Members may want to ask specific questions or make specific proposals related to them, but there are really three areas that are of prime importance. I've mentioned two of those and was just beginning to address the third, and that is really the option that's given in 22(1) and 25(1) for consumers who may feel they need redress to go directly to the small claims court, the courts, or to arbitration, depending on their choice. That speaks to concerns raised by the members for Calgary-Buffalo, Edmonton-Kingsway, and Edmonton-Strathcona.

Mr. Chairman, I would like to thank the Member for Edmonton-Strathcona for his long-standing interest in the Bill itself and for giving me a copy of at least the amendments that he originally thought should be considered. I would draw to his attention, in terms of suggestions related to the consumer responsibility section, the portion I identified regarding the opportunity for the arbitrator or the court system to take into account that I think speaks to some of the concerns he had in that regard. I certainly don't take the words that the member suggested, but they do, I think, deal in part with that.

Some of the other sections that were suggested by the hon. member – perhaps if he's proposing amendments, I could leave my remarks to that time – I believe can be dealt with through the regulation-making ability of the Bill. I might say that because the Bill has not been tested in any respect at this point in time because we have to work out a lot of the different dimensions that the Bill will create or speak to, I have some reluctance to put in firm writing aspects that can't be worked through with industry and consumer groups. So I would prefer to leave some of those to regulation-making sections as opposed to specifically identifying them in the Bill itself, but I do appreciate the member's interest, indeed his advocacy for parts of this type of legislation in previous years, and for the overall approach to it in plain language format.

Mr. Chairman, those are my specific comments with regards to the government amendments that are before you. Once more, I would be happy to respond to members' remarks.

MR. CHAIRMAN: Is it the wish of the committee to deal with the amendments proposed by the hon. minister before proceeding with subsequent amendments?

HON. MEMBERS: Agreed.

MR. CHAIRMAN: The hon. Member for Edmonton-Strathcona.

MR. WRIGHT: Yes, subject to this consideration: there will be competing amendments on some of the same sections; perhaps when I speak to the government amendments, my amendments could also be distributed and the government amendments considered if I so choose to refer to my own particular sections to see what we're dealing with. So perhaps I can ask the pages to distribute my amendments now too.

MR. CHAIRMAN: That would be perfectly in order, hon. member.

The Chair assumes it would be agreeable to the committee that we can start discussion on A of the government amendments, if there is any, while this distribution is taking place.

Are there any comments on A, relating to an amendment to section l(l)(c)?

HON. MEMBERS: Question.

[Motion on amendment A carried]

MR. CHAIRMAN: B: section 2(i). Any comments or questions on that proposal?

HON. MEMBERS: Question.

[Motion on amendment B carried]

MR. CHAIRMAN: C: section 4(b). Are there any comments or questions relating to that amendment? Is the committee ready for the question?

HON. MEMBERS: Question.

[Motion on amendment C carried]

MR. CHAIRMAN: D: section 7. The hon. Member for Edmonton-Kingsway.

MR. McEACHERN: Yes, Mr. Chairman. I would just like to say that although I find the amendment itself acceptable, I don't find it totally adequate. Sections 5 through 7, on page 6, come very close to blaming the victim if something goes wrong, and although the minister's change to section 7 at the bottom of the page does make it somewhat better, if members would care to look at the wording there, it says:

> Failure by a consumer to fulfill the responsibilities referred to in this Division is to be taken into account in assessing or apportioning damages in claims for loss under this Act.

"Is to be taken into account" is now to be changed to "can be considered," and so now reads "responsibilities referred to in this Division can be considered." Now, that does leave it up to the discretion, I guess, of the arbitrator to decide whether or not it's appropriate, but he's not given any guidance.

So it would seem to me that what is needed here is to go back to section 5 and put something in there that would indicate that the arbitrator should have some guidelines on when he should or should not take into account whether the consumer actually asked the right questions or not. There are none; he's sort of still left to use his own judgment without any guidelines. The Member for Edmonton-Strathcona did suggest to me some wording we could use, and I don't know if he now – do you have an amendment?

AN HON. MEMBER: Yes, it's being passed around now.

MR. McEACHERN: Okay. I guess there's nothing wrong with accepting this amendment for section 7, but I would like the members to know that we think this whole section from 5 to 7 should be strengthened with some guidelines for the arbitrator and that we will be moving an amendment in that line. I think that while we're on this section, now would be the time to do that rather than go on through and then come back.

MR. CHAIRMAN: Are there any further comments? Questions?

MR. CHUMIR: I just wanted to say, Mr. Chairman, that I'm very pleased to see that the minister is responsive, listening to comments and criticisms in the House. I'm delighted to see that some change has been made, and I must say that I find it to be an improvement to what was there before. However, as I've mentioned to the minister in personal discussion and in this House, I find the whole concept of a consumer's duty vis-à-vis dealing with a professional who is supposed to have expertise to be a leap beyond the norm. I think that that is probably ill-conceived in concept, and no amount of patching it up will really remedy it, but it looks like we're going to be proceeding with this concept. It's better than it was . . .

MR. CHAIRMAN: Order please. I'm not trying to intentionally interrupt the hon. member, but the background noise is very, very high in committee this evening.

MR. CHUMIR: I'm surprised that they're not all mesmerized with this important subject matter and scintillating address.

In any event, it's better than it was, and it looks like we'll just have to wait and see how it works. I don't have a specific amendment to these provisions because I wouldn't have them in the legislation itself, and I've explained why. My theory is to the origins and why they're so wrong-minded, and that is basically because the government has looked at it from the point of view of its responsibility in the Principal affair. It has looked at it from the point of view of a third-party insurer and has said: "The person we've insured is negligent. Why, should we be responsible?" But vis-a-vis two professionals, I don't think this would be appropriate for a client dealing with a lawyer, notwithstanding it is true that there should be duties vested in investors in a general sense for their own responsibility. I think that's an element of education, and I don't think it should be a function of their dealings and their liabilities in dealing with professionals.

MR. WRIGHT: Mr. Chairman, I do appreciate sincerely, the attempts of the minister to do what's right with this Bill without any political considerations: just seeing what's best for people in general. Therefore, I'm sorry to say that I find the approach on section 7 to be wrongheaded. What is being done is an acknowledgment that there are shortfalls in the wording of some other sections in this part, and I would hazard a guess that the shortfall is perhaps in section 5 – I believe it to be in section 5, but particularly section 8.

Now, section 5: the objection there, Mr. Chairman, is that it's not clear whether there's a shifting onus on the would-be investor depending on whether the investor is sophisticated or not, and section 8, more important, Mr. Chairman, where duties are imposed upon the consumer; that is to say, the ordinary citizen has duties imposed on him.

MR. CHAIRMAN: Order please. Order in the committee, please. This *is* really getting to be too much.

MR. WRIGHT: My voice isn't quite a strong as it was a couple of months ago, Mr. Chairman.

Section 8 is the key section that requires the consumer, the ordinary citizen, when he or she goes to a financial planner or other supplier of advice for financial goods – "financial product" is the term used – to tell them all about it, and if they don't tell them all about it, then they could be in trouble, irrespective of the sophistication and so on of the particular consumer.

So instead of altering the wording that imposes that duty upon the citizen, the minister says, well, okay; it doesn't have to be "taken into account"; it just "can be considered." Surely the better approach is to leave it as it is – "is to be taken into account" – but describe the duty better. And if hon. members would care to look at the proposed amendment to section 8 that is now before them, they will see what I mean. Section 8, which I think is the main section that section 7 refers to in saying that the responsibilities "can be considered," the section that imposes the duty upon the citizen, you see, says:

> A supplier, agent or financial planner must give appropriate advice . . . when the consumer tells the supplier . . .
> (a) why the consumer needs the advice, or
> (b) what purpose the consumer intends to achieve by investing in a named financial product.

The duty does not arise, in other words, until the citizen tells the seller of the product or the would-be adviser what it's all about. But the citizen may not be smart enough to understand quite what they want. Maybe they don't say anything, or they just say, "I would like, please, to buy an income averaging annuity" because they're reading off a piece of paper they've been given, and it's the last thing they need. Now, providing the financial planner or the seller of the product just keeps his or her mouth shut, then under the wording of section 8, they cannot be criticized.

So I believe that we should leave section 7 as it is and alter section 8, and section 5, too, for another reason, and put the

duty where it ought to be – namely, on the provider of the financial product – and require that provider to ask what it is the consumer wants and to ask why, if they're asking for a named financial product, the consumer wants that named financial product, which may be quite inappropriate to their real needs, and then advise or sell accordingly. At present it still is the case that if the consumer is unsophisticated and is mixed up or doesn't really know what they're after but just happens to say, "Well, I want this particular product," then under the wording here the seller is just off the hook if it's supplied, and it's quite wrong, quite inapt to the purpose that the consumer really wants.

So on section 8 I say the onus should be reversed, and it should read like this:

> Before advising a consumer, supplier, agent or financial planner must ask a consumer
> (a) why the consumer [wants the product or] needs advice . . .
> and must give advice or propose a named appropriate financial product.

Then if the wrong thing is advised or the wrong product in all the circumstances is given or sold to the consumer, the supplier of this will have to bear the consequences of his or her negligence. It should be taken into account then, you see; it shouldn't be optional, as this now makes it.

So what I am saying, in short, is that the patching job, the remedy that the minister is trying to make to this problem here is the wrong way. They're saying that the wrong recipe doesn't have to be paid attention to when they should be correcting the recipe and saying it has to be paid attention to. So I speak against the government amendment to section 7, and the reasons will more fully appear when our amendments to sections 5 and 8 are appreciated.

MR. CHAIRMAN: The hon. Member for Edmonton-Kingsway.

MR. McEACHERN: Yes. I would like to add to that. I think my colleague made appropriate comments about sections 7 and 8, but I would like to also point out that 5(1) is really the crux of the matter as far as I'm concerned, because 5(1) is the start of this section about the consumer's responsibility. If you're going to truly get at the problem – while the problems in sections 7 and 8 are as my colleague from Edmonton-Strathcona said – nonetheless, the crux of the matter is to in some way distinguish one consumer from another, and that is not done in any of those sections. It may be all very well for the seller of a product to have to ask the customer – and I think that's a good idea – "Just why do you want this and what do you want," and ask for some explanations in case the person doesn't really know how to go about buying a particular financial product, but the crux of the matter is still 5(1), and I think the amendment suggested by my colleague from Edmonton-Strathcona on this paper illustrates that point.

He would suggest adding in terms of reference to the consumer – I won't read the whole amendment exactly because it's a fairly long one there; that is, if I read all of 5(1) – the expression "having regard to all the circumstances of the particular consumer and the transaction" after "consumer knows or." So in the middle of that sentence would be added those words "having regard to all the circumstances of the particular consumer," which would allow, then, for a consumer you might expect to be sophisticated, like, say, a lawyer from Calgary-Buffalo, who should know what to ask, and another customer who might not know what to ask. I think that expression would help with that problem, whereas the suggested amendments for 7 and 8 do not particularly help with that problem.

MR. ANDERSON: Mr. Chairman, just with respect to the comments made by the three hon. members who have spoken: Calgary-Buffalo, Edmonton-Kingsway, and Edmonton-Strathcona. First, with respect to Edmonton-Kingsway. His point is well made that in terms of arbitration provisions there are not in fact detailed parameters on how an arbitrator would proceed through those. It is intended that with the Arbitration and Mediation Society and other consultation that that arbitration clause will, in fact, be worked out over the next year or so, and I've said previously and would repeat tonight that it'll probably be into 1992 before the arbitration clause can take place. So his point is well taken. I believe that we will cover it in the future, and if he has specific thoughts in that regard, we'd appreciate any advice we can get.

Regarding the comments by the Member for Calgary-Buffalo, apparently we have a fairly fundamental difference of opinion there, though I do think our amendment speaks to any concerns that might arise from it. However, we do believe that in this new legislation, with new very significant responsibilities on the sellers of financial products and others dealing with financial institutions, it is important that that balance be there, that for education purposes and for basic understanding as well as common sense, there be responsibilities on the part of the consumer and the seller. Now, the amendment that's before you clearly indicates that the arbitrator or the court process can in fact determine whether or not they will take that into consideration. I ask members to consider that as well in light of other sections of the Act that specifically state that no one person could be absolved of any guilt with respect to this Act because another fails to fulfill a responsibility: specifically, emphatically stated in the Bill, as is the section that deals with unfair practices, that a person cannot take advantage of a consumer; that, too, is in the Bill.

With respect to the Member for Edmonton-Strathcona's suggestion and the amendment, indeed when he sent that to us, it was one we considered carefully. That is an alternative approach. I wouldn't agree with him that there are basic problems in sections 5 or 8, but I did agree that there was a need to clarify. One problem with using this approach is that because we cast the net so wide and in fact bank tellers who would be indeed setting up interest-bearing accounts would have to comply with the basic provisions of the Bill, it would not, at least in our current system of financial institutions, be reasonable to expect that all of those would be able to ask a series of questions of somebody coming in for that basic financial product, and at least the way we interpret it, that's the way section 8 could be applied. It was for that reason that we decided to proceed in the other way, which is allowing an arbitrator or a court to judge consumer responsibility, depending on the specific circumstances. As I mentioned before, that would be identified further, at least the arbitration process, as we define that and go through implementing the various stages of this unique piece of legislation, which has not been put in place in this form or anything like it anywhere in the nation.

MR. WRIGHT: On that point, Mr. Chairman, I'm a bit puzzled because on the amendment we've just made, in 2(i)(ii), we've struck out "by a bank, treasury branch, credit union, trust company" and substituted "on cash balances by a treasury branch, credit union, trust company, bank." So is that where the

minister is saying that the teller would still have to provide advice when taking in a customer's request for an interest-bearing account?

MR. ANDERSON: Mr. Chairman, I was referring to the hon. member's recommendation regarding section 8, where it's indicated that before advising a consumer, a "supplier, agent or financial planner": a supplier or agent might well fall into the category of the more general distribution of interest-bearing accounts, as I indicated, and that's our concern with that general approach. The ability to define that at this point was more easily carried out by amendment to section 7, as I indicated.

MR. WRIGHT: Okay. Well, if I can be heard again, Mr. Chairman, I appreciate that, but surely that's, as it were, throwing the baby out with the bathwater. It is a legitimate concern, surely, but to protect bank tellers on matters like this, which is certainly a worthy object, you are taking protection away from, let's say, Hutterites who have been somehow persuaded that personal promissory notes for $5 million are a good deal. Surely there can be specific wording to deal with the class of cases where – I mean, the ordinary person wouldn't expect sophisticated advice from a bank teller. Surely we can be clever and more discriminating in our definitions to achieve the purpose that the minister is describing there than this blanket sort of amendment.

MR. ANDERSON: Well, very briefly, Mr. Chairman, I appreciate the member's zealousness in wanting to protect the investor, which indeed this Bill does. Again, I would just remind the member that this is a first of its kind. Our system has to adapt to this kind of approach, and to try and cover any more than we're currently doing in this one would, I believe, stretch the ability of people in the industry and the general public to deal with that. Perhaps there can be some consideration in the future.

I would make one more point, and that is that when the member speaks of promissory notes, for example, that's covered under the Securities Act. There are other financial instruments that we would cover in different ways under the Insurance Act or mutual funds in certain ways with securities legislation, but with regards to this Act, I believe we have gone a considerable way and, frankly, as far as we can take the protection at this point. I would again also indicate that philosophically we do believe consumers and industry both have to have some responsibility, recognizing the different perspectives that they come from and the different degrees of knowledge that are there. Still, in our complex, fast-moving financial community we have to have all parties trying to be involved in these transactions.

MR. WRIGHT: Am I right, Mr. Chairman, that the minister is telling us that large lenders excluded from the provisions of our Securities Act as being sophisticated – what's the expression? – people who are lending in excess of half a million dollars, or whatever the number was, that fall outside the provisions of the Securities Act because these are such large numbers, are not protected by this Act?

MR. ANDERSON: Mr. Chairman, I was indicating that in fact there are other Acts that deal with more complex provisions of specific kinds of financial investments. This Act deals with some basic purchases of the most commonly used financial products.

MR. McEACHERN: The question was more specific; it was fairly specific. There was under the old Securities Act an exemption for those people who were willing to put in something like $97,000 or more. I'm not sure whether the new Securities Act brings those into coverage now. If it doesn't, then my colleague was really asking the question: do you mean to say that this Act doesn't catch those? You're very specifically saying that the sale of those kinds of investments are not caught by this Act?

MR. ANDERSON: That's right, Mr. Chairman. With respect to this Act it deals with basic purchase of financial instruments, but those identified specifically as part of the exempt market in the Securities Act are still Securities Act responsibilities.

MR. CHAIRMAN: The hon. Member for Edmonton-Kingsway.

MR. McEACHERN: Yes. I just wanted to go back to the point that I was sort of chewing on a bit, if I might. I look at section 26 on page 14, and I read:

> 26 (1) A court or an arbitrator must consider . . .
>
> (b) the degree to which each party has failed to comply with this Act,

which is a pretty serious sort of statement that the consumer is on the hook just as much in some ways as the seller or the financial planner. Given that I think the changes you're making in 7 and 8, apart from having the difficulties expressed by the Member for Edmonton-Strathcona, also do not deal with that fundamental problem of treating one consumer differently than another, I think the minister should really seriously consider that, whatever he decides to do with the amendments for 7 and 8, he should look back at our amendment of section 5 and put in that expression which we suggest in our amendment, which will be formally proposed later, to give those arbitrators some guidelines. It's all very well to say that down the road, you know, the regulations or future changes may do that, but there's no reason we shouldn't do that now. There may be quite a difference between one person and another person as consumers asking to buy a product, and that should be taken into account because of the very straightforward and strong instruction to the arbitrator in 26(l)(b). I really find it hard to believe that we have to wait for later or anything. I think the amendment suggested by the Member for Edmonton-Strathcona in section 5(1) will at least help to some extent in that regard.

MR. WRIGHT: I'm sorry to – I guess this is what committee is all about really: getting into the reasons for amendments. So I don't need to apologize really.

Now, that's raised an interesting point. Which will now govern, section 26(b), "the degree to which each party has failed to comply with this Act," or section 7 as is proposed to be amended?

MR. ANDERSON: Mr. Chairman, I don't see the conflict. Section 26(b) says, "the degree to which each party has failed to comply with this Act," but the Act, as the proposed amendment indicates, would say that the consumer responsibilities portions can be taken into account. So the degree of compliance would be judged in relation to that 26(b).

Again, too, I would draw members' attention to 38, which indicates that one person is not relieved and the section, I think it's 16, which deals with prohibited practices, which I believe protects the consumer in that respect. I can't see any interpreta-

tion frankly which would jeopardize the consumer before a reasonable and responsible arbiter or judge.

MR. McEACHERN: I didn't quite hear the section number the minister mentioned before 16, so I would ask him to re-reference that so I can look it up.

Before I sit down, just a comment then. It does seem to me that there is a conflict. Section 26(1) says that the arbitrator "must consider" the degree to which each party has complied. Then, 7 says that they can consider but have the option not to. So it doesn't seem to me that there's really much option in 7, that 26 would tell you which option you have to take in 7. That's why I think 7 does not deal with my concern and why I'm suggesting the amendment for 5(1) about allowing consideration for different kinds of customers.

MR. WRIGHT: Mr. Chairman, I think the short point is that perhaps if we're going to amend section 7 as proposed, in section 26 to make it quite clear there should be some expression such as: and subject to the provisions of section 7. Then it's clear, because on the face of it there is a bit of a conflict there. The minister might consider that.

MR. ANDERSON: Mr. Chairman, I see the point that's made, though I wouldn't agree that there's a conflict. However, I do suspect that because this is a new Act, we will have to make changes as we go into the initial stages of it next year, and we'll certainly take that into consideration when we review that once more. We did try and make sure that one section applied correctly to another, and I believe I've done that, but thank you for the recommendation.

MR. McEACHERN: And the other section number?

MR. ANDERSON: Oh, the hon. member wanted the references. I was referring once again, Mr. Chairman, to 16, on prohibited business practices, and 38, on failure not permitting avoidance.

[Motion on amendment D carried]

MR. McEACHERN: Are we doing D?

MR. CHAIRMAN: We did D, hon. member. That was section 7.

The Chair doesn't want to create any more complications than necessary, so is there a concern or question that any hon. member has relating to this batch of government amendments? [interjection] The minister moved the whole works.

MR. WRIGHT: Yes. All right.

MR. CHAIRMAN: So they're all before, but the next one . . .

MR. WRIGHT: Well, I guess you've judged the sentiment of the House, especially in that last vote, Mr. Chairman. It was very quick on your part.

Section E is what we're dealing with now, is it?

MR. CHAIRMAN: Well, that's the next available one.

MR. WRIGHT: Right. Does the minister want to make any remarks about the amendment to section 8? [interjection] Yes, all right.

Again, Mr. Chairman, the problem here is that the onus is entirely on the consumer in this section. Now, there obviously is an onus on the consumer, when he or she is asked a question, to answer correctly, but there is not, it seems to me, an equality of sophistication or knowledge between the average consumer – or some consumers anyway; it doesn't need to be the average consumer – and the supplier about these matters. One is skilled and one usually not, and the consumer doesn't know what he or she is about much of the time, just knows they've been told to do something about it. Again, if he or she is silent or just asks for something, then the supplier is off the hook. So that's why I suggest that hon. members consider how the onus can be shifted, have a look, if they please, at section D in my proposed amendment, and they will see how the thing can be turned around and end up better, in my respectful submission, than this proposed amendment.

Perhaps the appropriate time is to read it now, Mr. Chairman. This section 8 should read in section D, I repeat, on my paper:

> Before advising a consumer, supplier, agent, or financial planner must ask a consumer
> (a) why the consumer needs advice, and
> (b) what purpose the consumer intends to achieve by investing, and must give advice or propose a named financial product to the consumer that is appropriate in light of the consumer's response.

So the onus there is where it ought to be: on the supplier.

Mr. Chairman, the Bar Association in its critique of this Bill expressed the same reservations, I understand, about it, and I submit that that is a superior form for the section 8.

MR. CHAIRMAN: Question?

MR. WRIGHT: [Inaudible] point of order answered by you. Yet I believe that the amendment proposed by the government is better than what's there at present. Is there any contradiction between – well, I guess there's not – allowing this to go forward and then amending it again with my amendments?

MR. CHAIRMAN: The Chair feels that when these sets of amendments are complete, there's really no fundamental reason why the hon. Member for Edmonton-Strathcona's amendments cannot be presented.

MR. WRIGHT: Fine.

[Motion on amendment E carried]

MR. CHAIRMAN: Any further comments, questions regarding this bundle of government amendments?

HON. MEMBERS: Question.

MR. CHAIRMAN: Is the committee ready for the question, then, on the balance?

[Motion on amendments F through U carried]

MR. CHAIRMAN: The hon. Member for Edmonton-Strathcona now has some amendments to bring before the committee. Edmonton-Strathcona.

MR. WRIGHT: Thank you, Mr. Chairman. The definition section is first treated in my amendment. Section 2(f) of the Bill deals with the definition of financial planner, and if we look at it, it simply says, "means a person referred to in section 21." Section 21, Mr. Chairman, defines financial planner as

a person who is licensed to do financial planning under regulations made under the Licensing of Trades and Businesses Act.

Now, how about people who hold themselves out as financial planners? Are they off the hook simply because they have not registered themselves under the Licensing of Trades and Businesses Act? Why should they be free of the duties that are so very correctly imposed by this Act? If you or I go out and hold ourselves out, wrongly it may be, as people we are not, then of course there are existing remedies at law, I suppose. But why should that person be in a stronger position than people who've obeyed the law and at least registered as being what they are, who then have additional duties? It doesn't seem right to me. So in the first amendment I propose that financial planner should mean:

A person who holds himself out [himself including herself of course] as being engaged in financial planning and includes a person licensed to do Financial planning under the regulations made under the Licensing of Trades and Businesses Act

So we have two sorts of people: those who hold themselves out, and those who, whether they hold themselves out or not, are in fact licensed to do the planning under the Licensing of Trades and Businesses Act. I would very much like to hear from the minister as to why that is not a reasonable amendment.

MR. ANDERSON: Mr. Chairman, with respect to the area of financial planning, it's one of the most difficult that we've tried to grapple with in the development of this Act. We did have working over the past year and a half a task force headed by Meredith DeGroat out of Calgary and representative of the various groups and organizations that might be considered to be doing financial planning, as well as representation from the Consumers' Association. The end result in our deliberations, as well as those generally across the country which have tried to deal with this issue, is to conclude that at this point in time we don't have the mechanism nor can we see putting in place the ability to restrict the function of financial planning. The section that's before you might have that ability in terms of its definition, but its primary purpose is to at least allow the consumer to know that when they go to see somebody who has the title of financial planner, they have these ethics, these standards, these educational requirements. That basic requirement is included in the Act.

There's a good argument to be made for going further than that. I tell the hon. member and the committee frankly that to this point it seems that the administrative nightmare and the infringement into the variety of occupational groups without more considered development of those possibilities would probably not do as much good as harm with respect to the section.

So those would be my comments on, I suppose, both recommendations A and B that the member makes regarding financial planning. I would underline again my remarks from the beginning: even with the section we have on financial planning, it will still take us some time with the industry groups involved to define that title.

MR. WRIGHT: Mr. Chairman, I'm afraid I just don't follow the minister there. I mean, what extra work would it involve? We know who the financial planners are who register themselves under the Act. Really if they aren't registered, they aren't under it. But it seems to me that we're setting out a code here that's supposed to apply to help citizens be protected from sharks. Okay? Now, this reminds me so strongly of some of the defects of the Unfair Trade Practices Act, which exempts a number of people from its scope so that, in fact, we had all sellers of securities subject to fewer ethical rules than sellers of used cars. That was ridiculous. But they can still get out from under this Act, not be subject to the rules here at all, simply by refraining from registration.

It's not the case that the government has to police anything here. This isn't like the Securities Act; this is a code of conduct for those who come within its ambit. Of course, if there are complaints, then they have to be entertained, and perhaps that's what the minister is alluding to. Basically the setup is not for the government to do all sorts of things but for people to be able either to go to court and have something extra in the way of rules to back them up to what's there in the common law or to go to arbitration. It's still not a government involvement, and that's good. But to have such a blanket exemption of those who simply haven't registered under the Act really just tears the guts out of the Bill, it seems to me, Mr. Chairman, and that is a really, really serious defect of the whole thing, surely.

MR. ANDERSON: Mr. Chairman, once again I'd say to the member: "holds himself out" to do financial planning. What does that constitute? How do we define that? In what occupational groups would that be considered? Where does the development of a person's estate – I shouldn't use a legal example, because the hon. member would be more able than I to debate that one – in that context, where is financial planning, and when is it not financial planning? How does that apply to an individual who's doing your tax return at the end of a year? Is that financial planning? Is that not financial planning? Where do we define those? How do we police that and deal with that concept? It's not as easy a definition as one would hope it would be. That's been the conclusion of a considerable amount of work in that regard, both in this province and in other places. Perhaps in the future as we're evolving this, we may be able to narrow down that function more, and the group we have been involved with, industry and consumer representation that's dealing with the financial planning issue, may well be able to deal with that, so we have the regulation-making ability under this section. However, I think we would not be serving the potential success of the Bill well to add at this point that other, very broad net in terms of trying to determine what is someone who holds themselves out to be engaged in financial planning.

MR. WRIGHT: I just have some doubt whether the hon. gentleman is paying careful attention to the wording of the proposal. It doesn't speak of people who are financial planners. That is a very difficult definition to make. It's people who hold themselves out as financial planners, and let the tribunal that has to deal with it grapple with that one. There doesn't have to be a definition. There are dozens, hundreds, thousands perhaps, of laws on the books or in common law where the definition in the end is made in the case, because it's an impossible task to grapple in advance where there are hundreds of thousands of more or less different circumstances under which all the transactions of human life take place. So it's a common experience to have something which is indefinable at its very limits but you have a general idea at least of what constitutes it, and it's amazing how soon a working definition emerges from decided cases.

Here what we have to decide in each particular case is whether there has been a holding out, and that's not very difficult. Often the very words will be there. The minister himself said that we can't deal with everybody who just puts a

plate on their door, "financial planner." Why not? There's no definition there. The person himself or herself holds themselves out as that, and that's good enough. Of course, if they aren't doing financial planning at all and are mistaken, that doesn't mean they're caught by the Act, I suppose, if they didn't know what they were talking about. It would be really confused.

He mentioned lawyers. Excellent example. How about Mr. Petrasuk and the people that he defrauded? They could not get access to the assurance fund because it was ruled in many cases, in all the cases where it was clear, anyway, by the Law Society's inquiries that Mr. Petrasuk was acting as a financial planner or investor, a seller of products, as it were. He was not acting as a lawyer, so the hapless people who were defrauded were left to their own devices. Now, this wouldn't fix up the fact that the person has insurance or not, but it would sure help with the question of the rights, at any rate, and the wrongs, and perhaps it would slow down people in the same position, lawyers or not, before they blithely went ahead to supposedly help people with their investments. When they look at it and say, "Well, I don't have to bother about this because I'm not registered," it's a real travesty, I suggest, Mr. Chairman. I really haven't heard an answer from the minister on this, and I submit very strongly that before even this passing of the Act is dealt with, a second look be taken at this definition section.

MR. CHUMIR: Well, my friend has a point, as I listen to him. Section 21 refers to

> A financial planner is a person who is licensed to do financial planning under regulations made under the Licensing of Trades and Businesses Act.

I'm wondering whether the minister might advise: is that broad enough to encompass all individuals who do in fact hold themselves out? Because if those regulations are broad enough to encompass that or are intended to be broad enough to encompass that, then the only hiatus is whether or not a person has or has not become licensed. This section, then, could be remedied simply by referring to a financial planner being a person who is licensed or required to be licensed. As long as your regulations are broad enough to catch everybody, you would have a solution there.

MR. ANDERSON: Mr. Chairman, the Member for Calgary-Buffalo I think is quite right, that the regulations themselves could be broad enough to deal with the particular item under consideration. I believe, though – the member didn't seem to think so – that I answered the question in my previous one, again with the engaging in the practice of financial planning. I don't reject the member's concept. It does elude us as to how to implement it at this point in time.

I might also indicate one more point to the member and the committee, and that is that we want to ensure that in this area of financial planning we try and do it in conjunction with other provinces so that there is some common understanding as people seek financial products across boundaries, which is often the case. There is discussion that's taking place at an inter-governmental level through the various consumer and corporate affairs ministries and others. British Columbia is evolving theirs. Perhaps the furthest ahead in that regard would be the province of Quebec, which has moved considerable ways, and we are going to try and develop the regulations under this section along with those entities.

So I'm afraid, albeit very well intended, I can't support the amendment proposed this evening for those reasons.

MR. McEACHERN: Just to really be clear what the minister is saying here: when I as a consumer go to buy a product and I've got Mr. A and Mr. B that I'm choosing between and Mr. A is registered under the Licensing of Trades and Businesses Act but Mr. B is not – he's maybe got a half a year of accounting and dropped out of accounting school, but he's decided to go into business for himself and start selling financial products. Surely, if he holds himself out to be a financial planner and I end up going to him for whatever reason, through friends or something, and buy something from him, should he not have to live up to the provisions of this Act? What you're really saying by the way you've worded the definition of financial planner here is no, that he can take me for a ride and I've got no recourse, under this Act anyway, whatever other Acts there might be.

By the definitions of financial planner and then financial planning, because you quite rightly said that (f) and (g) are related here in terms of the Member for Edmonton-Strathcona's amendments, so long as he is preparing a financial plan for me or even advising me on part of my financial plan and is in any way, shape, or form taking some money from me for that advice – I mean, we're not talking here about a hot tip at the racetrack or something on the stock market that turns out to be a false tip. I'm not talking about that, and I'm not talking about a brother-in-law saying, "Oh, I think you should put some money into this, that, or the other thing, or you should sell your property." We're talking here about somebody who holds himself out as a financial planner and probably takes some money – in fact, I would assume takes some money – because of that advice he gives you. Yet if he isn't registered under the Licensing of Trades and Businesses Act, he doesn't have to comply, and I have no recourse under this Act for what he does. Whereas if he is an honest person and does register, then I do have recourse. I don't understand why you would want to leave that exemption when it would be as simple as section 2(f) and (g) amendments, as suggested by the member and colleague, to catch anybody who dares to take money and purport to be a financial planner.

MR. CHUMIR: Well, it's a similar point, but just to clarify and make sure we're on the same wave, I'm thinking of a situation who falls within the regulations and says: "Nuts. I'm not going to register. I'm not going to get my licence. I know I'm doing it, but I'm just not going to bother." Then a dispute arises and the individual is attempted to be brought under this Act, and the decision is no, you can't get that person even though they were supposed to be licensed because the section of the Act simply says a financial planner is only somebody who is properly licensed, not somebody who simply has to be licensed. It just seems to me that that doesn't make any sense at all, and I think there's obviously got to be an error in here somewhere, because I think the intention of the legislation is that it must encompass anybody who is required to obtain that licensing, whether or not they do or they don't. Certainly somebody can't benefit from their breach of the law, which is I think what we're saying here, and if the minister's got an airtight answer to that one, I'll be astonished. But perhaps . . .

MR. ANDERSON: Mr. Chairman, I have to say that I didn't understand the hon. member's last series of questions. I believe I understood what the Member for Edmonton-Kingsway was saying, and he was just not correct in terms of his evaluation of the section in that regard. Clearly, if a person is licensed under the trades and businesses Act to carry out financial planning, then they would be required to have those restrictions. An

individual who is in fact a financial planner under that definition would be licensed under that provision. Again, the details, the parameters, the extent of that area of responsibility is one that we have to work out with the industry to a considerable degree as we move through the evolution of this particular Act.

MR. WRIGHT: What the learned Member for Calgary-Buffalo was saying in a nutshell was that no one should be allowed to profit from their disobedience of the law in this example, where they should be registered and aren't. Yet that is exactly what this Act allows.

MR. ANDERSON: Mr. Chairman, it's now hit me what the Member for Calgary-Buffalo had indicated. Clearly the benefit of this section is that an individual consumer, through both our education programs and through general understanding of the circumstances, can say, "I will go to a person whom I know has these qualifications, these ethics, these standards, and that's the person licensed under the trades and businesses Act." That's the benefit of this legislation. A person can choose somebody as one chooses a chartered accountant to do particular things or one chooses a lawyer who is governed by legislation to do particular things. I mean, I can well go to Doug Main for my tax returns, but that's my choice to do so. However, if I want to be assured of his qualifications, then I have to look for those, and this allows for that on the part of the consumer.

MR. CHUMIR: I'm concerned with a situation in which I hold myself out as a financial planner. I say I'm a financial planner. Someone comes into my office and expects me to be a financial planner. I'm required to be registered under the Act, but I don't bother to register, and I provide the advice, and I breach the Act. The client comes in and says: "Well, I went to this person. He said he's a financial planner. He had this sign up that said 'financial planner.' I want to hold him responsible." The arbitrator looks at this provision and says: "Well, Chumir wasn't registered under the Act. He should have been registered. He held himself out, but he wasn't ethical enough to register under the Act. We have no jurisdiction to deal with the remedies under this Act."

Now, the only answer you might have is that, well, everybody who goes to see a financial planner, goes into a bank or wherever, has got to ask for the licence and not simply rely on the fact that they've said they're a financial planner. I don't think that's very reasonable, and it's so easily remedied simply by stating that it applies to anyone who is licensed or required to be licensed to do financial planning. So it seems to me to be such a basically simple and obvious point that I can't understand why the minister isn't doing nip-ups with an agreement on it. Because what else do you expect the consumer to do, other than he's got somebody who's holding themselves out as a financial planner?

MR. ANDERSON: Mr. Chairman, if the hon. member held himself out to be a financial planner under the Licensing of Trades and Businesses Act and was not, he would be contravening sections of the Act and would deal with the penalty clauses therein provided. The member, whether or not he was a financial planner under this section of the Act, would have to deal with the consumer in the manner identified under other sections; in other words, have a contract that's in understandable form, not take advantage of a consumer, give them basic information requirements, and all of those other provisions that are there in this particular Act. So while I see the direction that the member is going off on, this Act is an increased protection for a consumer. It's not a total protection. We don't have such a thing in this province or any other place that I'm aware of, but it is a considerable new protection in terms of the consumer being able to look for those individuals who are licensed under that particular Act.

MR. McEACHERN: Do I hear you right in saying that in my example where I said Mr. A was licensed and Mr. B was not and I went to Mr. B, I would still have the remedies of this Act available to me even though he was not registered under the Licensing of Trades and Businesses Act? That I could still expect him to fulfill all of these things, and if he didn't, I could take it to an arbitrator or a court and expect all these remedies? Oh, I didn't understand that the Bill would do that for me.

MR. ANDERSON: Yes, sir, Mr. Chairman, the provisions of the Act apply to anyone selling the financial product. So he can call himself the grand dragon of whatever, but if he's selling a financial product under this Act, he will have to deal with the provisions of the Act.

MR. CHAIRMAN: Any further comments on this amendment? Is the committee ready for the question?

HON. MEMBERS: Question.

MR. CHAIRMAN: All in favour, please say aye.

SOME HON. MEMBERS: Aye.

MR. CHAIRMAN: Opposed, please say no.

SOME HON. MEMBERS: No.

AN HON. MEMBER: Pretty close.

MR. CHAIRMAN: Pretty close.

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

[Eight minutes having elapsed, the House divided]

For the motion:

Bruseker	Laing, M.	Sigurdson
Chumir	McEachern	Taylor
Fox	Pashak	Wright
Hawkesworth	Roberts	

Against the motion:

Ady	Fjordbotten	Osterman
Anderson	Fowler	Paszkowski
Bogle	Hyland	Payne
Brassard	Klein	Rostad
Calahasen	Kowalski	Severtson
Cardinal	Laing, B.	Shrake
Cherry	Lund	Sparrow
Day	Main	Stewart
Elliott	McClellan	Tannas,
Evans	Mirosh	Thurber
Fischer	Moore	Zarusky

Totals: Ayes – 11 Noes – 33

[Motion on amendment lost]

MR. WRIGHT: Yes, in section B of the proposed amendment we move to what I with great respect identify as the next shortcoming in the definition section. Here, in the section as it stands, it defines financial planning as meaning:

> reviewing, analyzing or organizing personal financial information for the purpose of preparing a plan to manage a consumer's financial affairs.

Now, how about when one simply goes to a financial planner for advice, Mr. Chairman? There is no plan to be prepared. It's not intended that there be a plan prepared. You've gone for advice, maybe about some specific investment – just advice; no plan. Then it's not financial planning. Surely that's got to be another oversight.

I'll just make that perfectly plain. It's only financial planning if the information is provided for the purpose of preparing a plan to manage a consumer's financial affairs. So the financial planner can be perfectly well registered under the Licensing of Trades and Businesses Act, but he or she will still not be reached by this Act. Where is the sense in that? Can I be so ungenerous as to suppose that the industry has slipped something by the department here? Because surely we should be talking about the advice a financial planner is giving, irrespective of the purpose, but it's only if there is a plan in view. So the amendment simply corrects that loophole. It's a heck of a big loophole, Mr. Chairman:

> "financial planning" means reviewing, analyzing or organizing personal financial information for the purpose of
>
> (i) preparing a plan to manage, or
>
> (ii) otherwise advising on . . .

That's the nub of the amendment, (ii) here: "otherwise advising on a consumer's financial affairs."

I ask this committee: this is not a political matter at all; it's just plain common managerial sense to subscribe to the good sense of this amendment.

MR. ANDERSON: Mr. Chairman, my remarks would be similar to those made with respect to section A. It's indeed not a political matter; it's a matter of how far one can go in involving themselves in this industry at this point in time. With all sections of this Act we've put a new onus, new responsibility, on the financial industry. We may want to further define financial planning under the licensing of trades and businesses as we proceed through that, but to extend that net further at this juncture may create undue problems within the marketplace. So the remarks made on the previous section would apply.

MR. McEACHERN: Surely some of the same debate applies. What you're really saying is: if I go to somebody and purchase quite a large number of mutual funds, somehow that financial planning doesn't apply, and therefore this Bill doesn't apply. Or are you saying it's the same thing again? Because mutual funds are mentioned somewhere else in here, suddenly the Act applies in spite of the fact that this isn't a financial planner. Are you sure your specification of the various types of things that are sold or can be sold is adequate to cover the whole range? I mean, this covers the whole range in one little expression, "otherwise advising on a consumer's financial affairs." That automatically brings that person who is purporting to be a financial planner into the Act and therefore gives me the remedies of this Act.

You do list quite a number of the different financial products in this section 2, and you note at the end "an investment described in regulations," which allows you to add, I guess, in the regulations. But I'm wondering when we're going to see the regulations and how tight they're going to be and whether by including a listing you can cover them all when it would be so much easier just to do it the way my colleague from Edmonton-Strathcona has suggested.

MR. ANDERSON: Mr. Chairman, clearly we cannot . . . You know, this wide a net, "otherwise advising on a consumer's financial affairs", is a very broad definition. If I advise Don Sparrow to bet on horse number 2 in the races tomorrow, is that advising on his financial affairs? That is the kind of question that comes into play when you try and extend this section. The member appropriately indicated that we have the ability to deal with other investments under regulations, further involvement, and indeed under the licensing of trades and businesses section to deal with the definition of financial planner. I don't disagree with the concepts. Again, the ability to involve ourselves in all aspects of people's lives is limited, and should be. We are trying with this Act to get further than ever has been done by a government in this country. I believe that to that degree it is appropriate and wouldn't therefore support the amendment.

MR. WRIGHT: With the greatest respect, I must ask the minister in dealing with this not to set up straw men – i.e., figures that don't exist – and then knock them down. You can always do that. He is ignoring the wording of the amendment, which repeats exactly the wording of the section. It's not simply "otherwise advising on a consumer's financial affairs." That would be ridiculous. Of course that would be intrusion, advising Don Sparrow about horse racing. It's prefaced by:

> "financial planning" means reviewing, analyzing or organizing personal financial information for the purpose of
>
> (i) preparing a plan to manage, or
>
> (ii) otherwise advising on . . .

But it must be a deliberate reviewing or analyzing or organizing a person's financial information. It's clear: something that is organized in a businesslike way or purporting to be, and moreover, it must be by a financial planner too. You have two elaborate safeguards. It is not just a wholesale intrusion into anything financial that a citizen might be asking about.

MR. McEACHERN: I've been trying to get at the essence of the difference between what the minister is relying on here and what the Member for Edmonton-Strathcona is saying. Perhaps it boils down to this. The minister is saying that if anybody sells a financial product – if A sells a financial product to B, A is caught under this Act and must live up to its provisions, and remedies can be sought under this Act. I agree with him. But what about: as a financial planner I decide to start giving advice to you, but I don't actually sell you anything, or at least not everything you bought. I may sell you some products, but maybe I say, "Look, you'd be better going off to talk to Joe about this other product, and I think you should go buy shares in something or other." So you give him advice, but he has to go somewhere else to fulfill that part of the plan that you've put forward to him. Should you not have some responsibility for that still, even though you may not have got the commission for selling that particular product because he had to go somewhere else to get it? You know, it may be that I don't sell stocks on the market, but I might advise you just the same to go and buy certain kinds of stocks on the market as part of the financial planning I'm helping you with, and you may have to pay another stockbroker to buy those shares. Does that not leave me off the hook just a little bit lightly? I guess that's the thing that we're

trying to get at. If I actually sell you a product and actually charge you a fee, I understand that in spite of the difference in definitions we're using here, you're right, and this Act would apply. But if I just advise you to go buy them and you have to buy them elsewhere, then I seem to escape from any responsibility under this Act.

MR. ANDERSON: The provisions of the Act would apply regardless of where you bought in terms of those.

MR. CHAIRMAN: Any further comments? Is the committee ready for the question?

[Motion on amendment lost]

MR. WRIGHT: Section 5(1) is really a key section to be amended. I hope hon. members can hear what I'm saying, Mr. Chairman, because I regard this as an important piece of legislation and, in general, excellent legislation. But there are some parts that could be improved, and this particular part is certainly one of them. Because this is in the part that puts an onus on the consumer – i.e., the citizen – to inform the seller of the financial product, the provider of the financial product, whether it's advice or stocks and bonds or whatever it is, of all the circumstances of their case. Why it's so important is that if the advice is not given, if the information is not given correctly, then it can count against the citizen when the citizen gets into deep trouble as a result of the sale, the transaction, the advice, et cetera.

It is not clear from section 5, if you look at it, about the standard of disclosure that is required. Section 5 of the Act is entitled "Consumers' responsibilities before investing," and it says that "a consumer must provide information that the consumer knows or should know is relevant" and so on. Subsection (2) says, "Before investing in a named financial product, a consumer is responsible" for taking certain actions, being "reasonably well informed about it", and so on. In section 7, which we have dealt with earlier, the effect of the consumer's failure to fulfill responsibilities is dealt with. What is not clear from section 5 is whether there is a single standard that's applicable to everyone or a shifting standard depending on (a) the circumstances of the product that is being dealt with – i.e., is it an abstruse sort of thing or is it a simple sort of thing? – and (b), and perhaps more important, the circumstances of the inquirer, of the consumer that is to say, since you would expect a higher standard of a businessman, particularly a skilled businessman, when it comes to being up front with his or her requirements than the widow at the corner who has been told it would be in her best interests to buy a certain sort of investment or shares or stock or bonds or just to lay out her estate in a certain way. So I think common sense would say it ought to be the case that we would expect more in the way of disclosure from a skilled businessman than from an unsophisticated person, but it doesn't say that.

In laws, as lawyers know and as most people, I suppose, would not be surprised to learn and perhaps know, there are in general two ways of approaching something like this. There's the standard of the reasonable person, so you don't consider individual variations; you just consider what is reasonable on average. Okay? That's one standard that in criminal law you have to use sometimes because the perpetrator of the alleged crime won't know who he or she is going to affect; it has to be an average sort of thing. The other is a shifting standard when the identity of the alleged victim is known, or if, to put it more precisely, the defendant, or accused, dealt with someone in particular and should have known that he or she was more or less sophisticated. So that is not addressed in this amendment.

I know that the minister will say, "Well, yes, but under section 7 as amended you don't have to stay strictly to the answer you get from looking at 5." As I say and as I repeat, that should be done by fixing up section 5 instead of making section 7 flabby, which is what has happened so far. But flabby or not – and it is flabby now – section 5 should still be improved, and it will be improved by the words set out in C of my amendment to the Bill. It's very simple. By amending section 5(1), by going to the first line, "a consumer must provide information that the consumer knows" and then inserting after "knows" the words "having regard to all the circumstances of the particular consumer and the transaction," it would read "a consumer must provide information that the consumer knows, having regard to all the circumstances of the particular consumer and the transaction, or should know . . ."

Mr. Chairman, I must say that there is a slight mistake here, if it can be noted when this amendment is passed. The place it should be inserted is after the word "know" in the second line and not after the word "knows" in the first line. If that can be noted, I hope the committee can understand that slight mistake there. So can you suitably note after the words "should know" instead of "consumer knows". [interjection] Oh, I beg your pardon, Mr. Chairman. I'm sorry. I was missing the word "or"; "consumer knows or." It's quite right as it is. I take it all back.

All right; back on track, Mr. Chairman: "the consumer knows or, having regard to all the circumstances of the particular consumer and the transaction, should know is relevant to or would have a significant effect" and so on. Now then, it is plain that if it's an unsophisticated person, there is a lower standard of disclosure required. If it is a complicated transaction or, if not, an obscure transaction that a person, even an average person, even a skilled businessman, perhaps might not be expected to know the parameters of, that should be taken into account. So it's quite clear we have what ordinary people regard as a reasonable sort of standard, a shifting standard, having regard to all the circumstances of the case, very familiar to lawyers, but you'll notice I have expressed it in ordinary language, as this Act is so commendably couched.

So that's the amendment, that's the purpose of the amendment, and I ask the concurrence of the committee.

MR. ANDERSON: Mr. Chairman, the hon. member correctly foretold that I would indicate that section 7 deals with this. Again, I don't disagree with the concept. In fact, I very much agree with the concept of the amendment. However, I believe it's best handled in 7, both in terms of simplicity and in terms of dealing with the overall flexibility that's required in this new piece of legislation. I appreciate him raising it and circulating it to me. It helped us to underline the need for the change in 7, but I do believe that suffices in dealing with the concern of 5 and 8. I realize he would like it more specifically dealt with and identified, as he does in his amendment. However, we believe we've dealt with that and concerns raised by other individuals and people by amending 7, as the committee has passed.

MR. McEACHERN: I guess I would just like to say again that quite frankly I would rather see this whole section scrapped, the 5, 6, 7, and 8 sections on responsibility of the consumer. That's not to say that consumers don't have a certain amount of responsibility, but to sort of legislate that somehow they will be penalized if they don't ask certain questions does not make an

awful lot of sense. It doesn't make sense for the person who is an unsophisticated investor, as my colleague has just described and explained, nor does it necessarily make a lot of sense for the sophisticated investor. A sophisticated investor will also know some sophisticated financial planners and agents or suppliers of financial products of one kind or another and may very well go up to a person and say, "Get me some mutual funds" or get me this, that, or the other thing in a two-minute conversation and should fully expect that he will be dealt with fairly and correctly, and all the rules of this Art should apply, and he shouldn't have to give him a lot of details about financial plans and why he wants it and why he doesn't want it and what else he wants and how it fits into his overall plans. It should not be necessary going through the compliance suggested in number 8. As to number 7, saying that the differences can be considered doesn't particularly mean they will be considered. So I think you're letting the arbitrator off the hook in terms of protecting somebody who is an unsophisticated investor. If you must have this section 5, 6, 7, and 8 in here, detailing the responsibilities of consumers – and don't forget it also says in 26 that, you know, what kind of performance the two people went through in terms of setting out the penalties will be taken into account.

In the Principal case, for example, that would mean some of the most unsophisticated contract holders would get less if you applied this idea straight across to them than somebody else who would ask some of the right questions but still get all the wrong answers. I don't think that would be fair. Nobody ever tried to say that when the government offered 15 cents for AIC and 18 cents for FIC people, some people should get 20 cents and some only 16 or some 10 because of this kind of consideration. Nobody would suggest that they should. So I don't see why we're suggesting they should here. I don't think the questions the consumer does or doesn't ask should have anything to do with the behaviour of the person selling the financial product. So I really don't see the need for this section. But if you must have this section in, certainly the amendment suggested by my colleague at least would help to mitigate the negative aspects of pointing at the consumer and saying, "Hey, you did something wrong; you didn't ask the right questions," which I think is quite an extraordinary idea.

MR. CHAIRMAN: Ready for the question on this amendment?

SOME HON. MEMBERS: Question.

MR. CHAIRMAN: All in favour, please say aye.

SOME HON. MEMBERS: Aye.

MR. CHAIRMAN: Opposed, please say no.

SOME HON. MEMBERS: No.

MR. CHAIRMAN: Defeated.

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

[Eight minutes having elapsed, the House divided]

For the motion:

Barrett	Hawkesworth	Roberts
Bruseker	Laing, M.	Taylor
Chumir	McEachern	Wright
Fox	Pashak	

Against the motion:

Ady	Fjordbotten	Osterman
Anderson	Fowler	Paszkowski
Bogle	Hyland	Payne
Brassard	Klein	Rostad
Calahasen	Kowalski	Severtson
Cardinal	Laing, B.	Shrake
Cherry	Lund	Sparrow
Day	Main	Stewart
Elliott	McClellan	Tannas
Evans	Mirosh	Thurber
Fischer	Moore	Zarusky

Totals: Ayes – 11 Noes – 33

[Motion on amendment lost]

MR. CHAIRMAN: Before we proceed further, the Chair would like to suggest that further divisions, if any, will be held at the end of the discussion of the remaining amendments, and we can treat the remaining amendments as a bundle after the debate thereon. Would that be agreeable to the committee?

HON. MEMBERS: Agreed.

MR. CHAIRMAN: Agreed.

The hon. Member for Edmonton-Strathcona.

MR. WRIGHT: Mr. Chairman, next is number D in the amendments to Bill 19 that I have proposed. Now, I know hon. members have been hanging on my every word here, so I needn't repeat what I said earlier when dealing with the government amendment to section 7, which entails, really, consideration of other sections in that part. Just to remind you nonetheless, what this amendment does is reverse the onus on the section as printed. The section as printed requires a supplier, agent, or financial planner to give appropriate advice or provide the appropriate financial product when – and I'm interpolating this – and only when the consumer tells a supplier, agent, or financial planner why the consumer needs the advice or what purpose the consumer intends to achieve by investing in a named financial product. Therefore, if the citizen doesn't tell the financial planner or the supplier of the financial product why he or she needs the advice or what purpose is intended when they invest in a named financial product, the supplier, agent, or financial planner is off the hook so far as the provisions of this Act are concerned as to the appropriateness of advice or the appropriateness of the named financial product.

Surely, Mr. Chairman, it should be not too much to ask those people to ask the consumer why they need the advice and what the purpose is that they intend by asking for this named financial product. Surely they're the sophisticated people; they're the people that are supposed to know. Just require them to ask this simple thing and to act accordingly, because if the inquirer, for whatever reason, says nothing, then the provider of the advice or the named financial product is simply off the hook. And I don't think, Mr. Chairman, that that is the purpose of the legislation. The purpose of the legislation is to provide reasonable protection to reasonable people who deal with this advice and these products, and to leave the onus completely on the citizen to explain what it is they want is wrong.

So I ask hon. members to look carefully at, first, the section and then at the reversing of the onus that is provided in the amendment and to vote accordingly.

MR. CHAIRMAN: Any further discussion on this amendment? We were going to deal with the decision at the end.

SOME HON. MEMBERS: Question.

MR. CHAIRMAN: Hon. members of the committee, the committee agreed to deal with the question on all of the amendments at the end of the discussion.

MR. WRIGHT: There are two more amendments nominally, but in effect we've dealt with F, because F was consequential on one of the earlier ones being passed. Was it A or B? [interjection] Was it? Twenty-one is consequential on financial planner definition, which is A, so we've dealt with that.

There's one more left, and that is the amendment to section 13. This deals with the fine print problem that's the bane of many citizens when they run into it: that buried in the document there's an exemption clause. It is true in some cases, perhaps in the majority of cases, that when you really read the thing, you can see that it is an exemption clause. But how many times do you read documents through? I mean, 99 times out of 100, people have the product there, they know what it is, and they're lucky if they read the headings really. They just go by the representation, but certainly the clauses in the back of it are left unread. Even if you put something on the front saying that inside there is an exemption clause that might excuse the seller or the company or the issuer from liability or in some way restrict the recovery of the purchaser, it is possible that they won't be any further ahead, but at least they have a much better, a much fairer warning. So this amendment simply requires that

> any provision in a document that exempts the seller of the financial product from liability or restricts that liability, wherever the provision is located in the document. . .

So the whole thing doesn't have to be on the front page so long as there is a finger pointing, literally or figuratively, to the exemption wherever it occurs. That should be on the front page, and unless it's so, then the exemption is void.

I realize that I didn't get these amendments to the minister until the middle of last week, by which time his own amendments were prepared. I'm sorry about that. I had intended to do it a little earlier, so I can see that perhaps it would have been awkward to try and get amendments done in the meantime. But, all the same, this stands on its own and could very easily be accepted as being a very reasonable amendment. On the Order Paper I do have a Bill called the Unfair Contract Terms Act which would include these sorts of provisions as a general matter. It wouldn't include this remedy, but it would deal in a general way with these exemption clauses. But in the absence of such general legislation, then we have to go through legislation as it comes up and do what's fair.

I submit, Mr. Chairman, that it is fair and proper in this particular piece of consumer legislation dealing with financial products that the exemption clause problem should be dealt with and dealt with in this manner.

MR. ANDERSON: Mr. Chairman, very briefly on section 8. I think we had considerable debate. Once again I would make the case that to implement section 8, you would not just be dealing with a sophisticated financial planner, but you're dealing with all of the bank tellers that deal with the interest accounts. Asking those series of questions would be a responsibility that I don't believe would be merited.

On section E, I think the point is well taken and the suggestion good. Whether or not that specifically is what we need on the front page or in bold type I wouldn't conclude, but I have asked my department to consider this particular wording when we look at the regulations dealing with the plain language sections of the Bill which we will evolve. This is the kind of thing we would deal with in regulation as opposed to specifying in this particular Bill.

MR. CHAIRMAN: The hon. Member for Edmonton-Strathcona.

MR. WRIGHT: I'm just formally withdrawing F as no longer being relevant.

MR. CHAIRMAN: Any more comments on the amendments before the committee?

All those in favour of the remaining amendments, D, E, and F . . .

MR. WRIGHT: No; D and E. Amendment F is withdrawn because it's consequential on amendment A, which failed.

MR. CHAIRMAN: All those in favour of amendments D and E, please say aye.

SOME HON. MEMBERS: Aye.

MR. CHAIRMAN: Opposed, please say no.

SOME HON. MEMBERS: No.

MR. CHAIRMAN: The amendments fail.

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

[Eight minutes having elapsed, the House divided]

For the motion:		
Bruseker	Laing, M.	Roberts
Chumir	McEachern	Taylor
Fox	Pashak	Wright
Hawkesworth		
Against the motion:		
Ady	Fowler	Paszkowski
Anderson	Hyland	Payne
Bogle	Klein	Rostad
Calahasen	Kowalski	Severtson
Cardinal	Laing, B.	Shrake
Cherry	Lund	Sparrow
Day	Main	Stewart
Elliott	McClellan	Tannas
Evans	Mirosh	Thurber
Fischer	Moore	Zarusky
Fjordbotten	Osterman	
Totals:	Ayes – 10	Noes – 32

[Motion on amendments lost]

MRS. OSTERMAN: Mr. Chairman, I'll only be a moment because I know that our colleagues are restless and want to get on to other Bills. I wish that I had been here, and couldn't be, when we did second reading. I wanted to just mention that in

second reading I would have described to the opposition some experience that I've had that I think would have allayed their concerns about the provisions in this particular piece of legislation. I'm pleased that the minister has addressed most of them, but there is one area that I'd like to bring to the minister's attention for future consideration, because I realize that with a brand-new piece of legislation he may well be back within, say, one or two years with some potential amendments.

One of the areas that I believe was most confusing to the people who discussed some of their financial problems with me was that of the general nomenclature which applies to financial instruments, investments, and so on. This cuts across a lot of pieces of legislation. I think if we could examine it in the future – whether it would come in the definition section or where it would be, because it certainly would have to touch a number of pieces of legislation – and in fact develop that nomenclature, choosing the verbiage that is used in so many pieces of legislation that describe financial transactions, whether we're talking about the Securities Act, this piece of legislation, trust company legislation, and so on. Of course, it applies to various portfolios, but I think the minister is probably the one that's well in a position to look at that in light of this particular piece of legislation and see if it isn't possible in the future to do that. I think there's probably a list of about 20 to 30 terms that could be looked at and made standard, made consistent right through all of our legislation to give the consumers the kind of power that that gives them in terms of a sense of knowing precisely what is being described no matter what investment or financial instrument they're looking at.

MR. CHAIRMAN: The hon. Member for Edmonton-Kingsway.

MR. McEACHERN: Yeah; just a final comment also. I've been in touch with some members of the financial investment community on this Bill, and they were under the impression that they had quite a lot of time left yet to look at it and put in their ideas and were definitely under the impression that somehow this would be around until fall, so I was a little surprised when the minister decided to move on it. Certainly we'll be checking back with them as to why they didn't get – and I know they were in touch with the government. So I just wonder where the communications broke down or what the problem is, and we'll be interested in getting in touch with them before third reading, I hope.

MR. WRIGHT: May I mention, Mr. Chairman, that although we have fought hard and unsuccessfully to achieve some amendments, the Bill is a good one in general. The minister is to be commended for the work done on it, and we'll be supporting it even though our amendments have failed.

MR. CHAIRMAN: Now the Member for Calgary-Buffalo.

MR. CHUMIR: Thank you. I have just a few brief comments and observations on a few provisions, Mr. Chairman. Firstly, I'd like to quiz the minister on an issue relating to section 16 that has been raised by someone in the financial industry. Section 16 relates to prohibited business practices relating to undue pressure, unfair advantage, misleading and deceiving consumers. The question that was posed to me and that would be posed through me to the minister is: why does contravention of this section not constitute an offence under section 40, which creates quite a number of offences including failure to comply with the duty, for example, to use plain language, which is so vague it's almost invisible? If that constitutes an offence, why not these other prohibitions which on the face of them are more serious and contain a greater degree of mens rea? I had some other questions, but perhaps I'll get the answer on that one. [interjection] Do you want to get them all through? Okay.

The next section relates to section 18, with respect to privacy, a good and an important concept that provides that personal information "can only be used for the purpose for which it is given." The concept is good. I have concerns that the section is not adequate to the task and that one could drive a coach and four through this section. Questions that arise: how does an individual know that the information has been used? Perhaps there might be circumstances in which a third party uses it and the individual becomes aware, but in most instances they wouldn't be aware. So is there any monitoring or enforcement provision? How do you define the purpose for which information was given? That seems to be totally left at large. Are there intended to be regulations?

I merely raise these without providing an amendment because I've been very interested in the realm of privacy for some period of time and have realized just how complex and convoluted that can be and how intensive the review needs to be. So I would raise it with a view to stimulating the enthusiasm and interest of the minister in this very important area which I feel has been largely neglected by his government and in fact has now risen anew in a recent context just over this past week in the constitutional realm, where transmissions on mobile phones are now being intercepted. With the advent of technology it's becoming more and more important. I think there's a great vacuum here in this province of understanding and review, and I would stimulate the minister to perhaps start a broader review of this issue and attempt to enthuse his colleagues. I think he'd be doing a great service to society were he to do so.

One final comment with respect to section 12, the duty to provide financial statements, for which we now have an amendment which states that if a supplier makes audited statements available, then they must be provided. Well, from a fairly robust statement of strong intentions when this legislation was introduced, we've gotten rather a redundancy: if statements are to be provided, then they're to be provided. This really begs the question, and perhaps the response of the minister is that it will be required in other legislation. I note that the Trust Companies Act at this particular point in time, while requiring audited financial statements to be given to shareholders, provides no requirement whatsoever that they be made available to depositors. This is a great hiatus; it was a major problem, as we know, in the Investment Contracts Act, where there was no such duty. This really has become extremely wishy-washy, and I note that the requirement to provide quarterly and semiannual financial statements has totally disappeared for some reason.

So with that, those are my concluding comments. Thank you, Mr. Chairman.

MR. ANDERSON: Mr. Chairman, perhaps I could briefly respond to some of the members' comments. The hon. Member for Three Hills dealt with the need for standardizing terms. In fact, there is a provision that would allow us by regulation to do that. We're in the process of working with other governments nationally. In fact, Alberta heads a task force to try and standardize some of the common terms utilized, such as "guarantee." That is proving to be much more difficult than we would have hoped. We would have hoped some basic terms had common understanding generally.

Mr. Chairman, I appreciate the comments from the Member for Edmonton-Strathcona and would say to him and to other members of the committee that there is much of how we will implement this Bill to be evolved through regulation and discussion, and I would invite continued participation in that evolution. That, too, is my answer to the Member for Edmonton-Kingsway. I did indicate to industry groups when I introduced the Bill for first reading that there would be a minimum of one month for input between first reading and committee stage. I introduced the Bill on May 1, so we've gone considerably past that. We have discussed with all of the major groups we know of, considered resolutions; however, that doesn't end the consultation process. We do intend to continue to consult with them with respect to the regulations that must be evolved before this Act would in fact be proclaimed.

The Member for Calgary-Buffalo raised a couple of points. In section 16 he asked why there wasn't criminal as opposed – well, the section has civil application. The reason is that that's a tested field. This section was taken very largely from our Unfair Trade Practices Act and in that respect allows us to work in the same way, in the same direction. I appreciate his points with respect to privacy, and he makes a good point that there is a continuing need to look at the effect of new technology and new systems in the rapidly changing marketplace in this instance and rapidly changing community in others with regards to that need.

He mentioned as well section 12 and the financial statements. I would disagree with him that it's not strong. We don't have yearly or quarterly; we have the most recent statement so that an individual can receive that. This is a first time that this is a requirement and, I believe, a positive addition to what we require in our financial community.

I thank all members for their suggestions and comments and will end with that response.

[The sections of Bill 19 as amended agreed to]

[Title and preamble agreed to]

MR. ANDERSON: Mr. Chairman, I move the Bill be reported.

[Motion carried]

Bill 33
Metis Settlements Accord Implementation Act

MR. CHAIRMAN: Any questions or comments or amendments to be offered with respect to this Bill?

The hon. Member for Calgary-Mountain View.

MR. HAWKESWORTH: Thank you, Mr. Chairman. I would like to offer a few comments this evening, following up from second reading, and to offer an amendment to Bill 33. While I'm speaking, perhaps I'll have the amendment distributed to all the hon. members.

Mr. Chairman, at the conclusion of second reading debate of Bills 33, 34, 35, and 36, the provincial Attorney General expressed some frustration with my comments, if that's the right term to use, in saying that he felt that my preoccupation with questions of aboriginal rights regarding these four Bills was, if I remember the term he used correctly, vexatious. I wanted to assure the Attorney General and all the members of the committee this evening that my intention is far from being vexatious. I apologize if that's the way they are interpreted, but it's an important issue and an important concern. If I take some time to repeat the concern, I hope the minister and others will understand that it is because of it being an important issue. I think it's particularly important having had the opportunity to briefly review a recent Supreme Court decision between Ronald Edward Sparrow and Her Majesty the Queen regarding aboriginal rights. I think it's going to go down as a very significant watershed decision in the whole history of Canada coming to grips with its native people.

I'd like to just take the opportunity in beginning my remarks to take from the decision two brief comments, because I think it'll underscore or underpin the reason why I'm putting forward an amendment here this evening to Bill 33, Mr. Chairman. First of all, on page 26 of the judgment the honourable judges of the Supreme Court made this comment, and I think it reflects a lot of common sense and summarizes a lot of history. They state:

> Our history has shown, unfortunately all too well, that Canada's aboriginal peoples are justified in worrying about government objectives that may be superficially neutral but which constitute de facto threats to the existence of aboriginal rights and interests.

I want to take some pains to ensure that that doesn't occur in any way, shape, or form in any Bill we might consider in this House.

As well, Mr. Chairman, the judges made another observation about aboriginal rights which I think is also pertinent to our discussions tonight.

> It is clear, then, that s. 35(1) of the Constitution Act, 1982 . . .

That, by the way, Mr. Chairman, is the section of the Constitution Act dealing with aboriginal rights.

> . . . represents the culmination of a long and difficult struggle in both the political forum and the courts for the constitutional recognition of aboriginal rights. The strong representations of native associations and other groups concerned with the welfare of Canada's aboriginal peoples made the adoption of s. 35(1) possible and it is important to note that the provision applies to the Indians, the Inuit and the Mltis.

Now, Mr. Chairman, I've gone to some length in making that reference because, as the Supreme Court in its most recent decision has reaffirmed, aboriginal rights do extend to Metis people, and therefore I think we should also make it abundantly clear in our deliberations that we as well are concerned that ensuring those rights are not undermined by any action that we might take, even though on the surface it may appear to be neutral or in fact even helpful.

My concern, Mr. Chairman, has to do with part 5 of Bill 33. The reason is because, as I understand this Sparrow judgment, it has to do with existing aboriginal rights, and that's understood to be aboriginal rights which are not extinguished. By extinguishing of aboriginal rights, it would mean that they no longer exist. So when I read the title to part 5 of this Bill, where it makes reference to the extinguishment of actions and claims, I have some concern, which may be a bit of a reaction, perhaps, to the wording in front of me. But I wouldn't want us to be passing legislation that might in any way lead to or support the extinguishment of Metis claims, aboriginal claims. So I would like to incorporate wording that's found in Bill 36, which we'll be dealing with later, Mr. Chairman, which has to do with the Constitution of Alberta Amendment Act, to borrow one of those whereas clauses to make it abundantly clear that within this section of this particular Bill we are not trying to undermine or take away from any aboriginal right that might affect the Metis people that this Bill is attempting to help and support.

[Mr. Moore in the Chair]

So I wish to place on the floor, Mr. Chairman, a new section which would be found after section 52. It would be numbered 52.1. It would come at the very end of this part and therefore would be sort of an enactment clause, and it would read that

> nothing in this part is to be construed so as to abrogate or derogate from any aboriginal rights referred to in Section 35 of the Constitution Act, 1982.

Now, an objection might be made, Mr. Chairman, on the basis that the Alberta Legislature is not competent or that it's outside of its jurisdiction or authority or power or ability in any way to abrogate rights which might exist for Metis people in the Constitution of Canada. That may well be the case. I'm not a lawyer to judge these things, but if it's been deemed that by signing an agreement with the Alberta government and signing the accord, the Metis people have voluntarily extinguished their claim, then perhaps the Bill is doing something that was not intended. And as the Supreme Court judgment seems to be stating that existing aboriginal rights mean unextinguished aboriginal rights, I would like to provide some comfort to ensure that there's nothing intended by this part or by this legislation to remove any rights that Metis people might have by virtue of signing an agreement, that that could not in any way be interpreted as giving up aboriginal rights.

It's only out of an abundance of caution, Mr. Chairman, that I put this forward. It is, I believe, in keeping with the preamble of Bill 36, which will be following, which intends to give effect to a Constitution of Alberta amendment. But I believe that incorporating it within the enactment clause of this Bill reinforces the intention that the government might have of ensuring that aboriginal rights are not violated or reduced by result of any of this legislation. I would hope, Mr. Chairman, that the amendment would receive the favourable consideration of all members of the Assembly.

Thank you.

MR. ACTING DEPUTY CHAIRMAN: Westlock-Sturgeon.

MR. TAYLOR: Thank you, Mr. Chairman. I'll only take a minute or two to throw my support behind the amendment. I recognize the hon. minister's statements that it doesn't really need to be in there – I'm sure he'll say that – and that really the clause speaks for itself. But through the years if I had never listened to a lawyer when he told me it would speak for itself, I'd probably be a lot better off then I am now. The lawyers are always very fond, especially if they've had anything to do with drafting – pride of draftsmanship, they call it; pride of authorship – of assuring all and sundry that there is no concern, don't worry. We've just seen from the Meech Lake accord where some of the best brains – Tory, Liberal, NDP, old, young, French, English – couldn't agree on something as simple as a distinct society that was supposed to be all formed out. So out of an abundance of caution I would like to support my hon. friend's amendment. I see nothing lost. I don't see how it hurts it in any way, shape, or form. If indeed the hon. minister has been able to draft an agreement that construes the inscrutable and does the impossible and all the wonderful things that lawyers say they can do, even if indeed he has been able to draft an Act that is that perfect, this clause will do no damage. If, on the other hand, there is some brain out there that's spent years and years and years reading the law books from Moses through to the modern day and is able to peck a hole in it that could cause our aboriginal people to lose some of the rights they have by being what they are in Canada, it would be most upsetting indeed. So, Mr. Chairman, I'd like to say that the Liberal caucus throws its support behind the amendment.

MR. ROSTAD: Mr. Chairman, I appreciate the representations made by the hon. Member for Calgary-Mountain View. The Sparrow action in the Supreme Court was indeed important for all aboriginals. It's important for what it says, whatever that is, because it's still being interpreted as to exactly what the Supreme Court was saying.

There is no doubt about it that section 35 of the Canadian Constitution establishes that Indians, Inuit, and Metis have the right to aboriginal rights. The base to that, though, is that they must have aboriginal rights to have them protected. In the companion Bill 36, which is the Constitution of Alberta Amendment Act, there is definitely a statement that says, citing Bill 33, that nothing in any of the four Bills of the Metis activities will derogate or abrogate from any aboriginal rights the Metis may have. The only body that can determine whether in fact the Metis have aboriginal rights is, ultimately, the Supreme Court of Canada. We as provincial legislators cannot say they have or they haven't got, and by putting the amendment as proposed by the Member for Calgary-Mountain View into the Act, we are tending to say that they have aboriginal rights, which is not for us to say. They've got what they've got right now. We feel, with the Metis, that the protection that's in the Acts as a package is sufficient, that it does not derogate, it does abrogate from any aboriginal rights they may have under section 35 of the Canadian Constitution, whatever those rights may be. On that basis, I speak against the amendment.

MR. ACTING DEPUTY CHAIRMAN: The Member for Calgary-Mountain View.

MR. HAWKESWORTH: Thank you, Mr. Chairman. There's another point that needs to be made in defence of this particular amendment. That has to do with a possibility that the Supreme Court at some time in the future might rule that under section 35 of the Canadian Constitution as it affects aboriginal rights, Metis people may be determined to be Indians within the meaning of the Indian Act. If such an event were ever to occur, it would basically have the effect of determining that all of these Bills in front of us are ultra vires and would fall away, would have no import or strength.

I think that adding such an incorporation clause that is proposed in the amendment would help to ensure that the legislation in front of us would have more likelihood of standing up and maintaining itself, by adding such a nonderogation clause. I think it is prudent. It would be in keeping with an abundance of caution. It anticipates some possibility that might occur in the future, it helps to ensure that Alberta's jurisdiction in this matter is brought forward in these Bills, and, yes, I think it helps, as the Attorney General said, to establish that Metis people have aboriginal rights. To that extent, I think it's good legislation. It's a good amendment and ought to be supported.

MR. ROSTAD: These circuitous representations made by the hon. Member for Calgary-Mountain View are exactly that, circuitous, and they tend to defeat his own argument. As I mentioned, if they have aboriginal rights, they are already protected. We as a provincial Legislature have absolutely no power to do anything with those particular rights. However, we don't maintain that they do have or that they don't have. By putting something into our legislation that says we will not

derogate or abrogate from those particular rights, the way courts use those types of sentences and interpret them, we are tending to say they in fact have those rights. It is again not the mandate of this Legislature to say they have them. If they have them, they have them. We don't need that. We have addressed that in the Constitution of Alberta Amendment Act and said that any of these four Acts do not derogate or abrogate, as I've said.

The hon. member also brought up extinguishment of claims based on the Metis rights that they might have. Those claims, if the hon. member reads the clauses correctly, are claims that relate to the Metis Betterment Act, which is an Act of this Legislature which again does not address aboriginal rights in any way, manner, or form. Those are programs and various other entitlements that we have legislated through this Legislature, and it's claims that come from that Act that are being extinguished.

[Mr. Schumacher in the Chair]

I might mention that this Act together with the other four are accomplishments of a consultative process with public hearings. There was a lot of debate this afternoon on a constitutional change to the Canadian Constitution. This – four Bills together – is exactly what we're trying to do, change the Alberta constitution to incorporate further rights that we have the capability of altering in our constitution and ultimately in the Canadian Constitution. This package is not something that's being imposed on the Metis; it's something that's been worked out together with them through a consultative process, through a great series of public hearings.

I again speak against the amendment.

MR. FOX: Mr. Chairman, on a matter of procedure. We're just getting into the evening's debate now. We likely have several hours on the agenda and many pieces of legislation. It's difficult to predict what the votes will be, but in the interest of maximizing the amount of time we have available for debate and minimizing the time spent in division, I'd like to move that any subsequent division on motions this evening would follow the procedure of 30 seconds of bell ringing, a minute of silence, and 30 seconds of bell ringing prior to the vote being called.

MR. CHAIRMAN: Agreed?

SOME HON. MEMBERS: Agreed.

MR. CHAIRMAN: Opposed? So ordered.

AN HON. MEMBER: Question.

MR. CHAIRMAN: Is the committee ready for the question on the amendment proposed by the hon. Member for Calgary-Mountain View? All those in favour, please say aye.

SOME HON. MEMBERS: Aye.

MR. CHAIRMAN: Opposed, please say no.

SOME HON. MEMBERS: No.

MR. CHAIRMAN: The amendment is defeated.

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

[One minute having elapsed, the House divided]

For the motion:

Barrett	Hawkesworth	Pashak
Bruseker	Laing, M.	Roberts
Chumir	McEachern	Taylor
Fox		

Against the motion:

Anderson	Klein	Payne
Bogle	Kowalski	Rostad
Calahasen	Laing, B.	Severtson
Cherry	Lund	Shrake
Day	Main	Sparrow
Evans	McClellan	Stewart
Fischer	Mirosh	Tannas
Fjordbotten	Moore	Thurber
Fowler	Paszkowski	Zarusky

Totals: Ayes – 10 Noes – 27

[Motion on amendment lost]

MR. CHAIRMAN: The hon. Member for Calgary-Mountain View.

MR. HAWKESWORTH: Thank you, Mr. Chairman. Just as I promised in my opening remarks on Bill 33, I had only one amendment, and that's that, as we've dealt with it. But there is one that I would have liked to have made, and it has to do with the amounts spelled out under part 1 implementing the financial assistance elements of the accord. What's spelled out here are very specific dollar figures throughout that particular part. What concerns me is that there's nothing in place to take into account the possible drop in buying power represented by inflation over the years. When you have dollars appearing in a Bill that passed through the Legislature in 1990, 10 or 17 years after that those dollar figures may well have shrunk to a very small fraction of what their value was in 1990 when the Bill was adopted by the Legislature. I would have liked to have seen some section within the Bill to the effect that the value of all the dollar figures referred to in the Act would be interpreted so that they had the value in 1990 as determined by the consumer price index. But not being a member of the government, Mr. Chairman, as represented by the Lieutenant Governor in Council, I guess that one is not in order for me to make, although any member of cabinet could well do that. I guess I'm just going to have to wait till after the next election or sometime down the road in order to be able to make an amendment to this legislation such as this.

This arrangement that I've just referred to, where we take into account the inflation and the consumer price index in paying out these moneys in 1990 dollars, Mr. Chairman, is a provision that is a part of the current James Bay agreement and the current arrangement with the Dene Metis. Seeing that the federal government has been able to make an accommodation in its settlements to take that sort of thing into account, I would have thought the Alberta government could have done the same. Now, in a previous debate the Attorney General stressed that this package before us has been adopted or approved by the Metis settlements federation, and I don't dispute that fact at all. What I would have liked to have known, however, was whether the proposal I'm making was ever submitted to the federation and that they, in turn, rejected it. That would be interesting.

Whether the government ever even put it on the table, though, is a question that I can't answer. Only the government can. I would be interested to know whether that proposal was ever made to the Metis federation and rejected by them. Given the precedent set by these other two agreements that I've mentioned, I think it would have been more in keeping with the spirit of implementing the accord.

One other note to make in regards to Bill 33, the principles as found in section 10 regarding the powers of the commissioner and the commission are to uphold

> (c) the principle of self-sufficiency and local government autonomy . . . [and]
>
> (d) the principle of equity with other local governments.

As I've mentioned previously, Mr. Chairman, setting up settlement councils similar to municipalities is not what the federal government has done in its most recent land claims settlement with the Sechelt Band in British Columbia.

What concerns me as well – and we can get into this discussion later on in Bill 35 – is that within that particular Bill, Bill 35, I don't believe these principles are upheld as well or as strongly as they could be. The powers that local governments and municipalities have in Alberta are greater, in my view, than the powers accorded to Metis settlements under Bill 35. But we'll get to that in due course. All I'm stating this evening, Mr. Chairman, is my concern regarding establishing local governments and not establishing self-governments. I think that's a key area that this Bill ought to have addressed. I think there are other, more progressive models out there that the provincial government could have adopted or could have put on the table in their discussions with the Metis federation.

Having placed on the record our concerns regarding Bill 33, and making it clear, I hope, that this is not in its entirety the sort of Bill that we would have liked to have introduced were we government, nevertheless we have recognized the accord that has been agreed to by the provincial government and the Metis federations. Notwithstanding that our amendment tonight has been defeated, we intend to support Bill 33 in committee stage, as we did at second reading, Mr. Chairman.

MR. ROSTAD: With respect, Mr. Chairman, that's poppycock to say that it's not the Bill that they would like to pass if they happened to be the government. First of all, that's a very, very remote circumstance, and secondly, when you don't have any responsibility, it doesn't matter what you say.

But getting to the elements of the Bill, section 9 was put into this Bill to address inflation, again through a consultative process. There's 1993, '96, 2001, and 2006: specific years when the government and the general council of the settlements must sit down and address the money, how it's been spent, but also in clause 2 to look at and see whether the amount of money is correct. To put just an inflationary factor to it, when some of this money won't be spent on an annual basis and will just be reinvested, holding it as a heritage fund for part of it, using when they have to, it was decided between both parties that it would be better if we set some marks along the way where we could take a measure to find out whether in fact we are addressing this properly or not.

The figures were first of all developed by bringing in a consultant who worked this out to find out what they would need to start the various settlement organizations. Some are more sophisticated than others; some will progress faster than others. It was thought that having a measure of this would be a fairer way to determine whether the amount of money was correct or not. It was, again, a consultative process.

The references to section 12, that it was just going to form another form of municipal government and it wasn't the form of self-government of the Sechelt Indian Band. Again, we keep bringing up Indians and Metis. The Metis are not Indians. They have aboriginal blood but they are not Indians. They are not under the jurisdiction of the government of Alberta.* The Sechelt, also, in their form of self-government – the hon. member either doesn't know or neglects to inform the Assembly when he keeps bringing them up that that band has a constitution, and everything they do in terms of their self-government has to be subject to that constitution. So it isn't this unique and free-flowing form of self-government because the federal government is making sure that that constitution is being lived up to and that any form of government, whether it's a form of self-sufficiency or self-determination . . . It's great to coin the word "self-government." In fact, at the aboriginal First Ministers' Conference in 1987 that was exactly the problem and why it took 20-some meetings all the way along in those first ministers' conferences, and finally nothing concrete comes: because there is not a definition of what self-government is, and that's what you need before you can progress to it. We are defining here a form of self-sufficiency, and it's not just another form of municipal government. The Metis would be the first to stand up and argue that point.

On that basis, Mr. Chairman, we're ready for the question.

MR. CHAIRMAN: The Member for Calgary-Mountain View.

MR. HAWKESWORTH: Thank you, Mr. Chairman. I listened with interest to the Attorney General's comments. He again pointed out section 9, which is a review and a process for determining under this section whether the money is going to be adequate or not. But I don't see how a review is in conflict with the proposal that I put forward. The Bill could have quite simply incorporated the principle that the dollars that are being contemplated in this Act are 1990 dollars, adjusted according to inflation, and the review could take place on top of it.

I'm not suggesting that the two are in conflict. None of my comments could have been construed that way, and there's no guarantee incorporated within the review that the two parties are going to agree either. It just said that they're going to review, and that's all it says. It doesn't commit the government to agreeing with the general council about anything regarding whether the money reflects the needs of the settlement and the members or not. It doesn't require that they agree, and it doesn't contemplate what would happen if they don't agree in order to resolve the matter. I guess under this review, if they don't agree, they just simply agree not to agree, and no more money is paid out under this part. So in effect it gives, as I read the review, a veto to the minister over determining whether any additional funds would be provided under this Act.

Mr. Chairman, yes, I understand that the Sechelt have a constitution. I would think that any self-governing people should have a constitution. It took us as a country until 1982 before we got one that we could amend on our own. We've had it for only a few years. Now it's been the subject of considerable debate and discussion, and a new amending formula may or may not be passed. Yes, Canada has a constitution as a self-governing people. The Sechelt constitution may well fit into the same sort of category.

But I would also point out that under the Bill establishing self-government for the Sechelt Indian Band, there are two clauses

*see page 1806, right col., para. 4

which specifically exempt the Sechelt from a couple of provisions, and I'll read them. Section 37, regarding the application of the laws of Canada:

> All federal laws of general application in force in Canada are applicable to and in respect of the Band, its members and Sechelt lands, except to the extent that those laws are inconsistent with this Act.

Again the same parallel provision in section 38 in reference to the application of the laws of British Columbia, and here I'm quoting:

> Laws of general application of British Columbia apply to or in respect of the members of the Band except to the extent that those laws are inconsistent with the terms of any treaty, this or any other Act of Parliament, the constitution of the Band or a law of the Band.

All I'm saying, Mr. Chairman, is this: the government of Canada has gone a lot farther in establishing for those people under its jurisdiction the meaning of aboriginal self-government than this government has taken with its people under the Metis settlements legislation before us. The minister retains unto himself or the Lieutenant Governor in Council virtually any aspect of this legislation before us. They reserve unto themselves the power of veto, the right to amend, change, or alter if they don't agree with what the settlement councils or the general councils have done.

I'm simply pointing out to the minister that if we want to look at parallel agreements reached between the federal government and the people under their jurisdiction, they've gone a lot farther in establishing aboriginal self-government than this government has done with the legislation in front of us.

[The sections of Bill 33 agreed to]

[Title and preamble agreed to]

MR. ROSTAD: I ask that the Bill be reported.

[Motion carried]

Bill 36
Constitution of Alberta Amendment Act, 1990

MR. CHAIRMAN: Are there any comments, questions, or amendments to be offered?

The hon. Member for Calgary-Mountain View.

MR. HAWKESWORTH: Thank you, Mr. Chairman. I have one amendment to Bill 36, and I would ask to have it distributed to all hon. members. The amendment being circulated is in two parts. It has the effect of amending the preamble by adding another whereas clause, and it adds an enactment clause, an additional one, item 10, which consists of a clause, and it's accompanied by a resolution to authorize an amendment to the Constitution of Canada.

Mr. Chairman, I was intrigued in going through the Alberta Metis Settlements Accord document, which was published by the provincial government as a result of the accord that was signed between the hon. Premier and representatives of the Alberta Federation of Metis Settlement Associations. It was signed on July 1, Canada Day, in 1989. In this document, the accord, is a covering page, the covering document, and then within this package the first document that is presented to anyone reading the document is a motion for a resolution to authorize an amendment to the Constitution of Canada. What this motion was intended to do, as I understand it, was ensure that the Constitution of Canada was changed in order to entrench the accord reached between Alberta and the Metis people represented by the federation. I thought that was a very suitable way in which the government could keep its solemn promise, agreed to and assented to by the government in its negotiations with those people.

Now, as I pointed out at debate during second reading, there were a number of different ways that the government could have sought to entrench this particular accord. One would have been to seek an amendment under section 35 of the Constitution of Canada, which has to do with aboriginal rights, but that section of the Constitution, Mr. Chairman, requires the consent of other Legislatures in Canada.

A second option would be to pursue the matter through section 43 of the Constitution of Canada Act, which has to do with provisions relating to some but not all provinces. That would allow for Alberta, by passing the legislation, to seek only the consent of the House of Commons and the Senate of Canada in order to change the Alberta Act and also to change the Constitution of Canada as it affects Alberta and as it affects the Metis people under this particular legislation.

So I'd like to at least read the two clauses to ensure it's part of the record. The whereas clause that would be added would read this way, for the benefit of all members of the Assembly:

> Whereas Section 43 of the Constitution Act, 1982 provides for an amendment to the Constitution of Canada in relation to any provision that applies to Alberta . . .

That is sort of the principle, and then the enactment clause in number 10:

> The Government of Alberta, following proclamation, will lay before the Legislative Assembly of Alberta at the earliest opportunity when it is then sitting, a resolution in the form appended hereto and will seek to authorize a proclamation to be issued by the Governor General under the Great Seal of Canada to amend the Constitution of Canada under Section 43 and the Alberta Act, to give effect to this Act.

Mr. Chairman, the one clause that struck my eye in reading Bill 36 is clause 8. Clause 8 makes reference to protecting Metis settlement land by the Constitution of Canada – you can see that there – and once that's done, then the Act in front of us, Bill 36, may be repealed, which leaves one in reading this legislation to assume that the solution presented to the Legislature through this Bill is a sort of interim measure until the Constitution of Canada is changed, entrenching this accord and protecting Metis settlement land.

But, Mr. Chairman, there's no provision within this Legislation, Bill 36, to give effect or to lay out a process by which the Constitution of Canada would be amended. It would seem to me that what was intended was this motion that was part of the Alberta/Metis Settlements Accord documentation. So what I've attempted to do is simply give effect to the agreement that was signed by the Premier back in July 1989, and that is to incorporate that resolution as much as I could to reflect the four pieces of legislation that are presently going through the Legislature: Bills 33, 34, 35, and 36.

The motion for a resolution that was incorporated in the Alberta/Metis Settlements Accord was written up following the two pieces of legislation that were introduced a year ago and allowed to die on the Order Paper. Of necessity the resolution couldn't be reproduced in its entirety or word for word, so the resolution and the schedule attached have changed somewhat, as I understood the enactment to have been changed, because of these four Bills that are coming before us through the Legislature in this session. I feel that the original undertaking that was given by the Premier to the Metis settlements federa-

tion was a good undertaking. It was a way of ensuring and enshrining protection for land, to enshrine and protect the letters patent and to enshrine and protect the establishment of the Metis Settlements general council. That was an excellent initiative on behalf of the Premier and the government, but what baffles and confuses me is why there is no reference whatsoever in this legislation to follow through on that undertaking.

So what I've attempted to do with this amendment is to incorporate an undertaking that I thought and still believe was a good one, an undertaking given by Premier, and I would hope that by incorporating the language the provincial government signed I've done what was originally intended and is in keeping with that commitment and honouring that commitment. I would hope that this amendment would also receive the endorsement from all parts of the Legislature.

MR. ROSTAD: Mr. Chairman, I guess it goes with the Assembly, and certainly it's the right of any member to get up and probably speak in any way they would wish on any item in here. But I feel sorry, and actually I detest – I think it's odious to try and put a complexion on something that has come through a consultative process; that has started with Resolution 18; a document this thick, Implementation of Resolution 18; Bills 64 and 65 introduced in this Assembly and, yes, allowed to die on the Order Paper; and now Bills 33, 34, 35, and 36: a three-year process that I can speak of personal involvement in.

Not too many days ago, on second reading of these – and obviously the hon. member doesn't listen, or he doesn't read *Hansard,* or whatever. He's coming out with some great surprise as to why we wouldn't have section 43 in, why we wouldn't have a resolution to it. I don't have the *Hansard* in front of me, but I could almost do it line by line. The explanation was given. Resolution 18, where this started in 1985 in this Assembly, a unanimous resolution, referred specifically to section 43. However, as the member brought up, that is a situation where the government of Canada says that if it's something that affects Alberta and it's something that affects Canada, it can be accommodated only if it's something that's present in the Constitution. They're arguing that this is not a present circumstance in the Constitution. Therefore, we should go to section 38, which the hon. member brought up. We don't want – and when I say "we," I speak for the government; I speak for the Metis – to go by section 38, because that's the seven and 50 formula.

This is unique to Canada, this whole initiative. There are a number of provinces that don't want this type of resolution in their Assemblies, because they aren't ready to move or they don't want to move. I can't speak for them, but I have spoken to them, and I can assure you that it's distressing them. I can assure you that the president of the Metis settlements federation, Mr. Randy Hardy, concurs. He doesn't want to be causing stress on his brethren in other provinces. We are continuing, again jointly, to work on the federal government to convince them that their officials' determination of what section 43 allows in this context is wrong and that we should provide that.

However, if we don't win the day, we may have to go by section 38. In fact, why this Act is brought forward is because we want to live up to our commitment and to give this entire accord, this entire initiative, the highest protection we can give it in Alberta, and that's in the Alberta constitution. We can't go and amend the Canadian Constitution unilaterally; it takes two of us. But we're working with them. We're showing them the error of their ways, that section 43 is the way. But we also wanted to get this to the Assembly to give the protection, to allow the land to be transferred to the Metis, to get on with the development capital and economic development for them. That's the process. That's why section 43 was not put into this particular Act, because maybe it won't be 43; that's why 38 wasn't put in here, because maybe it won't be 38.

We have made our commitment, and we want to live up to it. In fact, part of the package that was introduced earlier in this Assembly, in previous sessions, was a motion for a resolution to authorize an amendment to the Canadian Constitution, which is what the amendment is talking about here. This will all come. This will all take place, but you can't run before you can walk. We are, again through the consultative process, working on this procedure together. I speak against the amendment.

I'd like while I'm on the floor to clarify a point. I was advised that, perhaps through a slip of the tongue, I said the Metis are not under the jurisdiction of Alberta.* I meant the Metis are not under the jurisdiction of Canada. They are, gratefully, under the jurisdiction of Alberta. We've accepted that responsibility.

Thank you.

MR. HAWKESWORTH: Well, Mr. Chairman, nothing in the amendment can in any way be construed to commit the government of Canada. The amendment is to direct the government of Alberta, following the proclamation of this Act, to come back to the Legislative Assembly of Alberta as soon as it can, at its earliest opportunity. So there's a time line there. There's a requirement. There's a request for a commitment, not of the federal government but for the government of Alberta to act in that the government of Alberta would come to the Assembly here and seek to get action or legislation from under federal jurisdiction.

What this amendment does is simply direct the government of Alberta to come to the Legislature of Alberta with a resolution, not just any old resolution but a two-page resolution. It's found here attached. The Alberta government would then apply under section 43 to the House of Commons, and through the House of Commons to the Senate of Canada, to seek an Act to amend the Alberta Act. That's all this does. It's not asking for an amendment to the Saskatchewan Act or the Ontario Art or the British Columbia Art or what all those other provinces might do. This is a made-in-Alberta solution. That's according to what the provincial Attorney General has said from the time the legislation was introduced. I take him at his word.

What we would like to see is an amendment to the Alberta Act. We can't amend the Alberta Act. That's something that can only be done by the government of Canada through the House of Commons and the Senate. There is a mechanism for them to do that under section 43 of the Canadian Constitution. It's a provision that has to do with matters under the jurisdiction of some but not all provinces. Clearly this is one that affects Alberta, affects Alberta alone. It's a made-in-Alberta solution, and we're seeking to entrench it not simply and only through legislation under Alberta's jurisdiction but also to seek the change through the federal government. Nothing in this amendment binds the federal government. All it would do is bind the government of Alberta to follow through on a promise that was made, that was signed by the Premier in July 1989.

Now, nothing in this amendment refers to section 38. It refers solely to section 43. As far as I can see and as far as I intend, this is the one section that deals with the one province in the Constitution of Canada, that being its application solely to Alberta. I think that's made clear. I don't see how it could be

*see page 1804, right col., para. 2, line 6

made any clearer under the amendment that's put forward. There's nothing odious about it, Mr. Chairman. It's simply requesting the government of Alberta – well, committing the government of Alberta – to follow through on a signed agreement and to follow through on section 8 of the Bill, which is a reference to protecting this legislation under the Constitution of Canada.

It gives a requirement, it asks for a commitment that the government of Alberta come into the Legislative Assembly of Alberta: that's all the force that this amendment would have. It would be the only effect that this amendment would have: committing this government to passing a resolution through the Legislature of Alberta. When such a resolution would come through the Legislature, at that time the Legislature would be seeking a change to federal legislation which has the power in effect over Alberta. At that point, if such a resolution were adopted, then a mechanism would be in place for the government of Alberta to pursue this through the House of Commons and through the Senate to change legislation affecting Alberta and Alberta's Metis people.

I think that this resolution, this amendment, goes to some pains to ensure that it's not casting out a net that would draw in the other provinces but is casting out a net to ensure that Alberta and Alberta's interests are enshrined in the Constitution of Canada. That, it seems to me, is all that's intended and is in keeping with the consultative process and the promises made under the consultative process by the government of Alberta.

MR. CHAIRMAN: The question is on the amendment. All those in favour, please say aye.

SOME HON. MEMBERS: Aye.

MR. CHAIRMAN: Opposed, please say no.

SOME HON. MEMBERS: No.

MR. CHAIRMAN: The amendment's defeated.

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

[One minute having elapsed, the House divided]

For the motion:		
Fox	Laing, M.	Pashak
Hawkesworth	McEachern	Roberts
Against the motion:		
Ady	Fowler	Paszkowski
Anderson	Hyland	Payne
Bogle	Klein	Rostad
Calahasen	Kowalski	Severtson
Cardinal	Laing, B.	Shrake
Cherry	Lund	Sparrow
Chumir	Main	Stewart
Day	McClellan	Tannas
Elliott	Mirosh	Taylor
Evans	Moore	Thurber
Fischer	Osterman	Zarusky
Fjordbotten		
Totals	Ayes – 6	Noes – 34

[Motion on amendment lost]

[The sections of Bill 36 agreed to]

[Title and preamble agreed to]

MR. ROSTAD: I move that the Bill be reported.

[Motion carried]

Bill 28
Victims' Programs Assistance Act

MR. CHAIRMAN: Any questions, comments, or amendments to be offered with respect to this Bill?

The hon. Member for Edmonton-Avonmore.

MS M. LAING: I have amendments, Mr. Chairman. I raised concerns in second reading on this Bill about the committee that would be established to disburse the funds that would be collected. I continue to have concerns, actually, about the existence of this committee, never mind the size of it. The hon. minister has said that at the present time there's $228,000 that was collected over a nine-month period. That's not a lot of money. There has been a request for a committee of three to nine persons. It would be very easy to eat up that money in salaries and administrative expenses, and even over a full year I expect it could go to $300,000 or even $400,000 a year. So I'm certainly not convinced that we need a separate committee; however, I am convinced that we do not need a committee as large as nine persons.

I have heard from the volunteer sector, the victims' assistance community, saying that they are also very concerned that the funds will never get to them, or a very small amount of these funds. I know that the Solicitor General did recognize this concern when we spoke of it in second reading, but he may not always be the Solicitor General, and the concern may not always be shared by the person holding that position.

So I would like to move an amendment to section 3(1) by deleting "9" and substituting "5." I think that is more than adequate to determine the dispensation of the funds that would be collected, and I think that nine is an unnecessarily large number of persons to be required.

MR. CHAIRMAN: Would the committee agree to deal with this package of amendments as one, and we could have any decision of the committee after all of them have been discussed?

HON. MEMBERS: Agreed.

MS M. LAING: Mr. Chairman, I thought that the first one could be dealt with separately, and then the next three could be dealt with as a package because they're all related to the same matter.

MR. CHAIRMAN: Would the committee agree with that?

HON. MEMBERS: Agreed.

MR. CHAIRMAN: Any further comments with regard to A?

[Motion on amendment A lost]

MS M. LAING: Mr. Chairman, the next four amendments would amend the sections dealing with the evaluation of the agencies who had applied for funds under this program and would require that a written report be made of programs and agencies that would be assessed and that those agencies would get a copy of the report. Now, again I would note that the Solicitor General had spoken to this matter in second reading and had thought that would be only right and just; however, I think it needs to be encoded in the Act itself. I'm adding that there would in fact be an opportunity to make oral submissions. So section 4 is amended that there would be an evaluation, that it would be written, and that the agency could make an oral or written submission.

Section 8 is amended, and also we would add after it a fourth section:

> Any organization that receives a copy of a report pursuant to this section may, within 30 days of the receipt of such report, give notice to the Committee of its wish to make oral or written submissions to the Committee, and the Committee shall give the organization an opportunity to present its submissions within 60 days of that notice.

And section 11 is amended in that a list of applicants would be made available each fiscal year, with the amount requested, and it would be the amount that was granted, if any, by the committee.

So I would ask that these amendments be dealt with as a package. I think this would allow agencies that are applying to determine how they have been evaluated to appeal, and it would be a public disclosure of how the moneys would be spent.

MR. FOWLER: Mr. Chairman, I appreciate the reasons for which the hon. member has suggested these amendments, but I honestly believe that any good thinking, good believing, and good acting committee is going to do everything that is asked for in these amendments anyway. I abhor secrecy in government as much as the hon. member does, and I think any member that is of the volunteer community must be handled specifically in a manner which is open and fair to them. It would be my insistence, and I'm sure any future Solicitor General's insistence, that these groups be treated in such a manner. I see no requirement for the amendments.

[Motion on amendments lost]

MR. CHUMIR: Just a brief comment, Mr. Chairman, with respect to the establishment of this entity generally. I was discussing with the minister just a few moments ago the issue raised by the Member for Edmonton-Avonmore, that of what appears to be a relatively limited pot of money going into this agency when you take into account that a separate bureaucracy is going to be established. I just want to be on record, you know, as having expressed that concern. I know that the minister shared the concern with respect to that issue and indicated there would be other sources of revenue that they hoped to go in, including some federal moneys and so on. But all taken into account, the amount seemed to be still a relatively small sum. It's not something that really struck me at the time of second reading, but in subsequent contemplation I just wonder about the wisdom of a whole new structure for something with a relatively small sum of money. I know we have a Crimes Compensation Board. I know it has a totally separate role, but I wonder whether once this is passed – and it will be passed – the minister might want to give some thought as to whether there isn't a simpler and less expensive structure through which this money might be expended.

[The sections of Bill 28 agreed to]

[Title and preamble agreed to]

MR. FOWLER: Mr. Chairman, I move that Bill 28, the Victims' Programs Assistance Act, be reported without amendment.

[Motion carried]

Bill 42
Liquor Control Amendment Act, 1990

MR. FOWLER: Mr. Chairman, I have a government amendment, which has in fact been circulated. This not a substantive amendment at all. In section 2(h), which is a definition section, the initial section's definition was circuitous, and we've defined liquor by substituting "a liquid drink or drinkable liquid." Section 8 is amended by striking "Alcoholic Beverages" and substituting "Beverage Alcohol," and section 39 is amended by striking out the proposed section 57.1 and substituting the following. What the new 57.1 does is permit the Appeal Council to stay a decision of suspension or any decision of penalty which has been made under section 57

> (a) until the time period for making an application for judicial review . . . expires, or
>
> (b) until the decision on the application for judicial review is made or the application is otherwise concluded or abandoned,
>
> whichever is later, or until the Court of Queen's Bench directs otherwise.

In section 40 the words "or brewing" are struck because they're surplus to the particular section as included in manufacturing.

[Motion on amendment carried]

MR. CHAIRMAN: The hon. Member for Calgary-Forest Lawn.

MR. PASHAK: Thank you, Mr. Chairman. I just have three points I'd like to raise with the minister. If it's acceptable to him, could I just deal with each point and then have him respond to them individually? Would that be acceptable, hon. minister?

The first one has to deal with section 12.1 in your Bill, which calls for the establishment of "a committee to be named the 'Alcoholic Beverages Advisory Committee' consisting of not fewer than 9 members." In your press release that you sent out, hon. minister, you indicated that that committee will consist of industry representatives to provide formal advice and input on matters of legislation and policy. I wondered if you wonder consider either expanding the numbers of that committee – I think it's permissive in that sense – and perhaps give the Assembly some assurance that you may be willing to put other members of the public on that board as well as just industry representatives.

MR. FOWLER: Thank you, hon. member. I am certainly prepared to give an undertaking to this House and committee that there will be members of the public on this committee. The nine positions that are there are not in fact – there aren't that many directly connected industries or even allied that I have to attend to. For instance, the whole of the Hotel Association in Alberta will only have one member and, I feel, probably as

recommended by that association; the same with the restaurant association. So I consider very seriously the necessity of actual public members on that committee as well.

MR. PASHAK: Thank you very much, Mr. Chairman. As the minister is aware from the questions I was asking in question period, I have some concerns about changes to policy that would permit the off-sale of all liquor products, particularly through hotels. In order to determine the relationship between that concern and the Act, I'd like to know, I guess, if the minister could just answer a very simple question. Does the minister need to pass this Bill in order to provide the authority to permit all types of liquor to be sold off-sale through hotels?

I could maybe just quickly give him some reason for my confusion on this point. I'm trying to read through the Liquor Control Act as it exists right now. Section 58 would seem to give the minister all the power that he needs, particularly section 58(2)(e), which says in effect that "The Lieutenant Governor in Council may make regulations . . . respecting the conditions of a licence and of a permit." Then when I turn to the liquor regulations themselves, which I think are derived from that section of the current Act, section 13(b) says that a beer vendor's licence authorizes the licensee

> to sell beer, for consumption off the licensed premises in which it is sold, in closed bottles or by the case.

Could the off-sale of liquor through hotels be authorized under the current Act, or are changes in this Act that you're proposing essential for doing that? If so, would it be section . . . I want to just make sure I get to the right section here. On page 16 of your proposed Act, which would be the new 38(5), it really seems to broaden out the powers of the board to permit that kind of sale, because it says

> A licence issued under this section authorizes the licensee, subject to this Act and the regulations . . .
>
> (b) to keep and sell liquor authorized in the licence . . .
>
> (ii) for consumption in the licensed premises.

Is that section in a sense necessary for the Liquor Control Board in order to sell all varieties of liquor products in off-sale in hotels?

MR. FOWLER: Mr. Chairman, I indicated during debate on second reading on this and I think I also gave an apology that these were brought in so closely together: the policy in respect to off-sales and the Bill into the House. I would not, of course, have disregarded the House to the extent that I would have brought a policy and recommended it prior to its receiving legislative approval if in fact it was necessary.

But in direct response to the member's question, it is our feeling that we have the authority within the present Act to in fact do what we are doing in regard to off-sales and do not require this Act to do so.

MR. PASHAK: Supplemental question on that point, Mr. Chairman, then. So in your interpretation of this Act, then, your proposed Act, 38(5), which has that provision for allowing the licensee "to keep and sell liquor authorized in the license for consumption in the licensed premises . . . or both" merely sets out perhaps in clearer terms the powers that you have, and that would be the section under which in the future a hotel owner might be granted the authority to sell liquor off-premises.

MR. FOWLER: That is correct, Mr. Chairman. Thank you.

MR. PASHAK: Then finally, Mr. Chairman, I have some concerns with the relationship between gambling and the consumption of liquor. I think it's been the practice that liquor can be sold where some types of gambling, like bingos, take place. I'm not even sure if that's correct, but I understand that people can't drink at the same table where they're gambling, that that's the present law, and if there is drinking associated with gambling, it's just because the rooms are adjacent to each other. I wonder if the changes that are being proposed in section 61 on page 38 of your proposed legislation, where it says that

> the Board may by order restrict or prohibit any
>
> (a) gambling or gambling device,
>
> (b) contest or lottery, or
>
> (c) sale or purchase of lottery tickets

means, implicit in that, that the new regulations would permit gambling and drinking to go side by side or at the same time, especially in casinos.

MR. FOWLER: Thank you, Mr. Chairman. I understand, again, the concern of the hon. member, and it is not my intention, to the extent that I can influence, to see casinos and drinking going together. Why we're addressing this matter is that we believe the opportunity should be considered for some of the drinking establishments to do that which we know is taking place in many Legions, for instance, where such small gambling as these Nevada tickets are in fact used. That's what we're looking at, as well as possibly other lotteries. But casino gambling and drinking is not being considered at all as something that is going to be juxtapositioned.

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

MR. CHUMIR: Thank you. I won't be long. I just have a couple of points to make, but before I do, I thought perhaps I'd just thank the minister of public works for having the Wild Rose Foundation or the community facilities enhancement program send around that pizza. Actually, I'm just kidding. I know there's no way that pizza from those sources would find its way into the opposition lounge. It's just that the pizza arrived in boxes shaped like suitcases, so . . .

Now, Mr. Chairman, I'd like to get back to a point I raised with the minister at second reading relating to the issue of suspension of licences, due process, the right of licensees to have a hearing before they lose their livelihood. I'd bring the minister's attention to section 48(1), which provides that the board may, with or without a hearing, do a number of things including, in subsection (d), "suspend or cancel a licence or permit." Now, as we move on to section 49.1 on page 21, the implications of that, of course, are that somebody could lose their permit and lose their livelihood, have to shut down their bar or establishment without having had a hearing. This is ostensibly remedied to some extent by section 49.1, which provides that "the Board may stay a decision" for certain periods of time. Now, I emphasize "may" because that is a totally discretionary proviso, and it seems to me, Mr. Chairman, particularly in terms of the loss of a permit, that section really should provide for a mandatory stay unless – and I give a big "unless" – there is a provision along the lines that the board is of the opinion that the public would be endangered by delay. I've seen that in the context of taxi licensing and so on. In fact, a proviso of that nature was implemented about four or five years ago in Calgary as a result of some dealings that I had.

I can't see why an individual should be subject to losing a licence without having a hearing, to leave total carte blanche discretion to the board as to whether or not they grant a stay

which may or may not be influenced by whether or not the licensee has been a pest or whatever other extraneous considerations. So I think that should be nailed down in the interests of due process. I would refer the minister also to section 57.1, which is the power to grant a stay by the appeal council, which I would suggest merits similar consideration.

The final comment I have would be with respect to section 77(1), the issue of being intoxicated in a public place. I commented extensively on this issue on second reading, and I wonder if the minister might tell us why it is that a police officer is entitled to take a person into custody simply on the basis of being in an intoxicated condition without having to satisfy the criteria of potential injury to himself or "be a danger, nuisance or disturbance to others", which are the conditions related to release in subsection (2) of that section. It just seems to me that that more robust criterion would certainly be in the interests of civil liberties, and I would commend it to the minister.

So those are my comments and thanks again to the minister of public works.

MR. CHAIRMAN: The hon. Member for Edmonton-Highlands.

MS BARRETT: Thank you, Mr. Chairman. As I expressed in second reading, I have my real grave doubts about the ultimate intent of this Bill. If it were not necessary for the advancement of the government's policy to establish agency stores – that is, something significantly greater than beer stores – in the back of taverns throughout Alberta progressively from small towns through the cities, I do not believe a lot of this Bill would be in front of us. In fact, to amend this Bill to prevent the government from pursuing that goal is a weighty task, because so many small components of the Bill dovetailed to give them this certainty of right to establish classes of licences and permits to allow them to do so. To date by regulation they have accomplished one of those measures and probably in accordance with the provisions of the Act as it stands. To do so beyond that I believe would be in violation of the provisions of the Bill, and I believe that is why in particular the proposed section 58 is as explicit as it is.

I have circulated to all members a copy of the amendment that I would like to now sponsor, which would be to amend section 40 of the Bill in the proposed section 58(o) by striking out all the words following "respecting" and substituting

> the eligibility of applicants for licences or permits, and governing the conditions that applicants for licences or permits must meet to qualify for a licence or permit.

Now, what I've done, Mr. Chairman, is that I've taken out the new wording which establishes a right for the cabinet to establish types and classes of licences and permits, which I believe is going to be necessary for the facilitation of their long-term goal, and substituted wording that is currently in the Act which allows for cabinet to determine the eligibility of applicants. I believe that the old wording is adequate to the needs that they say they're trying to accommodate in this Bill and would not facilitate the development of classes of licences from which one would automatically be entitled to apply for the off-sales right.

The second amendment that I propose affects this same section. I could have done a million amendments like this, but I believe that the ones that I'm sponsoring would be sufficient to put a stop, at least temporarily, to the government's plans here. It would amend section 40 in the proposed section 58(w) by striking the words following "permit" and substituting "for consumption on the premises." The wording in the Bill is . . . Where is (w) here? Let me read that section for the record This again refers to cabinet power. These guys say that they love democracy, but by cracky, if they can get more power from behind closed doors, they never miss an opportunity, Mr. Chairman. Anyway, this section (w) reads:

> respecting the conditions governing the sale and consumption of liquor sold or provided in premises under a licence or permit, whether for use on or off the premises.

It is not the only section that could be amended in this regard, but to amend this Bill in detail, basically to defeat the purposes intended, would be to amend every section. I believe that this amendment with one other would be sufficient.

Finally, I move to amend the Bill by striking "agency store" wherever it appears in the Bill. It tends to appear, I think, mainly after section 70 of the current Act, so section 49 of the Bill, but there are many references, Mr. Chairman. Ultimately, there can be no mistake: what this is meant to establish is another tier of liquor stores that are not ALCB stores. I don't think I need to explain that concept much further. I think I made my points quite clear in second reading. I believe the ultimate goal of this government is to get rid of ALCB stores because they are unionized. I believe that their goal is to Americanize the economic and cultural environments of liquor consumption in Alberta. I oppose both of those goals vehemently and ask for the support of the committee in contemplating the amendments I'm sponsoring.

Thank you.

MR. FOWLER: Mr. Chairman, I indicated during second reading debate that at no time during the discussion in the department of this major amendment to the Act was privatization discussed. I know that's a concern of the hon. opposition Member for Edmonton-Highlands, but it just was not part of the discussion. I don't think these amendments are required to attempt to head that off when, in fact, it wasn't in the discussions originally. I've indicated this to the president of the Alberta Union of Provincial Employees as well as to other people that attended with her. To bring about an amendment to head off something that there is no reason in the debate or discussions to believe was happening I do not believe is necessary and would ask for the defeat of the amendment.

MR. CHAIRMAN: The hon. Member for Vegreville.

MR. FOX: Thank you, Mr. Chairman. I made some comments in second reading that I won't repeat tonight, expressing my concern about the extension of off-sales to taverns. I'd just like to ask the minister how he would respond to concerns raised by members of the Alberta Restaurant and Foodservices Association, who hosted members for a very nice meal a week or two ago and suggested that same off-sale privilege be granted to lounges, that it not just be something granted to taverns. Imagine, if you will, a situation where in a town like Two Hills, for example, there's a hotel on the corner with a tavern that now has off-sale privileges for beer, will soon have off-sale privileges for hard liquor and wine. Two doors to the west there's a licensed restaurant that currently is able to sell all three classes of alcohol with meals. If the owner asks: how come the tavern gets to sell off-sales and we don't? You know, the minister has chosen to draw the line in a different place than we have. He's chosen to move the line and extend additional privileges to taverns. I'm just wondering how he responds to the owners of lounges and other licensed premises who would seek that same privilege not sometime in the future but right now.

MR. FOWLER: Mr. Chairman, the main business of taverns is selling booze or selling beer. There are professional people involved in that. Nobody under the age of 18 years is allowed to enter a tavern. They've been selling this booze for many, many years. In respect to the restaurant people, there are no age limits as to the people that can go into a restaurant, and that is one of the controls that I fear we would in fact lose: the mere access to it by being in the same premises in which it's sold.

If there is a fear on the side opposite in the NDs, the Official Opposition, that we would in fact be getting into the wiping out of the Alberta Liquor Control Board stores, that is a darned sight more likely to happen if there is a great proliferation of these outlets than if we just restricted it to those we are restricting it to in the proposed policy, not in this legislation. As we've stated, even if this legislation was not here and we were not debating it tonight, we would still be going ahead with what we're doing in respect to off-sales in hotels.

[Motion on amendment lost]

MR. HAWKESWORTH: I'd like to follow up on a question that was raised to the minister earlier by the hon. Member for Calgary-Forest Lawn. I have a question of my own I'd like to ask the minister if he could respond to, and this is in regards to page 38 of the Bill, section 61, which amends section 95. It has to do with gambling and the serving of alcohol.

It was a while back – I think a year, perhaps 18 months ago – that the federal government made changes to the Criminal Code to allow off-track betting via closed circuit television, and it's my understanding that Northlands and the Calgary Stampede board made some comments at the time that they would like to seek some changes in Alberta whereby they could offer broadcast of races from the racetrack via closed circuit TV to various hotels and lounges around the province and in association with closed circuit TV would set up some sort of off-track betting scheme whereby patrons could go up to the counter or the separate booth, put their money down on a particular horse, and then watch the race via closed circuit TV just as if they were at the racetrack. Now, what I've been wondering in reading this particular amendment is whether this particular section would change the Act in order to allow that sort of gambling to take place. I'm just wondering if the minister would kindly offer us some thoughts or views on that particular question.

MR. FOWLER: Mr. Chairman, maybe I wasn't listening intently enough, but the hon. member has an amendment on this matter. The answer in respect to off-track betting and teletheatre betting, which is now allowed in Canada under the Criminal Code – following an order in council passed by the Lieutenant Governor in Council, teletheatre betting is allowed in Alberta, and in fact it is already going on, I believe, in one of the northern communities. The intent there is that teletheatre betting has been allowed for the exhibition associations to enter into a contract with anyone they choose to bring teletheatre betting into that community. It is in fact being brought into an area which is a licensed lounge or a licensed tavern, so to speak. So that is occurring right now. As I read the amendment, it is,

> No premises operated primarily for the purposes of lawful forms of gambling shall be eligible for a license or a permit under the provisions of this Act.

I don't want to be the one to write to the Calgary and Edmonton exhibition boards telling them to wipe out liquor serving in their areas where in fact betting is going on.

MR. CHAIRMAN: The hon Member for Calgary-Mountain View.

MR. HAWKESWORTH: Thank you, Mr. Chairman. Well, my first intervention was to ask the minister to confirm, and he has in fact done that. I'd now like, for the consideration of the Assembly, to move the amendment that he referred to and which I have previously circulated to members of the Assembly.

> No premises operated primarily for the purposes of lawful forms of gambling shall be eligible for license or permit under the provisions of this Act.

Earlier the minister indicated that this was exactly his intention, that this particular section was intended to conform with the practice – he used the examples where some of the legions sell pool tickets – that would sort of allow that to continue to go on. It was not his intention to open up casinos as licensed premises for the serving of alcohol or – and I assume this was also his intention – other forms of gambling such as bingo palaces. It reaffirms a long-standing policy of this government to not allow gambling and alcohol consumption to take place at the same time, with the minor exceptions that the minister has outlined this evening.

I'm very concerned that if this policy is changed, I think there are some real long-term implications that this minister should be aware of. Those kinds of changes, the mingling of those sorts of activities under our public policy in this province, have not been allowed and for very good reasons. If there's been a change, then let's make it clear, but as far as I'm concerned, this amendment just confirms what the minister earlier said. I don't think we should be second-guessing how people might use loopholes in the future to get around the legislation; that might defeat our intentions. So I think it's important that this clause be added to ensure that for those premises that are primarily operated for lawful forms of gambling, alcohol will continue to not be available.

MS M. LAING: I'd like to speak in support of the amendment. I think that when we leave the law to be ambiguous, we leave ourselves open to interpretation that is unexpected and that goes contrary to the initial intent and in some cases the well-being of the community. I've had some experience working casinos for nonprofit, charitable organizations and certainly was very grateful that liquor was not available at those places. I think there is a mood and a mentality there that could easily get out of hand with the disinhibitory effects of alcohol if they were added. So I would urge acceptance of this amendment.

MR. FOWLER: Mr. Chairman, as I indicated, the proclamation of the Bill with this amendment would cause me to have to advise both the Calgary Stampede board and the Edmonton exhibition board and every exhibition board in this province that has racing – and racing is also where they serve liquored drinks – to cease and desist immediately the serving of liquored drinks, which to my knowledge has never caused any difficulty at all. I ask for defeat of the amendment.

[Motion on amendment lost]

MR. CHAIRMAN: The hon. Member for Taber-Warner.

MR. BOGLE: Thank you, Mr. Chairman. Under section 58 in the Bill, which is the regulatory authority granted to the Lieutenant Governor in Council, (gg) deals with

> regulating and controlling the provision of entertainment in licensed premises, including prohibiting or restricting specified types or kinds of entertainment.

I've placed a motion on the Order Paper, but unfortunately we won't be dealing with it this year because it's so far down and really a repeat of a motion put forward by the hon. Member for Olds-Didsbury a year ago which called for the prevention of granting of a licence to a premise or the cancellation of an existing licence in the case where on that premise there is nude dancing. I raised my question with the minister asking for reassurance, and I note that in second reading of the Bill – and unfortunately I wasn't in the Assembly on June 7 when that occurred – the minister alludes to restrictions that might take place in terms of specific kinds of striptease shows and so on. My question very specifically is: is it the intention of the minister, then, through the regulatory authority being requested under section 58 of this Bill to ensure that nude dancing is brought to an end in the province of Alberta?

MR. FOWLER: Mr. Chairman, there has been very considerable outcry by many members of the Alberta public in respect to the type of entertainment, particularly that entertainment which may be referred to as lewd. That is just apparently not acceptable in many parts of our province, and it is most certainly the intention of the government to address this concern through the regulations.

[The sections of Bill 42 as amended agreed to]

[Title and preamble agreed to]

MR. FOWLER: Mr. Chairman, I move that Bill 42, the Liquor Control Amendment Act, be reported.

[Motion carried]

MR. STEWART: Mr. Chairman, I move that the committee now rise and report progress.

[Motion carried]

[Mr. Deputy Speaker in the Chair]

MR. MOORE: Mr. Speaker, the Committee of the Whole has had under consideration certain Bills. The committee reports the following: Bills 55, 56, 33, 36, and 28. The committee reports the following with some amendments: Bills 19 and 42. I wish to table copies of all amendments considered by the Committee of the Whole on this date for the official records of the Assembly.

MR. DEPUTY SPEAKER: Order please. Having heard the report by the hon. Member for Lacombe, all those in favour please say aye.

HON. MEMBERS: Aye.

MR. DEPUTY SPEAKER: Opposed, please say no. So ordered.

[At 12:35 a.m. on Tuesday the House adjourned to 2:30 p.m.