Legislative Assembly of Alberta

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

[Mr. Schumacher in the Chair]

MR. CHAIRMAN: Order please. Will the Committee of the Whole please come to order, it being 8 o'clock.

Bill 38
Loan and Trust Corporations Act

MR. CHAIRMAN: The hon. the Provincial Treasurer wishes to propose a House amendment.

MR. JOHNSTON: Mr. Chairman, I do in fact have some amendments. I can tell you that I have circulated them already to members of the committee together with a key which I hope provides a link between the existing Bill 38 and the amendments I have proposed. If permitted, I would like to move those amendments to be part of Bill 38, Loan and Trust Corporations Act, as amended. As I said, they have been circulated.

Again, Mr. Chairman, I might just take one or two seconds on the amendments, if I'm permitted. I said in the House during second reading of this Bill that we have gone through a fairly extensive process of reviewing the legislation in that we have talked to a variety of user groups, trust companies, various people who are affected by the Bill. We've talked to the professional groups who are affected, and we've also talked to the other provinces in terms of what they see and how the harmonization process would impact on this legislation. Finally, we now have the benefit of the federal legislation which was introduced just recently. In accordance with that review and that process and that input opportunity that has been provided to Albertans, we have essentially outlined three kinds of amendments: amendments which deal with subsidiaries and associates, with the capital adequacy question, and with special purpose trust corporations.

Mr. Chairman, these are the substantive changes. I do have in the amendments, as you'll see, some technical questions, which are words which have to be deleted, expressions which have to be changed, or meanings which are redundant and removed, and those will show up, I'm sure, as you go through the process. I must say that Bill 38, as it was introduced last spring, has stood the test. It has been a fairly good piece of legislation. The amendments are really not all that extensive and are more, as I say, of a technical nature than of a substantive nature.

Since I have talked about the substantive changes, at least those which would be more substantive than technical, I will talk about subsidiaries and associates, as I've done before. The current Bill 38 before its amendment provided that the entity must acquire 50 percent of a downstream corporation. As I said, we now are changing that by the amendment to allow the reduction in investments to something on the order of 10 percent. That allows more flexibility for a loan and trust company to invest in such things as ancillary companies, information management companies, real property corporations, or for that matter other forms of financial institutions. It does that under two tests: one, of course, the investment test will hold that the portfolio shall not constitute more than a fixed amount, in this case five percent, of these kinds of investments, and secondly, it allows smaller trust companies to aggregate their resources without too much exposure to put together these kinds of downstream companies. This is fully in agreement with other pieces of legislation and is in fact responsive to the new kinds of changes that are taking place in the financial services sector. I explained that before. That's the major amendment on that side.

On the capital adequacy test, first of all, we thought that in the legislation there was a section which said that at the time of incorporation a loan or trust company must have a minimum capital requirement. We're simply changing that so that over the period that the company is registered in any jurisdiction, and certainly in this jurisdiction, the provincial and extraprovincial corporations, instead of having to satisfy the test at incorporation, must satisfy the test continuously. That obviously provides more strength to the depositor and I think is favourably found to be a minimum test by other jurisdictions.

Finally, in the current Bill 38 we had a special section for special purpose trust corporations, and they were corporations under this legislation which would not take deposits. We called them special purpose trust corporations. What this House amendment does, Mr. Chairman, is simply say that on registration of a company of this order, we'll make it clear in the outline, the letters patent, the charter of the company, that it cannot take deposits. Accordingly, with that limited opportunity to operate in those other kinds of non-deposit-taking trust company businesses, we would reduce the capital requirements of these corporations to $2 million. I think that's quite a reasonable change. Therefore, this particular change and much of the technical changes that you see in the legislation are as a consequence of special purpose trust corporations.

I could say that other amendments in the legislation deal with the way in which letters patent operate. There are, as I say, some wording changes which I think are necessary after sweeping through the legislation, but generally speaking, Mr. Chairman, I can say that this piece of legislation has stood the test. I repeat that again, because it has been carefully examined not just by those people in our government or in our legislation-writing area but by other jurisdictions, very carefully examined by other provinces, by the harmonization committee, by the various professional groups that will use it. I think, as I say again, it has stood the test.

So, Mr. Chairman, not wanting to go on too long on this issue and looking in the field to see what's happening out there, I will simply sit down and listen to the additional comments.

MR. CHAIRMAN: Are there any further comments?

The hon. Member for Calgary-Mountain View.

MR. HAWKESWORTH: Well, Mr. Chairman, I'm intrigued by the reaction from this caucus off to the right. I hope they're still with us.

I think it'd be proper at this point, Mr. Chairman, to indicate that in the short period of time that we've had the amendments from the Provincial Treasurer in front of us, I have a couple of concerns to highlight. I'd like to take the opportunity to put some questions to the Provincial Treasurer to get his indication of the reasons the particular amendments have been brought forward.

To begin, I should express my appreciation to the Provincial Treasurer for providing a key. After all, it is a very extensive and complex piece of legislation. Just having the straight

amendments in front of us makes it a bit difficult. It helps to some extent to have the key, and I appreciate that.

I'd like to draw members' attention to the key, page 12. It appears to me to be amendment X. This, Mr. Chairman, refers to section 189 of the Act regarding the receiving of deposits. Now, in this section we find that the amendment relates to subsections (5) and (7). What I intend to do is sort of pick the words as I understand them from the section. Basically, what this amendment does, as I understand it, is: where a provincial trust corporation receives money for the purpose of investment

> (a) repayable on demand . . . or
>
> (b) repayable on a fixed date or on the expiry of the specified term,
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> and the corporation may issue investment certificates or . . . evidences of the receipt of the money that are appropriate to the trust relationship created by the receipt of the money.

Then as we go further down to subsection (5), it indicates in the original Bill that

> A provincial trust corporation receiving money under subsection (2) shall earmark and set aside in respect of it securities, or cash and securities, equal to the full aggregate amount of the money received.

Then, of course,

> (7) The cash and securities that are earmarked and set aside . . . [are considered] the "depositors' liability fund."

What amendment X does is remove the words "and set aside."

8:10

I really would like the Provincial Treasurer to explain this, because it reminds me, Mr. Chairman, of the problems that occurred around the selling of investment certificates by First Investors and Associated Investors, AIC and FIC, two companies of the Principal Group of Companies. We remember vividly those infamous words that were contained on the back of the deposit certificates or the receipts that depositors received from AIC and FIC indicating that there were to be a certain amount of assets set aside equal to the deposits that had been received by the company.

What we see in this amendment, Mr. Chairman, is that there's no requirement for the trust corporation to set aside "securities, or cash and securities, equal to the full aggregate amount of the money received." Now, I have a lot of concern about this just given the recent experience we've had in this province, where people were informed that this restriction in AIC and FIC was a safeguard on their deposits, that this was a requirement of provincial legislation under the Investment Contracts Act, that assets were set aside to be equal to the amount of deposits that those two companies had received. When I see the original Bill requiring not only that those moneys should be earmarked but also that assets should be set aside in respect to those deposits and now I see the Provincial Treasurer bringing forward an amendment to strike out the words "and set aside," I'm just wondering if this isn't the Investment Contracts Act all over again, where that requirement wasn't met in practice. Are we giving up on this requirement ever working in practice, especially for provincially incorporated trust corporations?

With respect to these deposits, having an equal amount of assets set aside by the corporation would seem to provide far greater security to depositors than simply requiring that assets in this amount be earmarked. It may be that there's some reason that the Provincial Treasurer is doing this, but here we specifically have deposits that are

> for the purposes of investment . . .
>
> (a) repayable on demand or after notice, or
>
> (b) repayable on a fixed date or on the expiry of a specified term.

Basically, guaranteed investment certificates might be the term that would be applicable to this subsection. There is reference in subsection (2) to a "trust relationship created by the receipt of the money."

So I do have a concern here with amendment X. I wouldn't want us to inadvertently or through the back door or through some other mechanism through the amendment be recreating the problem that was created or existed under the Investment Contracts Act, which by the way this government quite expeditiously had to repeal a couple of short years ago because of the very negative experience of that legislation, particularly as it concerned AIC and FIC. So I'd like the Provincial Treasurer, if he would, to address that particular question.

I'd just move along to amendment Z, Mr. Chairman. It relates to section 191(4) being stricken. Section 191 has to do with borrowing by subordinated notes, and subsection 4 indicates a restriction; that is:

> A provincial corporation shall not issue a subordinated note if, after the issue of the note, the amount of the outstanding subordinate notes of the corporation would exceed a prescribed amount.

Again, "prescribed amount" I presume has some reference here to the regulations.

I'd be curious again why this particular amendment is being brought forward by the Provincial Treasurer. I'm just concerned why it might be deleted. I know that creditors ought to be able to look after themselves, but what might happen here if it's deleted in regards to the government's responsibility? I'd hate to see the government on the hook for any amount of a corporation's debt in excess of the prescribed amount. By removing this provision, it seems that there's maybe an intent here or an opening that it's okay or it's possible that a provincial corporation could issue a subordinated note after which the subordinated notes of the corporation would exceed a prescribed amount. By removing it, it seems to be sending a message that it's okay to do this now.

Now, maybe what the Provincial Treasurer is proposing here is repeated in some other section of the amendments or some other portion of the legislation and therefore is repetitive or needlessly reinforces something that's already looked after or taken care of in another section of the Act. But I'm particularly concerned, first of all, that the subordinated note is not considered a deposit and not insured by the Canada Deposit Insurance Corporation or a similar public agency. And of course the indebtedness ranks equally with the indebtedness evidenced by the other subordinated notes and is subordinated in right of payment to all other indebtedness of the corporation. It's I guess what you'd call second-class debt: it's sort of whatever's left over after the other indebtedness is taken care of. The Provincial Treasurer knows that I'd been asking him some questions last week about other subordinated debentures that I have concern about. They aren't secured by specifically attaching the assets of the corporation and therefore are much less able to be made good on in the event of the demise of a corporation. So I'm concerned about it. It's a question at this particular point.

I'd like to then refer to the amendment BB on the floor from the Provincial Treasurer regarding section 192. That whole section, 192.1(1), is added. Now, provision 192 regards the pledging of assets. It goes into a number of provisions, but what amendment BB does has to do in regards to

> 192.1(1) A provincial corporation shall not guarantee on behalf of any person other than itself the payment or repayment of any sum of money unless
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> (a) . . . [it's] a fixed sum of money, with or without interest, and

(b) the person on whose behalf the guarantee is given has an unqualified obligation to reimburse the corporation for the full amount of the payment or repayment to be guaranteed.

That subsection (b) would be strengthened if the following words were added: "and sufficient security is provided."

8:20

So on this particular point, Mr. Chairman, I'd like to make a subamendment to this particular amendment on the floor. You know, we have lots of experiences where guarantees have been provided but where sufficient security doesn't seem to be behind that particular guarantee. I would make reference in this case to the experience I'm aware of in the case of the Provincial Treasurer and the provincial government, who seem to be quite free and easy with guarantees these days, and when companies go bankrupt or into receivership, we find that many times those guarantees aren't fully secured. Therefore, in making good on the guarantee, the Provincial Treasurer or the taxpayer is at a loss and is forced to come up with the money to cover the debts of the company that had received that guarantee.

So it's basically, I guess, to add an element of prudence to this particular section regarding guarantees and the pledging of assets to ensure that in the giving of guarantees, the person on whose behalf that guarantee has been given has sufficient security at the point at which that guarantee is provided. I guess it's just a way of saying that it's good and prudent, in my view, to ensure that guarantees are backed up by sufficient security. After all, all you're doing when you're providing a guarantee is putting yourself in the place of the lender; that is, you're guaranteeing on somebody's behalf that a loan or a debt is going to be repaid. It seems to me that by doing that you take on all the risks of that lender, because really what you're doing is putting yourself in the shoes of the lender. You're undertaking to that lender that the person who's now got the obligation will make good on that loan. It seems to me that it would only be prudent to ensure that sufficient security is provided to the provincial corporation which might issue a guarantee on behalf of an individual.

So I've asked a number of questions, but I've concluded my remarks at the moment, Mr. Chairman, with a subamendment on the floor. Perhaps we could deal with that and in due course have the Provincial Treasurer respond to the questions that I've posed to him this evening.

MR. JOHNSTON: Mr. Chairman, I'd be glad to deal with section 192.1, which deals with the amendment that's been moved by my colleague the Member for Calgary-Mountain View. I think before I deal with the subamendment, if the committee will allow me, I have to talk about the amendment I have proposed, which is the so-called amendment BB that the member refers to, because it's BB that, in fact, speaks to the policy and speaks to the strengthening of this particular section. Let's remember that there is no provision or restriction in the current legislation to control the giving of guarantees or letters of credit or other forms of off-balance-sheet financing, and these are quite typical forms of instruments that are now provided by trust companies. They were more formally provided by banks before under the formal letter of guarantees, and letters of credit and guarantees, of course, are a common way in which you can do some short-term financing.

It is true that up to this point some legislation has not fully reflected this form of liability in terms of balance sheet disclosure or control. It has become a particular problem in the new dynamics of synthetic transactions; that is, the derivative markets where large entities are swapping positions back and forth. And this is all done off balance sheet. It's synthetic, it's elusive, and it's off in the gray, gray world somewhere. It has become a concern of regulators around the world that the form of guarantees, letters of credit, and other kinds of synthetic market instruments have to be controlled. We have brought this into this legislation as a full section amendment, 192.1(1), have strengthened the requirements with respect to guarantees provided by a loan or trust corporation – that is, one of these corporations – and ensured that, in fact, the person who gets the guarantee by the corporation must be "the person on whose behalf the guarantee is given has an unqualified obligation – and I put in italics the words "unqualified obligation" – to reimburse the corporation."

Essentially, Mr. Chairman, those words provide the same security, the same safeguards, as the member's amendment because, in fact, an "unqualified obligation" is, as he has stated in his amendment, "sufficient security [being] provided," which is the meaning of the amendment. So you can see that the force of this section is quite specific and quite strong and does, in fact, require that there is an asset to back the security or personal covenant by the person who gets the letter of credit. In all cases, this section strengthens the way in which guarantees or letters of credit are provided and has satisfied, as a matter of fact, the harmonization tests across Canada. Probably I would have to say to the member that although I agree with him that the guarantees have been an area where some concern has developed, it's not an area where we have to strengthen this particular section. And don't forget that over everything else the company itself must follow prudent lending practices which are prescribed elsewhere.

So, Mr. Chairman, on this particular amendment I can't agree that it does anything to enhance the section. The section itself is a new strengthening section to section 192 overall, and, given the legal opinion that we do have on this right now, the clear words "unqualified obligation to reimburse," which I quote from 192.1(l)(b), in fact cover what the member is attempting to achieve by his subamendment. Therefore, I don't think the amendment is necessary.

MR. McEACHERN: Perhaps we could ask the Treasurer to explain a little bit further. I have some trouble seeing the expression "unqualified obligation" as meaning the same thing as "and sufficient security is provided." I wonder if I went to the bank and went to borrow money and I signed some letter saying that I had an unqualified obligation to pay them back if they would take that as acceptable without also asking me to sign away my house or my car or some particular assets I have that they would be willing to accept. And you're saying that in legal jargon and in legal responsibility they would take the words "unqualified obligation" to cover that. Or are you saying that it's automatic that the words "unqualified obligation" are accompanied by a listing of assets that have no other calls upon them and that only that institution has the right to call those assets to meet that obligation? Well, I guess if you're a lawyer and got a lawyer's opinion on it, I'll have to take your word for it.

8:30

MR. HAWKESWORTH: If there's no further debate, I'd be drawing the debate on this subamendment to a close. I'm not a lawyer, and I'm not an accountant, but I do know that if I have an obligation, that's one thing. Whether I have sufficient assets to meet that obligation is another question. Simply to say that I have an unqualified obligation may mean something like, "I've

got this obligation; there's no doubt about it." You've got an obligation to reimburse a corporation under a guarantee. The question of whether I have the assets to fulfill the obligation strikes me as an entirely different question.

I could see where one might have a qualified obligation; that is, it might be a partial obligation. It might be an obligation shared with someone else, or it might be partially covered by some kind of agreement, covered by agreement in part, or not; that is, it may be a restricted obligation in some form or another, which may not be an issue entirely connected to the question of having the assets pledged in order to meet that obligation at some point.

For certainty or surety, I appreciate what the Provincial Treasurer has said. I doubt that on this point we're likely to have a long, drawn-out debate. I appreciate that the Provincial Treasurer is trying to give reassurances here that our objectives are both the same, both with his amendment and my subamendment. I believe the subamendment would add to greater surety or greater certainty in terms of the objective of the amendment. If it's not contrary to the intention of the amendment, then that additional certainty being provided by the words in the subamendment ought not to hurt. It would clarify it, I believe, for those who have to use this legislation in the future. I appreciate the Provincial Treasurer's comments. I think the point would add to greater certainty as to what that amendment intends.

Thank you, Mr. Chairman.

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

[Motion on subamendment lost]

MR. JOHNSTON: Mr. Chairman, I think the Member for Calgary-Mountain View invited me to comment on two other sections that he referred to in some of his opening comments, that being section 189, the "set aside" words, or amendment X, and section 191(4), the subordinated notes sections.

Let's look at section 189 first. I'll try to be as descriptive as I can on this section. The words "set aside" are taken out of the amendment in section 189 simply because it is commonly known that funds are not set aside any longer. You do not segregate funds for any particular purpose. They're controlled in a variety of ways. They don't physically set aside deposits or assets. You put them into one pool. The government has the same principle. We have the consolidated cash fund, for example, where cash from a variety of entities are rolled into the one fund. Therefore, the words "set aside" in this section realty are not appropriate terms since the portfolio for trust and owned funds are not physically separated.

Now, this is an amendment to this piece of legislation that came from the industry itself. They looked at the legislation and said, "You know, if you ask us to set it aside, we're going to have a thousand bank accounts around the country or around the province or around the city, making it impossible for us to provide the best service in terms of co-ordinating our cash management." As you know, people manage funds overnight now, so you don't want to have them in a variety of accounts, increasing the cost of dealing with the transactions in this case. Therefore, it is no longer contemporary or up to date to have money set aside. You account for it by accounting process as opposed to segregating the cash asset.

Of course, these are not at all to do with investment contract companies. This legislation is not at all relevant to contract companies. We have moved them under the securities legislation. They're no longer deposit taking. We cleared that up by the amendment which was put through in the spring of 1990, and therefore this is a much different approach to it in that we require capital, require disclosure, require portfolio management. So I can say in this case with respect to the set aside that this again was an error we had made in terms of our drafting, the words that were used. It was corrected by the trust companies association, agreed to by our own legal drafting people, and that's why it is as it is. There's nothing to be read into it. This is of the order of technical change.

With respect to section 191(4), which the member talked about, this section deals with the question of subordinated notes. What we have done here, Mr. Chairman, is: as the Bill now stood before amendment, the section limited the amount of subordinated debentures, and subordinated debentures, of course, are not part of the capital of an entity; they are a way in which a loan company would borrow money. In this case we have to look to the capital adequacy tests, and the words "capital base" are defined in the legislation under section 1(l)(e), and that defines for the capital adequacy or the capital base of an entity. It is the capital base that is one of the important tests of whether or not a company is self-sustaining, satisfying our own calculations in turn or the regulations which describe that. So what we have done is taken out in 191(2) the section which says that the subordinated notes would be controlled. What we have done is simply controlled that somewhere else, and we're doing it by the capital adequacy calculations that I spoke to.

Now, the capital adequacy calculations. If you want to see a detailed calculation of a capital adequacy in one of these trust companies, then you'll see an amazing process. It is this capital adequacy that I talked about that is the major focus of the harmonization question across Canada to ensure that all provinces calculate the eligible capital of an entity on the same basis, taking into account such things as whether or not there were shares in the company paid for in cash, whether there were other forms of contributed surplus – that is, money paid into the company – whether there are retained earnings in the company, which are the accumulated profits, whether or not there are reductions in that base from valuation changes or subtracting from it all other forms of subordinated liabilities included in these subordinated notes.

So we're controlling it on that side, Mr. Chairman. We're controlling by the capital adequacy calculations, and that will be a major focus of the regulations. It's quite clearly understood now across Canada, and this section is simply redundant. Subordinated notes will be limited by regulation to 50 percent of the primary capital in any event by this capital adequacy test. So in fact what we have done by this amendment is to simply reduce or remove a redundant section, and it will be covered very, very effectively in the capital adequacy calculations, and that will be specific in the regulations. I can go on to say again that an awful lot of time over the past two years has been spent on this very issue, the capital adequacy calculation, because it is this item that caused a lot of problems. It's causing the problem right now in one of the trust companies in Ontario, as you've seen. They've had to put new capital back into the company because the capital adequacy calculations have failed.

So again this is not untoward or different. This simply removes a redundant section of the legislation.

MR. McEACHERN: I believe I understand and accept the minister's explanation of the second point, but the first one on the set aside part, I think, requires further exploration. It's true, perhaps, that in order to maintain the maximum amount of

liquidity, nobody, none of these financial institutions really wants to, and when you said that the industry was, you know, adamant about this point and agreed on this point, well, I can quite see why they would be. It would be in the interest of the industry to have the maximum amount of liquidity possible to reuse any money that they've taken on deposit in whatever way they want and however they want and not to have any restrictions on that. I mentioned the other day that the banks used to have to put a certain amount of deposit with the Bank of Canada as a reserve. They always resented that, and of course through the years they've been able to get it whittled down and whittled down, now meaning that the banks can create money much easier than they used to in the past and making it harder for the Minister of Finance and the Governor of the Bank of Canada to control the liquidity of money in this country. Now trust companies are getting into the same game, and so obviously the same problem exists there.

8:40

There's another aspect of interest to it also. You pointed out that investment companies have now been put under the Securities Commission and therefore this is not applicable. But really deposit-taking institutions that can take, for instance, guaranteed investment certificates, like the banks or trust companies do, for 30 days or a year or different periods of time are really not doing anything different than FIC and AIC did. You know, we never did really get a good explanation about how the investment companies were supposed to set aside or have in a Canadian commercial bank assets equal to 100 percent of their deposit liabilities. It was never explained by the Treasurer or anybody else that I'm aware of just what was meant by that setting aside of assets equal to 100 percent of the liabilities: whether those liabilities meant for any one day or any one month or for the year or for all time. It was never clear.

Now we have some trust company legislation coming in that uses the words that a trust company, or some of these mortgage companies, can earmark certain moneys for a certain purpose but they don't need to set it aside. Well, okay. But how do they guarantee, then, the deposit? That brings us all into the CDIC thing, I suppose, and deposit insurance and all the rest of it, which is kind of another question, I gather.

So I guess what the minister is saying is that whatever those arrangements are, it doesn't require the trust company to physically take some of the money and set it aside and not use it; that they in fact then will be able to use it. I guess my question is: will regulations outline any restrictions on the amount of money that a trust company can use of the deposits it takes in, or will they be able to roll over 100 percent of it to do whatever they want with it as long as, of course, there's some kind of insurance scheme or policy that says on paper that they owe it under some kind of – what's the word? – earmarked sort of definition?

MR. JOHNSTON: Mr. Chairman, first of all, let's just review for a moment the accounting that takes place here. I don't want to give you a lesson on this; I know the member understands it as well as I do. When you receive money from a depositor, you put it in the bank and you establish an account for the person. The company, the trust company in this case, has a liability; that is the amount due to the depositor. The member understands that very well.

So what are the protections to ensure that that depositor's money is safeguarded? There is a series of those protections that are involved here. I'll set aside for a moment the other kinds of controls which would include the self-dealing: whether or not you're doing the right kind of loans. Put that aside, because those are always problematic. But there are two technical ways in which you can deal with the protection to the depositor, and that really is uppermost in everybody's mind in this case.

The first way, and this is the one that had been applied in Alberta for some time, was to say that if you have capital of, say, a million dollars, you can take deposits of roughly 20 times your capital. So now your deposit limit goes to 20 times a million, or $20 million. That was one approach to it, and that whole thing rested, obviously, on this calculation of the capital adequacy of the entity. As your retained earnings went up, you could obviously expand your deposits. Now, what did you do with those deposits? Well, those deposits went into this pool of money. The pool of money may well be cash. It could be government securities, or it could be cash, government securities, and bonds, or it could be cash, government securities, bonds, mortgages, commercial loans, et cetera, et cetera, et cetera.

So the second approach to this whole thing is to assume that if you take the depositors' money, you have to control what you do with the money over here in terms of the portfolio mix. The second way in which you control the way in which the depositor is protected is on the portfolio side, the so-called risk evaluation of the portfolio. If you dictate that a trust company controlled by this regulation must maintain 45 percent of its real assets, its good assets, in bonds or cash, then you're reducing the exposure. If you had him control that in 5 percent of cash or bonds and 80 percent in bridging loans for high-rise apartments during construction, you could experience a greater risk in the portfolio.

So this legislation sets a tier. It says: okay; you can put 45 percent in cash and bonds and mortgages; you can put another X percent in real estate, less than 5 percent; you can put some money into commercial loans; and then you can put a little bit down here in other kinds of investments, including investment subsidiaries, et cetera. So what this has done is control the portfolio, because there is a probability risk assigned to each one of these assets in the asset or the portfolio blend of any trust company. That's the second way you can control it. That's how this process unfolds.

So it's not necessary to say you're going to set the cash aside. You simply have the record over here. It says this company owes a liability, whether it's by demand account, by a chequing account, by a savings account, by a GIC, by a term certificate, to Mountain View Kid. That's what it says in there. That's a liability, and it's protected by a range of assets over here.

Then the second problem this entity has to face is the so-called matching of assets and liabilities. That's the so-called spread business. That's how they make their money. If they take a liability over here at 12 percent, they know they have to make 1.375 percent on that spread to generate enough cost to make some money for themselves. If an entity doesn't make money, it's not going to stay in business and can't expand its deposit-taking opportunity. So the spread is then part of the asset/liability management that is internal to the entity. If they know that they're going to have a lot of liabilities coming due in one month – that is, term certificates coming due – they don't want to be locked into 10-year mortgages, do they? There's a lot of computer software now available that does this asset/liability balance for you, and that is simply calculated to ensure that your income stream, your cash stream, is balanced against your liabilities and your need for cash. That's how it's done, and that's what this legislation does.

But the focus is on the capital adequacy, making sure it should never reduce that capital adequacy, and that takes a big, big calculation. It's a very, very laborious calculation, but it is in fact to safeguard the amount of deposits that can be taken. Even in the Principal case you saw the following: FIC/AIC had no real capital in the company, because once you took the capital that was in the company, subtracted losses, intercompany accounts, et cetera, it came down to zero. Here you had a company with very little capital supporting an amazing amount of deposits or guaranteed certificates, as they were called at that time, which was out of proportion. Moreover, there was little control on the blend of assets because we saw they were invested in funny kinds of assets, different kinds of portfolios, and there were some intercompany accounts in there that were dangerous.

This legislation is as streamlined, as efficient, and as contemporary as any you're going to see, because it builds on both of those principles. Then it has the so-called other responsibilities for directors, other responsibilities for management, other responsibilities for auditors, the preclusion of transaction, the disclosure of transaction, the blend of directors being two-thirds, one-third. All of these things are set up to ensure that the owners, the directors of the company, don't put the money into some deal for themselves. So it's not necessary to separate or to set aside the cash itself. Cash is universal, as you well know. What you have to control is accounting for the liability, the capital base, and ensure that the portfolios will control them.

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

MR. HAWKESWORTH: Thank you, Mr. Chairman. I'd like to express my appreciation to the Provincial Treasurer for, I guess, giving us a seminar this evening. It looks like he's in his element over there telling us all about the financial industry.

But I do still want to highlight some concern here. I appreciate his comments and I take him at his word, but when I see, for example, in section 190, which talks about the capital base, that addresses the business of leverage ratios and risk weighted average ratio requirements, et cetera, what do we find the legislation says? It says that it's going to be "set out in the regulations." Now, that may be all fine and good, it may even be appropriate, but we don't have the regulations in front of us. Given that these are major policy issues and major questions, as he has well alluded to himself, something that a lot of time has been spent on in negotiations and discussions with other provincial ministers in other provinces, I'm even going to be willing to say that perhaps it is appropriate that some of these questions be set out in regulations and not in legislation. But it's similarly appropriate that we have these regulations in front of us so we can have a look at how those policy questions have been addressed or resolved.

8:50

We're sitting here saying you can read it in the regulations. But we don't have the regulations. I think this is an ongoing difficulty with this piece of legislation that the minister has brought forward. I'm still left with no assurances that a provincial corporation will be prevented from issuing subordinated notes that might exceed a prescribed amount. I'm sure the Provincial Treasurer won't feel he needs to try it again, but even if he does, I'd appreciate that too. But if he's saying that section 191(4) is taken care of, if he's saying, as I understand his answer, that it's taken care of in the regulations, I would have appreciated the opportunity to have the regulations in front of us where he could point specifically to where that is spelled out. As I say, I have a concern. It was in the legislation. Perhaps it's been taken care of. I'll accept his word on that, but what I hear him saying is: look for it in the regulations. I can't see it in the regulations because I don't have them in front of me, and I think that's realty something that's missing or a shortcoming of this legislation, Mr. Chairman.

MR. JOHNSTON: Mr. Chairman, I've taken an awful lot of complex legislation through this Assembly over the past 16 years, and not once did the regulations go with it. This is a statement of principle. This outlines the way in which a piece of legislation operates. I suppose if you wanted to see how capital adequacy was calculated, you could go to the current regulations prescribed for the loan and trust corporations, because in there you'll see capital adequacy calculations that are quite similar to what we would find in the proposed legislation which will come sometime in '91. So to say that you can't deal with the legislation because the regulations are not there is the perpetual chicken-and-egg case that is not sustainable in a real debate. It has not been the policy of our government to bring the regulations forward at the same time, and I can tell you, going back to some very complex pieces of legislation including the Planning Act in 1976-77, that we did not provide the regulations. We provided the structure, the framework, the opportunity to provide regulations, and that is essentially what this legislation has done.

Capital adequacy calculations, including the subordinated calculations, are well-founded rules which, as I say, have been harmonized consistently across Canada. The process is in place, the agreement's in place, and in fact our current regulations or a current description as to how capital is calculated will in fact provide as much instructive assistance as anything.

MR. HAWKESWORTH: I'd just like to make one comment, Mr. Chairman, that having a consistent policy doesn't make it a good policy. And consistently not giving regulations still doesn't make that a good approach to bringing legislation through this House. I say to the Provincial Treasurer: again foisting off some of these important issues into the regulations in some ways is appropriate; I acknowledge that. But in some ways you may be addressing significant policy issues in the regulations and not allowing the Legislature the opportunity to scrutinize those at the time the legislation is being debated in this House.

MR. JOHNSTON: With respect, under our process right now regulations are done by order in council. That's the process we follow, Mr. Chairman. We tend to be consistent on that point.

MR. CHAIRMAN: The Member for Edmonton-Kingsway.

MR. McEACHERN: Thank you, Mr. Chairman. Yes, I know the government is very consistent on that point. They consistently leave too much power in the hands of the minister and too much to be decided by regulation on their legislation generally, and this Bill is not an exception; in fact, it's an extraordinary example of exactly that.

I want to thank the minister for his full answers to my last couple of queries, but I would like to express a little bit of disappointment at his opening statement. When we were talking about this Bill at second reading, I think we agreed that half an hour was not enough time to realty get to the essence of all the various principles and parts of this Bill on even a theoretical sort

of level. Of course, I expected him at the start of Committee of the Whole then to take a full half hour and get into some of the details and cover some of the things he hadn't been able to cover in his first half hour and perhaps answer some more of the questions that my colleague from Calgary-Mountain View and I raised during our speeches on second reading.

There are some parts of the Bill that are not covered and not changed to our satisfaction by the amendments the Treasurer has tabled, and I want to point a few of those out. I would start by suggesting that the Treasurer might like to look at section 312. It's under part 17, General, and talks about the Canada Deposit Insurance Corporation. That's mostly covered in section 260, and I intend to get to that in a minute in more detail.

The first part I'm interested in at the moment is section 312(2): "Claims by the Government against the provincial corporation." There are:

> (a) in respect of any money referred to in subsection (1),
>
> (b) in respect of any loans to the corporation . . .

and so on, and

> (c) in respect of money paid by the Government . . .

And then a general statement:

> shall, on the winding-up of the corporation, rank immediately after the remuneration of the liquidator and of the receiver and manager, if any, and before any other claims.

What this does is establish that the government ranks ahead of depositors for claiming assets of the company if it's being wound down or in a bankruptcy situation, and perhaps that's fair. If the government representing the taxpayers was not ahead of the depositors, it would then put the depositors ahead of the taxpayers. Since the taxpayers aren't the ones that made the decision to put money into a company, it would seem to me that the taxpayers should come first in terms of their rights to the assets compared to the depositors. However, I've got to say that the depositors who expect the government to regulate a company and then the government falls down on that, like in the Principal case – you end up with a situation where depositors feel very sold out.

So I hope the minister understands that if this was to be considered a fair rule, it also means then that the government has to do its job of regulation, because if the government is in some way at fault for the problems that the depositors find themselves in in relation to the bankruptcy of a financial institution in which they put money, then certainly they feel very wronged that somehow . . . From their point of view they thought this was a good company, that everything was fine. The government said it was okay, nobody warned them that there were any problems, and then suddenly they find themselves on the short end of the distribution of assets. So I just wanted to flag that to the minister and hope he realizes that the key to this thing is really consumer protection if that's to be considered a fair section in this Bill.

Now, I wanted to look at section 260 also in more detail, Mr. Chairman. Section 260 deals with the arrangements institutions might make in conjunction with the Canada Deposit Insurance Corporation: a sort of insurance for depositors into financial institutions. I find myself a little bit perplexed as to how to take this. There really isn't much guidance or direction here. If you look at 260(3), it says:

> The Minister may, on behalf of the Government and with the approval of the Lieutenant Governor in Council, enter into agreements with the Canada Deposit Insurance Corporation under the Canada Deposit Insurance Corporation Act (Canada) for any purpose in connection with the issue of policies of deposit insurance under that Act to provincial corporations.

Okay; so it's an enabling sort of blanket legislation allowing the Treasurer, I gather, or the government of this province to make any agreement they wish to in terms of insurance in connection with the Canada Deposit Insurance Corporation.

9:00

Sub (4) goes on to say.

> An agreement made pursuant to subsection (3) may contain an undertaking by the Government to indemnify the Canada Deposit Insurance Corporation for any loss to that Corporation occurring by reason of its obligation to make payment in respect of any deposit insured by a policy of deposit insurance when that obligation arises during the period specified in the agreement for that purpose.

It seems to me that (4) is a direct result of or perhaps a statement of the arrangement made by the Treasurer with the Canada Deposit Insurance Corporation in relation to North West Trust, and I'm really wondering how or why that would be necessary again. At least one would hope that isn't going to be necessary again. I've just sort of tried to piece it together, and I may not have it quite right, so I would like the Treasurer to correct me and explain a little more fully, if he would, if I haven't got it right.

I understood that when you made the agreement with the Canada Deposit Insurance Corporation to give you between $277 million or $278 million to take over North West Trust and the Alberta Heritage Savings & Trust Company, you then waived any further obligation that the Canada Deposit Insurance Corporation might have in regards to the deposits made into the new North West Trust until some future date. I don't know what the criteria would be to decide when that date was over. My understanding also was that there was a return of $15 million to the Canada Deposit Insurance Corporation for future indemnity, which I thought would be as an insurance payment to Canada Deposit Insurance Corporation for when that time came; in other words, when it was decided that North West Trust Company was a sound company, that it had divested itself of all the unprofitable properties and mortgages and that sort of thing into Softco and would therefore qualify again for Canada Deposit Insurance Corporation.

I guess what I'm wondering is: what are the obligations of the taxpayers towards the depositors of North West Trust? What are the obligations of Canada Deposit Insurance Corporation, and why would it be necessary to put this kind of a statement in to make that kind of arrangement again? It would seem to me that it should be unnecessary if under (3) we were able to make the kind of arrangement that would see to it that the insurance process that was set up would be adequate so that the government of Alberta would not have to *in* some way put the taxpayers of Alberta on the line as we've had to do in the North West Trust case for at least some period of time; how long I don't know. I wonder if the Treasurer would be able to give us some sense of that.

Another concern I have is not directly related to that, but over on the next page section 263 indicates that the Treasurer – and I said a minute ago that the Treasurer, and therefore the cabinet I guess, because they usually approve what the Treasurer does – takes on a considerable amount of authority by leaving things to the minister in so many different places, and this is one of them. Section 263 says:

> For the purposes of carrying out this Act, the Minister may . . .
>
> (b) receive affidavits, take declarations and depositions and examine witnesses under oath.

I would wonder, Mr. Chairman, if there's any other Bill that the minister can think of, or any other minister other than the

Attorney General – and I don't know that even he has those powers – that would be taking on this kind of power. It does seem to me an extraordinarily strong power. I suppose it's a bit like a judge or a lawyer or some commissioner that's been chosen by a government to hold some hearings and has been given powers under some Act to do these things. I'm wondering why the Treasurer would feel that he needs those kinds of powers to handle the trust company legislation and the companies applying for a right to operate, for letters patent under the Alberta government. Just a couple of things I'd like the Treasurer to answer.

Chairman's Ruling
Relevance

MR. CHAIRMAN: Order please. Order. The hon. member hasn't been addressing his questions and comments to the amendment. I assume that the amendment has now been exhausted by hon. members. The hon. Member for Edmonton-Kingsway was talking about the Bill in general and questions he had about the Bill, not the amendment. I was just wondering if we could deal with the amendment and get it out of the way before the Provincial Treasurer replies to the hon. member.

MR. McEACHERN: Mr. Chairman, my comments were in the general context of the amendment in the sense that we felt that they don't . . .

MR. CHAIRMAN: Hon. member . . .

MR. McEACHERN: I was just explaining.

MR. CHAIRMAN: Hon. member, the Chair heard you referring and reading from the Bill, not from the amendment. The Chair hesitated to interrupt because the Chair knew the hon. member wanted to make those points and ask those questions. But for the purposes of order the Chair feels that we should deal with the amendment now if there are no further comments directly on the amendment.

MR. McEACHERN: I don't understand why you make an assumption about what I was going to say.

Debate Continued

MR. McEACHERN: Yes, by all means proceed with the amendment.

SOME HON. MEMBERS: Question.

[Motion on amendment carried]

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

MR. HAWKESWORTH: Thank you, Mr. Chairman. I'd like to have distributed a number of amendments which I'd like to submit for the committee's consideration. While members are waiting for them to be distributed, let me simply launch in.

MR. GOGO: Mr. Chairman.

MR. CHAIRMAN: The hon. Deputy Government House Leader.

MR. GOGO: I wonder if the hon. Member for Calgary-Mountain View would entertain a motion: that I beg leave to adjourn debate.

MR. HAWKESWORTH: Just for the purpose of the record and for Votes and Proceedings, Mr. Chairman, if it's sufficient that these have now been moved and are all on the table and so on, I'm quite happy to give way to the Government House Leader in order for him to make his motion.

MR. CHAIRMAN: Hon. member, they have been tabled and are being circulated.

The motion before the committee is that debate on Bill 38 be adjourned. All those in favour, please say aye.

HON. MEMBERS: Aye.

MR. CHAIRMAN: Opposed, please say no. Carried.

Bill 57
Electoral Boundaries Commission Act

MR. CHAIRMAN: Are there any further amendments?

MR. ROSTAD: Mr. Chairman, the Deputy Government House Leader is giving you the certified copies, and I have a number here to be passed out to the members.

MR. CHAIRMAN: Order please. Order. It's come to the Chair's attention that when the committee rose yesterday, there was an amendment before the committee by the hon. Member for Edmonton-Belmont, which is still outstanding. Is the committee ready for the question on that?

SOME HON. MEMBERS: No.

MR. CHAIRMAN: No.

The hon. Member for Edmonton-Belmont.

9:10

MR. SIGURDSON: As you may recall, Mr. Chairman, last evening when we adjourned debate at approximately 10 o'clock, there were still a number of questions that had been put forward by members on this side of the Assembly with respect to the amendment. My colleague the Member for Calgary-Forest Lawn had asked a number of specific questions with respect to sections 17(2) and (3). Now, I don't know if it's the intent of the government to answer those specific questions. I would hope that before we try and call for the question, we don't have the government endeavour to push through this amendment and vote it down.

Mr. Chairman, in that the mover of Bill 57 is here, perhaps what I could do is repeat those questions that were put to any government member last night by my colleague the Member for Calgary-Forest Lawn. Those questions were with respect to section 17(2) where we have those up to 5 percent of constituencies that are permitted to fall below the variance of minus 25 percent to a permitted variance of up to 50 percent. The question was: why is 20,000 square kilometres one of the criteria?

The second question, of course, deals with subsection (b): why do you have seemingly an arbitrary figure of 15,000 surveyed kilometres? What's significant about that?

Why in sub (c) is there provision for 1,000 kilometres of primary and secondary highways? What is significant about that?

In sub (d) we have that provision that allows for any constituency whose closest border is 150 kilometres away from the capitol. What's significant about that? You do have air transport that allows you to get back to Calgary a lot sooner than it does to get out to, say, a place like Jasper out in West Yellowhead, so what's significant about (d)?

Why 4,000 people? Why not 2,000 or 3,000 per town or 5,000 or 6,000?

So that's a question that I hope the mover of the Bill would answer.

My colleague had expressed some sympathy for subsection (f) about economic factors and loss of population, but why two of the most recent censuses from Stats Canada? Why not just the most recent census?

> And (g), seemingly a very subjective criteria:
> To impose a higher population requirement would significantly and negatively affect the community of interests of the inhabitants of the proposed electoral division.

Who is to determine what that might be?

Those are the questions that we would hope the hon. Attorney General as the sponsor of the Bill or any member of the government side would stand up and respond to.

[Mr. Jonson in the Chair]

Now, last night, again for the benefit of the committee, when we did put those questions forward, we had the Member for Red Deer-North stand up and give us a list of speakers and dates when people had spoken previously on the Bill. He suggested that there may have been some answers there, but my recollection, sir, is that there are no answers to be found in *Hansard* going back to those dates with respect to the specifics for 17(2) and (3). It's just not to be found there. Are we going to have to get him to court and have the government defend this in front of some judge and say, "Well, this is the reason why"? Is that where we're going to find out? Well, quite frankly that's just not good enough. From our perspective this is where it ought to be tested first. The defence ought to be made here, or the rationale ought to be presented here. That's what we hope to have this evening before we move off this amendment.

MR. DEPUTY CHAIRMAN: The Member for Stony Plain.

MR. WOLOSHYN: Thank you, Mr. Chairman. I've listened to the discussion, the debates on this particular Bill for a few hours now, and I'm really beginning to wonder why this particular government is not prepared to go along with our amendment and delete 17(2) and (3).

I've heard numerous references to the triple E Senate. "Do you believe in it? Don't you believe in it?" I find that quite an interesting observation because every member in this House likely has their own opinion of what the triple E in the triple E Senate stands for. Certainly the lame effort that was made by this government to elect a Senator fell flat on its face. We are dealing with the electoral boundaries for the province of Alberta for the Members of this Legislative Assembly, and it doesn't have an awful lot to do with the individual perceptions of your triple E Senate. A student in one of the schools once said that there is one E missing on the triple E Senate, and that E should be "expensive." I think in the last few weeks that has been proven to be quite true.

The Member for Pincher Creek-Crowsnest stood up and gave us a list of really wonderful extra duties he had in his constituency. That was supposed to justify having section 3 put in there. I think he referred to 13 tennis courts. I quite frankly don't know what relevance that has, but I suppose if you play tennis a lot, you might have trouble getting in between them.

MR. SIGURDSON: He's got to run around and collect all those balls.

MR. WOLOSHYN: Or collect all the balls; I really don't know. But anyway, he's got 13 tennis courts, and I commend him for that, three covered arenas, and he didn't mention . . .

Chairman's Ruling
Repetition

MR. DEPUTY CHAIRMAN: Order please. The Chair wishes to draw to members' attention the matter of repetition in debate. Whether we are posing the same series of questions over and over again or listing certain items in Pincher Creek, those two points have been made repeatedly, and I'm invoking the rule regarding repetition in debate. I would advise all members that the Chair intends to invoke it.

Debate Continued

MR. WOLOSHYN: Well, that's fine. We won't worry about the two liquor stores, three Legions, and 19 community halls in that case.

The whole point is that this argument for having a special consideration made to this particular constituency doesn't wash. The constituency of Stony Plain has a city, a town, a large village, two coal mines, five summer villages, and I say, "So what?" That's a part of the job of representation.

MR. SIGURDSON: How many liquor stores?

MR. WOLOSHYN: The liquor stores I don't count, but I think there are three.

AN HON. MEMBER: How many tennis courts?

MR. WOLOSHYN: The tennis courts I haven't counted. I'm not in the business of going around collecting tennis balls.

MR. SIGURDSON: How many arenas?

MR. WOLOSHYN: About six arenas at any rate.

MR. DEPUTY CHAIRMAN: Hon. member, please deal with something that might possibly be new in the debate.

MR. WOLOSHYN: Okay; we'll go specifically to subsection (3). We all know that in 1979 or thereabouts for whatever reasons the municipality of Crowsnest was set up. Within that municipality they had four submunicipalities, if you will: the town of Blairmore, the town of Coleman, the village of Bellevue, and the village of Frank. Now all of a sudden, and I have to question why, that particular municipality for the purposes of this Act has said that it's not a town any more. The Act that set it up refers specifically to it as a town, so now we're in the process of overruling the Crowsnest Pass Municipal Unification Act for one specific little section in here. It also refers to it as a city for the

purposes of having wards, but nowhere does it say that at the whim of the government we shall discount it. It is a town; that's the long and short of it. That's what it's designated as and that's what it should be, and I think subsection (3) should be deleted on the very basis of being consistent.

9:20

We look at section 16 in terms of what we want to do with the amendment. I don't think anybody in this House has an argument with the subsections of 16. They have outlined fully what is expected. The commission, when it is appointed with whatever makeup, has got sufficient direction there without having to be taken off track and specifically outlined to save four particular constituencies. Mind you, one might get into a little bit of thinking to see which ones we are actually after here. I really don't know – although I could guess – beyond Pincher Creek-Crowsnest which ones these specifically relate to, because they have to relate to specific constituencies, or else it wouldn't be written up this way.

I think this kind of open gerrymandering makes a travesty of what we're trying to do here. What we're trying to do here is set up a commission that will have fair representation. We have given the commission good guidelines in section 16, we've given them a pretty good description in subsection (1) of 17, and now all of a sudden we go off on a tangent. I would like to know why. The hon. member from Calgary posed a series of questions for the House yesterday. We didn't get answers, and we're still waiting for answers. I would suggest that perhaps a better way of approaching the problem would be to maybe get into some good policies to have people move out to the countryside instead of the reverse. Maybe we won't have this particular distinction if the people in rural areas are encouraged to live back in their homes instead of being forced off into the more populated areas.

So, Mr. Chairman, I would respectfully submit that all members support this amendment by deleting subsections (2) and (3).

Thank you very much.

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

MR. BOGLE: Thank you, Mr. Chairman. I rise to speak against the amendment as proposed. There are really two sections which need to be addressed. First of all, the criteria set out in the legislation, the seven points recognizing that for the commission to deem that any constituency should be outside the plus/minus 25 percent norm – it's important for members to recognize that this is an optional provision; it is not mandatory. But in order for the commission to identify any one constituency outside the norm, the constituency would have to meet at least four of the seven points listed. The second provision, which has drawn some considerable attention, is the specific reference to the municipality of the Crowsnest Pass.

I'd like to very briefly address the municipality of the Crowsnest Pass first, and I would do so by posing this question in a general way to all members of the Assembly. After having heard the explanation given by the MLA for Pincher Creek-Crowsnest, after having heard about the uniqueness of the municipality of the Crowsnest Pass, a single municipality with four post offices, a similar number of cenotaphs . . . [interjection] If I may. Relax.

Point of Order
Repetition

MR. PASHAK: Mr. Chairman, point of order. You ruled our member out for reciting that litany. Why was that . . .

MR. DEPUTY CHAIRMAN: Order please. I have some reluctance in recognizing a point of order without a proper citation. But, hon. member, the Chair commented in the way he did because the hon. members of the opposition have posed the same set of questions and the same set of statistics several times in this debate. I think the hon. Member for Calgary-Forest Lawn would agree that these questions have all been directed to obtaining an answer or a response from the government side.

Now let us hear the Member for Taber-Warner.

Debate Continued

MR. BOGLE: Thank you, Mr. Chairman. The question I was going to pose is: after having heard the explanation given by the hon. Member for Pincher Creek-Crowsnest, is there anyone in the Assembly who can see a similarity between this municipality and any other town in the province of Alberta? It is a unique situation; it is a unique municipality. Well, the hon. member can shake his head, but I'd like him to explain at some point in time how he can justify that. It is unique. It took a special Act of the Legislature to bring together the towns, the villages, and parts of the improvement district to form a very unique municipality. If members will go back to the report, they will note that the recommendation from the all-party committee of the Assembly referred to "no population centre over 4,000." That was the sixth of the seven points set out as part of the criteria. In the ensuing legislation which was developed to reflect the report, the term "town" was used in subtion (e): "there is no town in the proposed electoral division that has a population exceeding 4000 people." Then section (3) of the Bill states: "For the purpose of subsection (2)(e), The Municipality of Crowsnest Pass is not a town."

In terms of the broader questions as put forward by the Member for Calgary-Forest Lawn, I would make the following observations. First of all, there's a considerable amount of evidence which was given during the hearings. It's been recorded; it's in *Hansard,* evidence given across the province by urban and rural Albertans suggesting certain recommendations. As I indicated in speaking to the report itself, one of the fundamental principles the committee strove to achieve was to ensure that the report would adequately and properly reflect what the committee members had heard from Albertans in terms of achieving fairness and equality across the province. In addition to the *Hansard* records, there is reference on pages 63 and 64 of the report to this very matter, the matter of "extreme or justifiable criteria" which could be considered that would take a constituency outside the norm. We've already spent some time in the Assembly discussing other jurisdictions which have deviations outside the norm. The hon. Member for Edmonton-Belmont is correct when he reminds the Assembly that the other jurisdictions have not had their legislation tested in the courts. That's true, but because others have not had their legislation tested in the courts, should that in some way be used as an excuse or a reason to duck, to hide, to play it safe? We're trying to do what is right.

Now, we see in the Canadian federal system that there is an upper Chamber, a Senate, albeit not equally representative of regions. That's something the vast majority of Albertans want to see changed and certainly the majority of members of this House want to see changed; they want to see a triple E Senate. I believe, Stony Plain, that that has a direct bearing, because people see the inequity at the federal level and don't want to see inequity develop at the provincial level. They want fairness across the board. But in the Canadian system, in addition to the upper House, we see in the House of Commons, which uses

the plus/minus 25 percent factor, that even with that, exceptions are made in the Northwest Territories, where there are two members of the House of Commons; in Yukon, where there is a member; and in Prince Edward Island, where there are four members. That's the House of Commons. We have examples in other jurisdictions which have been given: Ontario, where 15 of 130 seats are outside the plus/minus 25 percent range. To suggest in the Assembly that we should not do this because it might be challengeable or might violate the Charter is not a good enough reason. I remind all hon. members that the government has committed itself through the Attorney General, through our Premier, that the legislation will be referred to the courts. We want all members to be satisfied, as we are, that the legislation will withstand any challenge in the courts.

9:30

I'm going to attempt briefly to address some of the points raised as to the reasons for various criteria. I'll give my opinion, Mr. Chairman, and that's all I can do as one of seven members who listened to Albertans as we traveled across this province. What did we hear on this particular matter? Well, we heard in various parts of the province that some consideration should be given to the total size of the constituency. I'm not going to suggest for a moment that one brief said that 20,000 square kilometres should be the magic number, no. But using that as an example, the committee came back, looked at the map of Alberta, did some number-crunching. We looked at all 83 constituencies from largest to smallest, and after examining the criteria, we decided that 20,000 square kilometres was a reasonable figure. Is it a perfect figure? No. Can others argue that there should be another figure, whether it's 25,000 or 18,000? Yes, just as someone might argue that plus or minus 25 percent is not the proper figure, that it should be 22 percent or 28 percent. That isn't the point. The point is that the committee looked at the statistics available and made a recommendation in terms of the report back to this Assembly.

Item (b), "the total surveyed area of the proposed electoral division exceeds 15 000 square kilometres." Well, when hon. members look at a map of Alberta and can identify some constituencies . . . I'll use Dunvegan as an example, because when we were in the northwest part of the province, this point came up. The actual settled portion of the Dunvegan constituency is in what is generally referred to as the surveyed area. Now, because seismic crews and oil crews would travel throughout that constituency doesn't mean the entire constituency is settled or surveyed. No. The parts which have been surveyed are the parts which can support agricultural development, whether it's in the form of farming or ranching. So you'll see in the Peace River constituency, for instance, a long ribbon of development that follows from the town of Peace River up to the High Level area, the Fort Vermilion area, and then running across. Again, it follows the areas where the land base can support some kind of agricultural development. We looked carefully at that factor. We looked at it in the Dunvegan constituency. You'll find that the actual settled portion of the constituency – and I've forgotten the exact figure – is possibly a third or may even be as little as 25 percent of the total landmass that makes up the Dunvegan constituency.

We then looked at the total length of primary and secondary highways within the proposed electoral divisions and again identified all the highways, looked at all the constituencies, and realized there was quite a mix. And guess what? The Chinook constituency, which is by no means one of the largest constituencies under (a) category, doesn't exceed 20,000 square miles, but in terms of total settled area, in terms of people living in all corners of the constituency, it had more kilometres of highway system than any other constituency. Obviously if you've got primary and secondary roads running, you've got people that those roads are servicing. These roads aren't built for any other purpose. If you're running a road out to service an oil battery, it isn't a primary or secondary highway. At most it might be designated a resource road, but it would not fall under the definition of primary or secondary highway.

And (d),

> the distance from the Legislature Building in Edmonton to the nearest boundary of the proposed electoral division by the most direct highway route is more than 150 kilometres.

Again, I appreciate that it may be hard for some members to see why this is a factor. It's a factor in two ways. It's a factor, first, for the residents of that constituency, who increasingly must come to Edmonton for activities related to local government, whether it's the municipality, the hospital board, the school board, the health unit, the library, so many others. So it's the members who live in that constituency as well as the members of the Assembly who travel back and forth.

Yes, it's true that many of our communities are linked by a very good air service, but that doesn't work for all members of the Assembly. Even in some cases where a member may wish to drive from the constituency to the nearest centre for an air flight, there are reasons why the member will choose to use his automobile for the entire trip. Because of the weather yesterday, had I chosen to drive to Lethbridge and then fly from Lethbridge up, in all likelihood I would not have been here when I was. I couldn't have made it yesterday afternoon because freezing rain came down between the time I departed from my residence till I would have gotten to the airport. I would have missed my flight, and whether I could have gotten on the next flight, which is two to three hours later, I don't know. So there are other factors that do come into play, but the distance from the capitol is an important factor, and 150 kilometres was deemed to be a figure that was acceptable.

That "there is no town in the proposed electoral division that has a population exceeding 4000 people": again, if you look at many of the smaller constituencies in terms of total population, you find that one of the common denominators those constituencies have is that there are no major towns or towns with a large population. That could be said whether it's a Dunvegan or a Chinook or a Little Bow; they don't have a town centre with 6,000 or 8,000 people. They're smaller centres. This means that to make up the total population, there has to be many more of them. I recall when we had the hearings in Hanna, and we had to go back to Hanna for a second meeting. On a per capita basis our meetings in Hanna were by far the best attended in the entire province, yet that's one of the most sparsely populated constituencies in Alberta. So the size of a community does have a bearing because, as has been mentioned before, when a member is dealing with a local council, whether it's a council representing a village of 250 people or a town of 3,000 people or a city of 25,000 people, the issues, the concerns in that small community, are vital and have to be addressed, and it takes time. When the member mentions four cenotaphs, again, there are challenges in terms of the legions in the community, in the area the member represents.

And(f),

> due to economic factors there has been a significant loss of population in the proposed electoral division between the 2 most recent censuses available under the Statistics Act (Canada).

That, I think, has been referred to by several other opposition members, and I think there was some general understanding of

the reason for that particular amendment. I won't spend a lot of time on it unless members want further explanation. I think it's fairly self-explanatory. It was certainly meant to ensure that whether it be mining activity or particularly in a community that's a one-industry town where the industry went down very quickly and there's a dramatic loss of population, that indeed could be a factor the commission could examine when redistributing boundaries.

9:40

AN HON. MEMBER: What's significant?

MR. BOGLE: Pardon? "Significant" is something the commission will have to determine. There is not a definition provided in the legislation.

> Item (g),
> to impose a higher population requirement would significantly and negatively affect the community of interests of the inhabitants of the proposed electoral division.

Again, a difficult one to quantify if you're looking for some absolute term or number to apply, but it was to ensure that if a group of citizens from a particular area wish to petition the commission and make the argument that there's something very unique and special about their area – and I think the point was mentioned in debate yesterday that every place the committee went, we heard from people that they were indeed important and different from others – they would have the right to do just that.

I want to conclude my remarks by again indicating that the operative word is "may." There is nothing in this Act which directs the commission to create four ridings that fall outside the plus/minus 25 percent norm. There is indeed a provision which allows the commission, if the commission is satisfied that at least four of the seven criteria points have been met, to do so.

With those comments, Mr. Chairman, I'll conclude my remarks.

MR. DEPUTY CHAIRMAN: The Member for Edmonton-Calder.

MS MJOLSNESS: Thank you, Mr. Chairman. We have been presented and are being asked to endorse a Bill, the Electoral Boundaries Commission Act, that I believe does not bring about voter equality, nor is it fair. Now, we can talk in this Assembly about tennis courts and cenotaphs and freezing rain, but I believe it boils down to voter equality. I think we do have to recognize that there are variables we must consider, but I do believe that section 17(1) allows for that consideration. I do not believe we need (2) or (3), and our amendment would delete these two subsections.

Mr. Chairman, we had a committee that went around the province. It took a lot of time; it took a lot of expense. When the committee came back and subsequently we had a Bill presented in this House, we expected fairness and we expected equality. That is not what we got. That certainly would be the objective, I would feel, that the committee set out to bring about, and also that the government would have presented us with a Bill and this would have been the objective.

I really question, when we take a look at subsections (2) and (3), what the objective is of this government to introduce a Bill like this. We have a list of criteria, and I appreciate the fact that the Member for Taber-Warner tried to go through the criteria and justify them. But I can't help thinking when he talked in his remarks just now about 20,000 square kilometres, and he said that some people may say it should be 30,000 and some may say it should be 50,000, that that's a good point, Mr. Chairman, because what we're saying, then, is that these figures in these criteria are totally subjective. He says that not all of us would agree with these numbers. That's true; we don't, and we'd like to know where they came up with these particular numbers.

I would also like to say, Mr. Chairman, that I feel very strongly that the commission should be given the responsibility to go out and create 83 constituencies that are at least fair and equal. I don't believe that when we have criteria such as those set out in this Bill in this particular section that is allowed to happen.

Mr. Chairman, if the Assembly does not accept our amendments, which would delete these subsections in this particular section, what we're saying, then, is that we're going to allow four ridings in Alberta to exceed the average by 50 percent. Now, I know the government members are trying to justify this, but I just do not see, when we allow the average to be exceeded by 50 percent, where the fairness is in this. Again, I can appreciate the considerations that we do have when it comes to some of the factors that certain MLAs face.

Now, we've talked about uniqueness of ridings in the Assembly, Mr. Chairman, but there are 83 members in here, and I believe each one of us could come up with why our constituencies are very unique. But I don't believe that is where the focus of the debate should be; I don't believe that is what we should be talking about. We're talking about voter equality, and that is certainly what Madam Justice McLachlin was indicating when she made her ruling.

Mr. Chairman, this is an extremely important Bill. Again, I believe that the fundamental principle of democracy is voter equality. As my colleague from Calgary-Forest Lawn had mentioned last night – he asked a number of questions that I do appreciate the Member for Taber-Warner trying to answer. But I think the more we heard from the member, we realized that so much of this is just so absolutely subjective that it doesn't make all that much sense. I think this Bill would be improved a great deal if we deleted these subsections. We do not need them in the Bill. I don't believe we can support this Bill with these subsections in it, and I do believe the commission needs the freedom to go out and create the constituencies, that they should be allowed to create them. Section 1, where we talk about a 25 percent variance, I think is sufficient, so I would urge the Assembly to support our amendment.

Thank you.

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

MR. PASHAK: Thank you, Mr. Chairman. First of all, I'd like to extend my compliments to the Member for Taber-Warner for attempting to answer the questions, and I'd just like to say to him that I didn't mean to throw him off when he was dealing with 17(3). I made an attempt at humour. It was just that the Chair had been chastising our Member for Stony Plain with respect to repeating certain arguments that were made . . .

Chairman's Ruling
Reflections on a Ruling of the Chair

MR. DEPUTY CHAIRMAN: Hon. member, order please. Surely there are things to be entered into debate. There's no need to reflect upon the ruling of the Chair.

MR. PASHAK: Thank you, Mr. Chairman.

Debate Continued

MR. PASHAK: In any event, I just wanted to express something to the Member for Taber-Warner, because he did, in my view, make a sincere attempt to answer the question that I'd posed earlier in debate, and I appreciate that. However, I'm not in agreement with much of the content that he expressed this evening.

First of all, he cited some examples by way of extremes that he argued should create a precedent for this Legislature to take into account when looking at electoral boundary legislation. He cited, of course, the examples from the Northwest Territories and Yukon. Those really are extremes, and I'm not sure they're applicable to the situation that exists here in Alberta. The key is that Yukon has one representative; the Northwest Territories with a smaller population has two representatives in the federal Parliament, but it encompasses a much greater area. But the fact is that we're going out of our way to deal with a significantly unusual situation, and that should not in any way constitute a precedent for what we decide in this Legislative Assembly because we simply don't have a parallel condition here.

9:50

Secondly, Mr. Chairman, much of his argument centred around what he heard as a member of that committee and what members of the select committee generally heard as they went about the province and listened to submissions from almost 200 Albertans. I tried to make the case the other day, with respect to remarks that were made by the Member for Calgary-North West, that you have to be somewhat judicious in terms of how you interpret evidence that's presented before a committee. You have to take into account a number of factors. You have to take into account the strength of the argument that's being presented, the stature that person may or may not have in the community. But you also have to take into account the number of people that person is speaking on behalf of. In other words, if you had 200 representatives before a committee, 198 of them could be expressing the opinion of themselves as individuals. They should be heard; I've got no objection to that. Their point of view should be taken into account. But if the remaining two people of those 200 represent communities of 700,000 or more people each, then their views should have greater weight in whatever deliberations take place.

It's certainly true that both the mayors of Calgary and Edmonton, who represent well over half the population of this province, should have a preponderance in terms of weight that is taken into account by members when it comes to preparing a report or drafting legislation on the basis of evidence presented to them. It's clear that the population of the city of Calgary in the 1986 census is listed at something like 700,000; Edmonton is slightly lower than that, but the population of greater Calgary and greater Edmonton combined would certainly be in excess of 51 percent of the population of Alberta. It'd probably be closer to 60 or 65 or maybe even 70 percent. So when the mayors of those two cities speak, they deserve to have a very good hearing. They should have a preponderance of influence when it comes to directing the views of committee members and the government when it comes to drafting legislation. Both mayors made a strong case that we should have more equity in representation within the province. That is certainly not a characteristic of this proposed legislation, Bill 57.

With respect to the specific responses the Member for Taber-Warner gave to the questions that were posed last day with respect to all the subclauses of section 17(2) – that is, the subclauses that run (a) through (g) – I listened to his explanations with a great deal of attention and a great deal of interest. I could go through each of his arguments one by one and point out the weaknesses in each argument. I think he did a fairly skillful job of trying to make his case, but it's certainly true that this legislation will have to go before the Supreme Court of Alberta at some stage, and it will likely wind up before the Supreme Court of Canada; there will be a Charter of Rights and Freedoms contest here. I'm sure that whatever comments the Member for Taber-Warner entered into the record with respect to those sections will be a matter of great interest at this judicial hearing that I'm sure will take place. I'll leave it for the Supreme Court to decide on the merits of his argument.

Thank you.

MR. DEPUTY CHAIRMAN: The Member for Calgary-North West.

MR. BRUSEKER: Thank you, Mr. Chairman. I just want to make a few more comments, in particular about section 17(2). The Member for Calgary-Forest Lawn has raised some questions regarding the arbitrariness of some of the figures that are proposed. During the course of our hearings we asked for and received quite a substantial amount of evidence and information from our support staff that we had. I just want to sort of go through some of the different things and highlight, if I could, some of the difficulties that we do have with some of the numbers.

For example, the first one talks about 20,000 square kilometres. Now, it's understood, Mr. Chairman, that this is going to be applied to new boundaries that will be proposed by the commission. Unfortunately, since we don't have those yet, all I can do is see how the current boundaries and current constituencies would fall into that kind of distribution. Using the 20,000 figure, there are only eight constituencies under the current boundaries, only 10 percent, that would fall into that particular category. If we then look at the next one, talking about 15,000 square kilometres, currently there are only four constituencies that fall within that same category. Out of that there are relatively few – two of the four, in fact – that correlate with the first one, but there's not much correlation between the two of them. In fact, the largest constituency in the province, of course that being Fort McMurray, has only, according to the information we've been provided, 4 percent of the total constituency surveyed. Clearly that makes it difficult for the member representing that area, but I'm sure that when he goes around and represents those people, he really doesn't care whether they live in a surveyed or an unsurveyed area; he's their representative. So the relative arbitrariness of those figures I think comes into effect.

If we start looking, Mr. Chairman, at figures that are close – and I use that term advisedly – to the criteria that have been outlined in there, of course you can increase the numbers a little bit. But the arbitrariness of these numbers really draws into question their validity. When I look, for example, at the first two I said, eight and four current constituencies fall within those parameters, yet if we go down to the one about 1,000 kilometres of primary and secondary highways, we have nine current constituencies that have highways that exceed 1,000 kilometres and we have an additional six that are 900 or more. So, you know, the arbitrariness that was raised by the Member for Calgary-Forest Lawn bears fruit here. If you had picked a figure of 900, for example, then there would be 15 constituencies which

apply and so on. If we had chosen 1,100 or 1,200, again there would be a different figure that applies.

[Mr. Moore in the Chair]

The one that really kind of boggles the mind, and I come back to it again, as it has been mentioned before: "the distance from the Legislature Building in Edmonton to the nearest boundary." The figure there that is quoted is 150 kilometres. Mr. Chairman, under the current boundaries in the province of Alberta there are 30 – three zero – constituencies that are greater than 150 kilometres. Out of all those 30, then, the commission that will be appointed will have to look at each one of those and compare whether 150 kilometres fits in. I guess here we see in one case where almost 35 or 40 percent of the constituencies fall into one category, yet in another area only 5 percent of the constituencies fall into that category. So the arbitrariness of these numbers comes out even more. Unfortunately I don't have the information regarding the 4,000-person municipality or town or whatever you choose to call it, but again, I would suggest that that would probably be quite a number of areas.

When I look at (f) and (g), again the point I want to make with respect to those two is that we have in the first five that are proposed a number, at least a number that is quantifiable, and arguably there are some differences of opinion as to what the quantity should be. But I really do object to subsections (f) and (g) that just talk about the term "significant." I've made the argument before and I listened very carefully to the Member for Taber-Warner about his explanation, Mr. Chairman, but I simply cannot support that very open-ended definition that was provided.

So I would encourage all members to really have a look at this and recognize that I do not think it's in the best interests of this Legislative Assembly or the province to support the inclusion of 17(2) and 17(3). Therefore, I support the motion from Edmonton-Belmont.

MR. GOGO: Mr. Chairman, I move the committee rise and report.

[Motion carried]

[Mr. Speaker in the Chair]

10:00

MR. SPEAKER: Order please.
The Member for Ponoka-Rimbey.

MR. JONSON: Mr. Speaker, the Committee of the Whole has had under consideration certain Bills. The committee reports progress on the following Bills: Bill 38 and Bill 57.

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. SPEAKER: Does the Assembly concur in the report?

HON. MEMBERS: Agreed.

MR. SPEAKER: Opposed? Carried. Thank you.

[At 10:01 p.m. the Assembly adjourned to Wednesday at 2:30 p.m.]