Legislative Assembly of Alberta

Title: **Thursday, June 20, 1991 8:00 p.m.**
Date: 91/06/20
[Mr. Speaker in the Chair]

MR. SPEAKER: Be seated, please, those of you who have chairs.

head: **Government Bills and Orders**
head: **Second Reading**

Bill 36
Safety Codes Act

Moved by Mr. Bruseker that the motion for second reading be amended to read that Bill 36, the Safety Codes Act, be not now read a second time but that it be read a second time this day six months hence.

[Adjourned debate June 17: Mr. Lund]

MR. SPEAKER: Rocky Mountain House.

MR. LUND: Thank you, Mr. Speaker. The other day when we adjourned, we were just debating the hoist amendment, and I want to make a few comments relative to that hoist. There were a number of comments made by the hon. Member for Calgary-North West that I think I need to respond to a bit. He read from a letter that had been written from Robin Ford to Mr. Ray Kjenner talking about nothing changing when the new Act would be proclaimed. Well, in fact, that is true. When the transition does occur, the present regulations and codes will simply become regulations under this current Act. So we won't have the void that the hon. member spoke about.

He also spoke about elevators and how the inspections had gone down under the present system. I don't think he could have made my argument better when he talked about how the safety had deteriorated somewhat in his opinion. Well, Mr. Speaker, under this new Bill the ability to address that issue will be in the Act and I think would be addressed very quickly.

He also talked about the consultation process. Well, the consultation has been very extensive. He specifically mentioned power engineers. I have here and I would like to file with the Assembly four copies of a letter that was written from the power engineers indicating that they are pleased with what's in the proposed Act and how it was going to be administered and how it would be implemented. So I think this should alleviate the concern that the hon. member has with the one sector that he seemed to be most concerned about, and that was the power engineers and how the Act was going to affect them.

I would strongly urge all members of the Assembly to vote against this hoist so that we can get on with the implementation of the Safety Codes Act and in fact, in my opinion, enhance the safety of our citizens in the province of Alberta.

MR. SPEAKER: Edmonton-Whitemud.

MR. WICKMAN: Thank you, Mr. Speaker. Speaking very, very briefly in support of the motion put forward by the Member for Calgary-North West. When we talk in terms of the intent of the motion, it is of course to delay it for the period of a minimum of six months, and that could take it into a fall session or it could take it into a spring session. I look at Motion 20, which I guess we deal with tomorrow morning, that deals with the adjournment, and the interpretation I get from that kind of suggests to me that there may not be a fall session, but that's a whole different matter.

In any case, I recognize that there are a number of amendments that have been proposed by government to Bill 36 that will improve the Bill considerably. However, my concern is one of participation, consultation, particularly by the municipalities. My interpretation of the Bill is such that it's a transfer of responsibility, a transfer of costs to municipalities, and I believe, even more importantly, that with the amendments that are here, it becomes that much more important to allow for a period of time to allow the affected parties, such as the municipalities and the other affected parties, a period of time to reflect on the Bill as it would be amended, to have any further participation that they may have.

These seven Acts that are in place at the present time that these would replace have been there for a lengthy period of time, and holding off on the final passage of Bill 36 for a six-month period I don't think is going to be the end of the world. As a matter of fact, I believe that holding off and allowing that extra room for further participation is going to allow for improvement of the Bill, and rather than pass Bill 36 in its present form with the amendments as proposed by government, we could, in fact, end up with a Bill that is far superior.

On that note I would conclude, but I would urge all Members of the Legislative Assembly to support the motion as put forward by the Member for Calgary-North West.

AN HON. MEMBER: Question.

MR. SPEAKER: Question on the amendment.

[Motion on amendment lost]

MR. SPEAKER: Now the question will be put on the main motion.

[Motion carried; Bill 36 read a second time]

Bill 38
County Amendment Act, 1991

MR. SPEAKER: Rocky Mountain House.

MR. LUND: Thank you, Mr. Speaker. It gives me a great deal of pleasure tonight to rise and move second reading of Bill 38, the County Amendment Act, 1991.

This Act really amends a couple or three things that make it more democratic than the current Act. What it's really doing is allowing the ratepayers in a county to have a vote as to the county's continuation; that's one part of it. The other major thing that this Bill is accomplishing as far as making it more democratic for the persons in the area has to do with the summer villages that have a population of less than 150. Once this Act is passed, they will be able to attach themselves to another education unit and, in fact, be able to vote in an election for a school trustee, something they currently can't do.

So with those brief comments, I would move second reading of Bill 38.

MR. SPEAKER: Edmonton-Whitemud, followed by Edmonton-Beverly.

MR. WICKMAN: Thank you, Mr. Speaker. On behalf of the entire Liberal caucus that is here this evening, the vast numbers,

I'm pleased to say that we throw our support behind this Bill. My understanding of this is that it is an example of a Bill that is responding to consultation, responding to demands that have been made by associations throughout the province, and this Bill, in fact, addresses those concerns. I commend the member for bringing the Bill forward, and I would urge quick passage of this Bill.

Thank you.

MR. SPEAKER: Edmonton-Beverly.

MR. EWASIUK: Thank you, Mr. Speaker. I, too, want to make a few comments to Bill 38. Again, I don't see anything that we can object to in this particular Bill. I think it does, in fact, improve it in certain aspects in that it's going to increase the number of eligible electorate who participate or force a plebiscite or an election if, in fact, they wish to change their status from a county to a municipal district. Also, as the hon. Member for Rocky Mountain House indicated, the summer villages will now have the opportunity to participate in the election for the board of education.

8:10

There's only one area where perhaps I would like to get a response from the member, and it's where the county electorate would be able to petition the minister to determine whether they favour a continuation of a county or a municipal district. The change in this particular section, Mr. Speaker, is that previously the petition would go to the county council. The change that I note is that now the petition is going to be forwarded to the minister, and it's his responsibility then rather than the elected council. I wonder if the Member for Rocky Mountain House would like to explain that. Why is the minister assuming this responsibility rather than leaving it with the county council?

MR. SPEAKER: Rocky Mountain House, summation.

MR. LUND: Thank you, Mr. Speaker. I believe the question that was just posed would be more appropriately addressed in the committee stage, and I certainly will do it at that stage.

[Motion carried; Bill 38 read a second time]

Bill 40
Conflicts of Interest Act

MR. ROSTAD: Mr. Speaker, it's my pleasure to move second reading of Bill 40, Conflicts of Interest Act.

In introducing the Act, I have mixed feelings. There's a certain joy to bringing it in because I think there is an indication that the public and also the members want to have a code that would set out rules that we can operate under so that we as members and the public can be assured that we're keeping our duties that we have to the public through our being elected members separate from our private interests. The other side of the coin is that it's unfortunate that governing bodies, not just elected bodies in this House – whether it's in the church or the schools or whatever, there seems to be a malaise where the public doesn't have the confidence that I think they should have in these people and in us as elected members. So it's with that juxtaposition that I stand to introduce the Bill.

I think we owe, certainly from my perspective, a great deal to our Premier, who took it upon himself to ask a panel of three well-recognized and well-respected Albertans to canvass not only other jurisdictions but people of Alberta as well as elected people and political parties as to what should be in conflict of interest legislation. They went through that process and came out with a report, and, as I've mentioned earlier, we as a government have been working through that report. Unfortunately, with the illness of our Premier, we had to put it aside, and that delayed bringing this to the House a bit earlier. But I think the considered opinion of that panel is what is contained in Bill 40, and with the exception of a couple of areas that have changed, the rest of the changes have been more in drafting than in import.

To run through the basic principles of the Bill and then to welcome the members opposite as well as my colleagues to make comments, the Act will establish the office of an ethics commissioner. This is seen as a gatekeeper. It's someone that the public can be assured will receive full disclosure by each elected member of all of their interests: financial, interrelationship with other people, investments, all those. The panel also recognized that there's a need for privacy, that each individual has the right to privacy. So the commissioner would be the gatekeeper in looking at what each person has, potential conflicts or real conflicts, and dealing with those yet would be able to tell the public that he's aware of what this person has and is assured that there is no conflict or, if there has been, that it's been remedied and that we can sit here and operate as elected officials and the public can then regain or maintain the confidence they have in the institution of government.

Of course, that puts an obligation on all of us as MLAs and ministers to fully disclose what we do have. No matter how large an obligation or how much we put down in writing or whatever kind of rules we put in place, that will only be as effective as each of us as individuals want it to be. If you don't want to divulge or you want to hide something, I guess that's always a possibility. There are sanctions that would be very serious if you're determined, but no system is going to ensure complete independence. That is going to have to come from each of us.

The other obligations are that we won't participate in any decisions or matters that might further our private interests. We won't use our office or our powers to influence a government decision to further our private interests. We won't use insider information to further our private interests. These prohibitions apply to our private interests as MLAs or as ministers, but they also affect our spouse, minor children, or other persons that are directly associated with us and their interests.

As I mentioned, our disclosure will be full and complete. The ethics commissioner, after he's appointed, will have to devise his own reporting forms, his own mechanisms that he wants to use for that. We have samples of what other provinces, such as Ontario or British Columbia, use. He may pick those up, but he will devise that system. Then he would sit down with each of us, 83 elected individuals, run through our circumstances, and ensure to the best of his ability and the best of our ability as MLAs that we have made that disclosure.

He would then prepare, in conjunction with each of us, what would be publicly disclosed. That may not be values; it may be values. It may be certain properties; it may not be certain properties. As recommended in the report, your residence, your recreation property, investments under $1,000, cash gifts under $1,000, those things may not be required, but he will have to determine this, again with the direction that the public be satisfied that somebody knows all the relevant information about all of us.

There are restrictions on ministers as against MLAs that they are prohibited from owning or having a beneficial interest in

publicly traded securities of any corporation unless the securities and/or any other investments are held in a blind trust or the approval of the ethics commissioner has been obtained such that they don't have to be in a blind trust. Again, he's the gatekeeper. He would determine whether those securities are such that they don't have a potential of putting us into a conflict. If they do, you would have to divest yourself or put them into a blind trust.

AN HON. MEMBER: He or she?

MR. ROSTAD: The hon. member says "he or she." Yes. It's the generic "he."

The ethics commissioner would also authenticate the person that would be used as a trustee. That person would have to, in the commissioner's view, understand about investments, understand the responsibilities, and have the capability of managing a person's affairs completely. Again, he is the gatekeeper. Whom we as MLAs may recommend, he may not accept.

8:20

Ministers cannot engage in employment or in the practice of a profession or carry on business or hold an office or any directorship other than in a social club or religious organization if the activity creates or appears to create a conflict between the minister's private interests and his public duty. Now, again there may be something that a person is doing that through hardship or whatever you may not be able to divest yourself of. However, the ethics commissioner is the person that would make that decision, and if his decision is such that you would have to divest yourself, then as a minister you would either have to change your portfolio or remove yourself from Executive Council or, in fact, divest yourself of that particular interest. These are not mere pittances in their effect on the lives of ministers. These are definitely serious and have quite significant ramifications, but I think they're necessary.

Also, former ministers will be prohibited from soliciting or accepting contracts or benefits for themselves or any other person from a department of the government or a provincial agency with which those ministers had significant official dealings in the last year of their service as ministers. They would also be prohibited from accepting employment with or appointment to an entity with which they had significant official dealings during their last year of service as ministers and are prohibited from acting on a commercial basis respecting any ongoing matter with which they were directly involved during their last year of service as ministers. That would be for a period of six months after leaving office. Now, again the ethics commissioner has the discretion to make exceptions if in his judgment and his judgment only there is not a chance of a conflict, not just a real conflict but even an apparent conflict. But, again, he is the gatekeeper, and the exceptions, I'm sure, would be few.

There's a significant sanction for contravening these prohibitions by a former minister: a fine of up to $20,000. Now, of course, a former minister is no longer a member of this Legislature, so we can't put in the Act a sanction of losing their seat or whatever, because they're gone. So you have to look at a fine as being the sanction. However, ministers who knowingly award or approve a prohibited contract or benefit to a former minister will be acting in breach of the Act and will be subject to a sanction of this Legislature, again, I think, quite a significant and quite a detrimental provision if breached.

In the areas of fees and gifts – and we've had quite a bit of dialogue in the last few days in the Assembly in that context – MLAs and ministers will be prohibited from accepting a fee, gift, or other benefit connected with the performance of their office from a person other than the Crown. That extends to a spouse or minor children of the member, as well. Gifts of protocol or social obligation may be received, but they may not exceed a value of $200 from the same source in any calendar year without the ethics commissioner's approval. Any gifts that are allowed to be kept will be publicly reported. There may be gifts of greater value that you receive, but you may receive them on behalf of the government and end up giving them over to the government. Again, the ethics commissioner will be the gatekeeper on that.

The provisions that we have in sections 27, 28, and 29 of the Leg. Assembly Act are being brought forward into the Conflicts of Interest Act, and that's the prohibition that we currently have on contracts, payments, and offices. The provisions relating to disqualifying offices will be moved into this Act. I think it's fair that all members can pretty well go to one Act and find out what their responsibilities are and understand that provision.

The complaint procedure. Any person, MLA, the Speaker, the Premier can bring forward an allegation of a conflict. The ethics commissioner will investigate. Some will be looked at by him and his staff and a decision made quickly. Some which have a more serious or complicated aspect to them could go through a full-fledged public inquiry where he has the powers to subpoena witnesses and have a full investigation.

All his investigations will be made public, and his report will be made to the Speaker. There will be a House amendment come forward because there's a part missing here. If we aren't sitting and there is a report that relates to a particular member, it would be unfair that that could not be made to that member prior to the Assembly reconvening. That could be a period of six, eight months, and it's unfair, I think, to have a member hanging out there when the ethics commissioner has made a decision yet that person doesn't know what that decision is.

The report is then tabled in the Assembly, and if the ethics commissioner makes his recommendations for a sanction, the Assembly would then be seized in handling that and increasing or completing the sanction recommended by the ethics commissioner. Again, there is a small House amendment that will be coming forward, because if you read the Act again, it appears that it's the Speaker expelling somebody and not the Assembly expelling somebody. A House amendment will be coming through to clear that up.

Again, the Assembly is the highest court in this province, and it is here that we will decide to accept or vary a recommendation of the ethics commissioner. As I mentioned earlier in the Assembly, I think it is highly, highly unlikely that any government or party would try and downplay what recommendation would come. I think the political consequences of that would be such that that wouldn't happen.

Section 31 of the Alberta Energy Company Act, which permitted MLAs to own shares, will be repealed. If they own shares in that publicly traded company, they would have to be in a blind trust, and the ethics commissioner would deal with that. That provision will be repealed.

There is an amendment to the Public Service Act such that the Public Service Commission, the Minister of Labour can bring forward regulations that would affect the public service. I look for the parameters that will be put on them for financial disclosure and jobs and cooling-off periods being not unlike what is here. That part of the Wachowich report has not been implemented in this, because this Conflicts of Interest Act we're bringing into this Assembly is for our elected members, but I

will assure the Assembly that the Public Service Act will contain provisions very similar to what we have.

Mr. Speaker, again I think we all recognize how politics have changed, how public life has changed, and how we have to assure the public that we are keeping our private interests separate from our public duties. It's certainly my pleasure to ask and to recommend second reading of the Conflicts of Interest Act.

Thank you.

MR. SPEAKER: Edmonton-Centre.

8:30

REV. ROBERTS: Thank you, Mr. Speaker. Again I think it's a real triumph of the persistence and will of the New Democrat Official Opposition that this Bill has finally come to be here in the Assembly. It goes down in history as one of the longest standing Bills that we have argued for and put forth time and time and time again as a private member's Bill, together with the freedom of information and personal privacy Act, which is another one of our long-standing efforts in this Assembly. Its day will soon come as well, I'm sure.

We're very grateful to the Attorney General, to the Premier, to the government Conservative caucus that they've finally deigned to bring in Bill 40 and, like so many other times I remember saying and thinking in this Assembly, I guess better late than never. It has been long overdue. The public has been demanding this kind of legislation for a long period of time. I'm glad this Conservative government in this province is finally in sync with the will of the people and, as the Attorney General has said, the way in which politics and our perception of politicians have drastically changed.

This kind of conflict of interest legislation needs to be on the books and operational, as the Attorney General has outlined, to really clearly delineate the separation and the difference between members of this Assembly in their private interests and in their public duties and as professionals, as I think every profession also needs to look at the conflicts of interests which they may enter into, particularly as it pertains to pecuniary interests. I think of that old Biblical line, Mr. Speaker, about how no one can serve two masters, and it's difficult to know how one can serve a sense of self-aggrandizement as well as trying to serve a sense of service to the people. To get those two masters or those two interests mixed up, as has often happened, is entirely regrettable. We need to have this Bill before us to outline clearly what we are about in terms of our public duties and what we must not be about in terms of how our private interests may be furthered by information and powers and decision-making which we have access to as publicly elected people.

As the Attorney General has outlined, we need to set these rules, these guidelines, to have this clarity, to have this in practice, and to have the perception out there. Again I'm concerned: editorials that I've read in the major dailies and elsewhere out there still don't think this Bill goes far enough. The perception is that we need at least this and perhaps even more, as I'm sure the Attorney General will discover, at least in our amendments. The sense is one of trust, and we have a lot to do to recover that sense of trust. As Bob Rae said when he was first elected Premier of Ontario: we want to earn the trust of the people who elected us. It's never easy, from whatever side of the House we sit on, to know how actions that we take may undermine a certain degree of trust, but we need to always be earning it. Thankfully we'll have this Bill and the office of the commissioner to help us in that endeavour.

Again the long history of incidents raises questions that need to be cleared up about how those of us in positions of some power and decision-making who have information and can peddle certain degrees of influence either have or seem to have made those decisions with our own pecuniary interests in mind either directly or tangentially. I refer not to specific detail, Mr. Speaker, because we've been through certain incidents in this Assembly just in recent memory. It seems to us that with this Bill in place, those incidents of last year and even the current ones that are being debated would not in fact have to come to this Assembly and be sullied, in a sense, through the media and through debates here, because we would have had this Bill as a preventative measure. That's really what I'd like to see it become and not just a matter of implementing rules and regulations and telling us what to do and what not to do but in a preventative sense how we can look down the line in terms of how certain things we may do may affect perception, the blurring of the lines. We need to have this Bill in place for that.

I guess, Mr. Speaker, that the basic principle of the Bill here at second reading, as the Attorney General has outlined, is one that we in the Official Opposition wholeheartedly agree with. Whether the recommendations have been culled from the Wachowich report or other legislative attempts at conflict of interest legislation, what this Bill is basically doing on principle is setting out a set of rules and guidelines in legislation which provide for that clear separation of personal interests and public duties. As the Attorney General has outlined, it sets out the parameters for that, the mechanisms for disclosure, and establishes the office of the ethics commissioner.

I was interested that I did not hear the Attorney General refer too much to the principle of a cooling-off period, this business of its not just while we're in this House that we have certain obligations to be vetted through the ethics commissioner but that when we leave this Assembly, we have a certain obligation, a certain duty, not to use information that we have. In a sense a cooling-off period needs to be very rigorously understood and applied and has implications in that period.

We still have great difficulty on this side of the House with the whole concept of blind trusts. That is, in a sense, just blind. It still does not allow for full disclosure. Whether it's shares in oil companies or land holdings with drilling rights, the ethics commissioner needs to know and the public has a right to know. To have a sort of blind trust still puts some blinders on this. I guess we'll get into it more in committee stage, when we have amendments to bring in in that regard. The minister has referred to the ultimate power, as he sees it, of the Assembly here over the courts and the repeal of section 31 of the Alberta Energy Company Act.

As I say, Mr. Speaker, for our part as the New Democratic Official Opposition we will support this Bill strongly in terms of the basic principle as has been outlined and discussed in these various ways here at second reading; however, we still maintain that it is deficient in a number of the ways in which that basic principle is not fully realized in the practical implementation and its implications. Hence, in the deficiencies of that I'll just sort of forewarn the Attorney General of how we see the principle fully being implemented by virtue of certain amendments or errors where we feel amendments are needed.

In the definition section, for instance, we need to be clear on what conflict of interest is. I think this whole definition needs to be much stronger in terms of both real and apparent conflict. We need to be clear on not just what may be seen on the surface to be a real conflict but how an apparent conflict is also a matter for question and investigation. We have to have

definitions for that. We'll propose those in the form of an amendment.

We have questions with respect to how far this goes: not just to elected members but to deputy ministers, assistant deputy ministers, and other senior government officials. I know the minister is of the opinion that that will be taken care of in the Public Service Act and other Acts, but why not have it here so that we know what our standards are, those who work for us in those positions also know, and we in a sense have responsibility with and for them?

We got into this a bit before. The definition around spouse to include common-law partners is one that I think needs to be loosened up in terms of this definition of spouse, which we feel is far too restrictive.

We also feel strongly, Mr. Speaker, that if we're going to talk about disclosure, part of what needs to be disclosed is not just a particular asset but some evaluation of that asset, putting a certain value on it. I know it's going to be difficult to know whether it's a market value or an appraised value or whatever, but it seems to us that we just can't say: well, we have this apartment building in Fort McMurray or downtown Calgary. Some attempt needs to be made to say what the market value is on that piece of property. That also needs to be part of the disclosure and at the disposal of the ethics commissioner to really have a fuller sense of what's involved in what may or may not be a conflict.

8:40

There are other minor points there. As I've said, we'd also just feel much better if the whole reference to blind trusts were eliminated and abolished. Again, we'll get into that in amendment. I've referred to the extension of the application beyond just members or ministers but to others.

On the cooling-off period we feel strongly that six months is just not enough. There's still a great deal of information in the hands of Executive Council and government and the government caucus that can be very valuable and that can be acted on seven months, nine months, 12 months, or two years hence. I'm sure if there were those who knew about this Al-Pac project coming down, they could have said, "Oh, yeah, we're going to have that eventually," and a year or two ago started investing in pieces of property up there or in Alberta-Pacific shares or whatever. So six months is just not at all adequate. We're going to suggest that two years is the restriction that needs to be in place.

Again, I guess it's just a philosophical difference, because I probably do agree that in law we are the highest court in the province, yet for us even to be perceived to be the final appeal for members even beyond the courts still allows the public out there to say: sure, it's just you politicians who are going to be able to pass judgment on other politicians. I think part of the purpose of this Bill is to say: no, we politicians are subject to the full scrutiny of due process and of the courts, and if judgment is found in the court system, the judicial system, that there's been a breach here, then in fact that's where it needs to finally be decided. Then they come back to a Conservative majority government caucus and say, well, you know, it really wasn't all that bad, and we can maybe get away with this and that. It's a difficult one. I do feel, with the Attorney General, that it would very rarely happen that the government would overrule a court decision, yet it's been my understanding in this Assembly that it's happened two or three times that certain courts have quashed permits and the rest, yet construction continues. They seem to be almost not following the decisions which the judiciary at its highest levels have made at some points. If we need to in a sense divest ourselves of some powers and say that, yes, we are the highest court in the land, but in terms of this we will say that it's up to the courts to make the final determination, then I think it would help to serve the public interest and the perception that needs to be laid out that it's not just a political game in terms of past judgments on other political games; it's politics here, and it's judicial judgments there.

I just have another couple of concerns, Mr. Speaker, in terms of how this principle is working itself out in this Bill. The second to last one I have here has to do with my discomfort around the term "ethics commissioner." I've sort of wondered about that. I understand the Attorney General's reference to this person being a gatekeeper and the different functions of the person as to what they're doing, but you know, it seems to me that the term "ethics" is a very lofty and a very loaded term. To call someone an "ethics commissioner" leaves it kind of wide open. I mean, is this person going to be making pronouncements on all kinds of ways – as I understand ethics, it's ways to prevent harm being done, to do no harm to oneself or to others?

I have before in this House, Mr. Speaker, introduced a health care ethics institute. There are other forms of ethics in private relationships. I mean, "ethics" is a term that in a sense has to do with social mores in a variety of experiences and manifestations. To say that this person is going to be an ethics commissioner conjures up to me someone who is almost like a philosopher king or someone who has studied ethics and is a professional ethicist and knows the difference between a teleological ethic and a deontological ethic or situational ethics. I mean, there are lots of different approaches to how one studies ethics and what ethics mean. Is it that the end always justifies the means? Is it ethics in terms of the person and their context or situational ethics, which vary from situation to situation? I mean, there are a lot of different ways to approach the study of ethics, which is in the final analysis to prevent harm from being done to others or to oneself.

[Mr. Jonson in the Chair]

I have felt strongly that the basic purpose for any of those who want to study this is to find ways in which behaviour can be reflected upon enough to know how we can in the future prevent harm from being done. So in fact on a certain question – for instance, around abortion – there may be three or four different ethical responses on that issue. What an ethicist needs to do with a person is to say, "Well, if you look at it this way, this might be the certain outcome," or "This would be one of a variety of consequences or options for what you may be entering into by virtue of having an abortion." I mean, there are ethicists who say that abortion is fine, and other ethicists who say, no, abortion is wrong. So to me it's a sense of reflecting enough on a particular decision which allows the individual or the group of individuals to know what they're getting in for and to be able to open that up in enough of a realistic way that they can then make healthy decisions for themselves. I don't get the sense that this ethics commissioner as that kind of person.

In fact, I think a lot of these things I'm raising might just be alleviated if the person were instead called the conflict of interest commissioner. Really what this person is doing, as I understand it, Mr. Speaker, is basically implementing the provisions of this Act. Is that not correct? They're not there to pronounce on every kind of ethical issue which we or others might have; they're there to pronounce on different questions to do with conflict of interest. So I would strongly recommend –

I guess the term first arose from the Wachowich report – that the Attorney General and the government reconsider that term, which I think is far too lofty and far too loaded for what we want to have here. Instead, entitle this person the conflict of interest commissioner, who would be responsible for the implementation of Bill 40, and leave it at that.

I just had another couple of concerns, Mr. Speaker, on the principle study of this. We have our principles in this Assembly. I know from what I've looked at that other Legislative Assemblies throughout the dominion and even the federal Parliament have their own version of this principle, albeit in very different legislative forms. I'm wondering if the Attorney General has in fact met with other Attorneys General or investigated through his department other conflict of interest legislation in other provinces, in the federal government, and even in other countries. Is there in fact any way we can sort of get a national standard here? Again, I think it would help the public perception, that we're not softer here in Alberta than they might be Ontario, or in Manitoba you can get away with this but can't get away with it in British Columbia.

I think we all as publicly elected officials at the municipal and the provincial and federal levels need to know clearly what we're getting into, and the public needs to know what they can expect from us. I would hope that this Bill would be consonant with how the legislation has been formerly in other provinces and that we can in fact get at some kind of national standard in this way, which I know might sound like we still need local autonomy and do it our own Alberta way or that we're better than all the rest or all those kinds of rhetorical responses, but I think a serious attempt at looking at what other provinces are doing and how we can pull together and have in a sense a Canadian conflict of interest understanding for politicians would be a good thing.

8:50

I just want to conclude with some comments on section 7, which has to do with the acceptance of gifts and fees and benefits. When I wrote my notes up on this, it was back on Monday. I was going to ask: "Hold on a minute here. Is this retroactive or what? Are we just going to wait for this Bill to reach Royal Assent before it's implemented on certain golfing tournament returns or other things which are going on?" I'm glad to see that section 7 is already having its desired impact and intent. It's too bad that it isn't retroactive, but I'd like to think that it's going to really cut down on slush funds and discretionary funds and other ways in which moneys can be raised.

However, at the same time as saying that, I don't want to throw a real conundrum over there to the Attorney General. From what I've heard of how in fact in this section – which we need, and I'm not arguing that we don't. Have we thought through as elected people in this Assembly what it means for us both in nomination processes as well as for certain people in certain parties who may be in a leadership contest? The effect it would seem to have is that none of us can raise money privately for a nomination battle or for a leadership battle or contest, but those who are outside of this Assembly, who are in the private sector, can be even now raising money for a leadership contest or for a nomination process and, of course, would not fall under the provisions of this Act, whereas we would. We need to know that. If it puts us at that disadvantage, we need to be able to again know that and know how to deal with that when the times comes. Perhaps it is putting us at a disadvantage which we just can't escape.

There are those who want to be out there raising hundreds of thousands of dollars to beat us. However, I might caution that the Conservative candidate that I defeated in Edmonton-Centre spent three times as much money as I did in the last provincial election, and it did not seem to have much effect when the final votes were cast. I guess we can't get ultimately worried about the opposition or our political challengers having much more money than we have. Again it's the character of us and the record that we have which speaks far more loudly, but it does seem to me in a sense to put us at a bit of a disadvantage.

I think those are all the comments I have here now at second reading, Mr. Speaker. In them I have tried to outline our support for the Bill, how we understand the principle, how we want to implement, I think, tighter language and a number of controls, and how we'll have to do that at committee stage with our numerous amendments.

Thank you.

MR. ACTING DEPUTY SPEAKER: Ready for the question? May the hon. minister close debate?

Does the Member for Calgary-Buffalo wish to speak?

MR. CHUMIR: Thank you, Mr. Speaker. I'm very pleased to see this legislation presented to the House. The strength of the democratic process depends upon the respect of citizens for government. Accordingly, it's important that elected officials – and senior bureaucrats, I might add, who are not covered but I'm pleased to see will be covered by other legislation – be clearly seen to be acting in the public interest and not for purposes of advancing their own interests. When suspicion is raised by activities of public officials, it erodes confidence in our government and hurts us all.

We in the Alberta Liberal Party caucus have been concerned about a number of incidents in recent years which have raised conflict of interest questions. Let me hasten to add that, in my view, by standards in other parts of this country, indeed in the world, we rank very high in the quality of our lives and the honesty of our politicians, and it's indeed a pleasure to live and work in an atmosphere like this. I say that in the sense that our scandals pale by comparison to scandals in other parts of this nation and this world, and I hope that will continue to be the case. Nevertheless, we do have room for improvement. We have to move with the times. The times have demanded a legislative initiative of this kind, indeed perhaps sometime ago, and I'm now pleased to see this.

The direction is extremely positive, Mr. Speaker, and without sacrificing humility in an undue manner, I might say that a great deal of the legislation bears a happy resemblance to recommendations which were made by our caucus to the Conflict of Interest Review Panel. There are, of course, still some defects and a number of serious problems which we intend to comment on in greater detail during committee and perhaps a little later in my comments, which will not be long. But I think it's important to state in all fairness that as we deal with this legislation, we here in this House, as in other Legislatures across North America and the world, are going through a bit of an experimental stage to try and gauge just where that border line is where an individual is free to act without constraint by the duties of office. So we're feeling our way around, and we're going to make some mistakes. We won't get it perfect this time. We probably won't get it perfect at any point in time. So I see this as a first effort and I think a reasonable although highly imperfect first effort.

Now, in our brief to the conflict of interest panel we noted our belief that the fundamental principle in securing respect for and integrity in the government is maximum disclosure and

openness to public scrutiny. Indeed, Mr. Justice Parker of Ontario, the commissioner looking into the Sinclair Stevens affair, stated, and I quote:

> Public confidence in the integrity of government can best be assured by a system that requires disclosure of the public office holder's private financial interests.

He recommended full disclosure in a public registry of all nonpersonal assets by all public officeholders and their spouses, and he rejected particularly the blind trust as a totally unsatisfactory mechanism. We tend to agree with him in that regard, although we do in fact endorse the mechanism with respect to the ethics commissioner and the manner in which disclosure is mandated therein, with the exception of a reservation we have relating to the blind trust.

I would note that this focus on full disclosure has been the approach for the past 10 or 11 years in the United States under their Ethics in Government legislation, which requires disclosure of relevant assets by members of Congress and spouses. Exemptions are provided where privacy outweighs the public interest in disclosure, of course. It's noteworthy, I guess, that at a time when there is some question, perhaps some uneasiness with respect to disclosure requirements re spouses and minor children, the approach in the United States has broad acceptance in principle after 10 years of experience with it, and I think that says something for the soundness of the principle. So with that focus on the importance of disclosure, we are very pleased to see the emphasis on the disclosure provisions in the legislation before this House at the present time. As I noted, we would prefer not to have the blind trust exemption.

I might note that there's also some concern, although I don't have a perfect answer and some would say I don't even have an imperfect answer, about an issue of how we deal with private companies in which an individual does not have a controlling interest. There is a mechanism for disclosure when there is a controlling interest, but where the interest is less than controlling – and that can be 49 percent – there is no disclosure of the asset base of that company. That's, I believe, a serious defect. I don't know what the answer is to that, and I hope that we'll be able to discuss that and wrestle with it.

9:00

Now, in terms of mechanics the key feature of this legislation is the adoption of the Ontario mechanism of a commissioner to adjudicate and serve as a focal point for some very difficult decisions. I must say that I very strongly agree with the comments of the Member for Edmonton-Centre in respect of preferring to see the use of a term other than that of "ethics commissioner." Perhaps it would have been better, as he suggested, to have a conflict of interest commissioner. I say that from this perspective: ethics connotes value judgment, and although we are moving in the direction of a much more value-oriented approach to our duties, the reality is that the ethics commissioner is going to be applying a legal statute where the parameters of our duty and his responsibilities and powers and jurisdiction is of a very legal nature, and what is legal is not necessarily ethical. I think we give the wrong signal to members of the public if we state that the ethics commissioner has made an adjudication and imply that thereby the decision is ethical. It may very well be ethical, but it may be no more than a black letter law decision, which you can say is legal. So I would like to see that changed because I think language is very important, and this is in a sense a perversion of language. Not an intentional perversion; I think it's done in the very best spirit. But I would prefer to keep the term "ethics" reserved for the realm of decisions which are truly ethical.

[Mr. Speaker in the Chair]

Now, notwithstanding the reservations I have with respect to the terminology, I believe that this office is indeed an excellent mechanism for balancing a whole range of difficult questions to which there is no perfect answer. For example, the issue of disclosure of information presents a very difficult question in terms of the balance of privacy versus the right of the public to know. The mechanism here is that there shall be virtually full disclosure to the privacy commissioner, but then the privacy commissioner is to make some decisions with respect to what is called filtered disclosure, divulging assets but not values. I think that is a very important and excellent approach, but again it's an experiment, and there will be problems and imperfections we're going to have to learn about as we go along.

Now, there are a number of problems that I have, and second reading is not the time to get into these matters in any great detail. I will just briefly outline a few of the areas that are of concern, and I don't know, again, whether we can properly remedy them. We'll do our best to bring forward some suggestions and some thoughts in that regard. There are prescriptions here with respect to use of information or making of decisions which result in a benefit to the individual member or to his spouse or minor children. I have a concern with respect to the potential use of information, for example, beyond that ambit to, say, relatives or close friends. One gets very difficult in terms of definition. It may be that we can't come up with something, but I think that is an omission and an area that should be looked at.

The area of fees is a very difficult one, because as I read the provisions here, the limitation is a very, very narrow one that proscribes fees connected directly or indirectly with the performance of the member's office. I'm not so sure that raising funds with respect to a golf tournament may necessarily be considered to be connected with the actual performance of the member's office. Let me raise a question of a situation that transpired with respect to myself recently: a trip to Germany last week which was financed by a foundation of a German political party, a well-known foundation, quite aboveboard. The travel expenses were paid by that particular party. Is that something that comes within the ambit of fees or a gift which is directly connected with the performance of the office? Are those the types of things that we want to proscribe? I think we have some difficulties in here, and there is an answer that we're going to be proposing. I think there are many gray areas. What we have to do is look for much more thorough disclosure than we're going to find in this legislation. I'll be making some proposals and probably having a discussion with the Attorney General in that regard personally. I see some real difficulties under this section. It's either overinclusive or underinclusive, and I think it should be neither.

Probably the most obviously defective area in the legislation, a totally inadequate area, relates to the cooling-off period. I must say that as kindly as I am inclined to want to be towards the government for bringing forward this legislation at this stage, this provides a penetrating glimpse into the obvious defects, the area in which this government has been most defective in terms of the element of the highest ethics and avoiding of conflict of interest, and that is the manner in which members leave this government and then come back to lobby and represent clients and deal with their departments. That is a situation that has been dealt with in legislation in a number of other jurisdictions,

and the six-month cooling-off period here is nothing more than a joke. It's a very weak and very ineffective set of provisions. Ontario has a one-year provision. Some American jurisdictions have two-year provisions.

REV. ROBERTS: What's the Liberal position?

MR. CHUMIR: We're for a two-year provision.

That is the most serious concern that we have with this legislation at this stage, Mr. Speaker. Perhaps I might note that the provision that a minister is able to come back and deal with his department or represent somebody in respect of a matter which that minister dealt with in his official capacity is almost breathtaking. It's totally unacceptable, and it's something that we will be proposing changes in.

With those few comments, Mr. Speaker, we are pleased to see the legislation, and we'll be supporting it in principle. We'll be making some suggestions, and we'll have many, many questions and a great deal of discussion in respect of much of the very important detail.

Thank you.

MR. SPEAKER: The Member for Cardston.

9:10

MR. ADY: Thank you, Mr. Speaker. I'd like to make a few comments about this Bill. First of all, let me say that I don't have any problem with legislation that precludes any member of this Assembly exerting influence when they shouldn't. Having information and using it to their advantage I think is wrong and should be legislated. I think we should have legislation that does that, but there are some things in here that I guess I would like to ask the minister to clarify as to how necessary they really are. I'll deal just specifically with members who are not part of Executive Council.

In section 7 of the Act dealing with the blind trust that must be established for publicly traded stock, I guess I have to ask the question why that would be necessary for a member of this Assembly who's not a member of Executive Council. I can see where we would need to have legislation like that to deal with stock that perhaps the government had ownership of, such as Alberta Energy or when we used to have ownership of Pacific Western Airlines. In ordinary stock that's traded on the public stock exchange, I guess what it really does is put any member of this Assembly who may be involved in the stock market virtually out of business because he chose to run and be a part of this Assembly. I think it might be considered onerous.

I'd like to move on now to section 14(3)(a), having to do with public disclosure. That section indicates that the public disclosure – and I'm talking about the one that is public to anybody. A member must declare all assets, all liabilities, all financial interests, all sources of income, and this will become part of the public disclosure. Now, it's fair ball that there may not be value put on to the public disclosure. Nevertheless, it goes on in section 17 that this will be made available to the Clerk of the Assembly and that the Clerk of the Assembly will make that available to anyone who wishes to access it. If they so choose to ask for a copy, they'll be provided with a copy to take away with them. I just wonder what the need of that is. I can see it being necessary to make a public disclosure that would be made public if there were an investigation of a member, but where there's no investigation, rather just curiosity, I fail to see the need for that to be public to that extent. If someone wants to question me about some involvement that I've had with the government, I surely don't mind if they want to go to the commissioner and check that out, but I guess I have a little trouble with it being posted on the wall of the town hall.

The other question I have is with section 15(4). It says that when a member ceases to be a member of this Assembly, he must file a public disclosure of all of that information "within 30 days after ceasing to be a Member." My question to the minister has to be: what if he doesn't? He doesn't want to come back; he's retired. What's the penalty if he doesn't file that, and why would he do it?

Mr. Speaker, with those few comments and questions to the minister, I'll conclude my remarks.

MR. SPEAKER: Edmonton-Jasper Place.

MR. McINNIS: Thank you, Mr. Speaker. I, too, would like to enter a few comments in debate on the conflict of interest legislation. It's certainly been said already in this debate that the legislation is long overdue because there is a malaise, which I believe the Attorney General referred to in his opening remarks. We're elected to this Assembly to look after the health, safety, and well-being of the people who elected us and also to try to secure for them a future. We're not elected to look after our own interests. It's clear to most people that where there's a conflict between those two things, we call that a conflict of interest, and it's the public interest that has to prevail. That principle is easy to state and most people feel that they have a commonsense understanding of it, but when we go to write it down in legislation, that's where things get complicated and where problems arise.

I think there are some problems with the legislation. We have to start with a premise that came to me, anyways, from the late Harry S. Truman, who was the President of the United States, as everyone knows. He said at one time that it's impossible to become rich in politics unless you're a crook. He said that like any other person in political life, he did his share of influence peddling, because there's an element of that in everybody's political career. We do things for people, and that's expected, but we don't do things for ourselves. With respect to the comment just made by the Member for Cardston, I think that everyone who enters public life and leaves public life should file a statement of net worth, so that people have an idea of what became of a person's net worth during the time they were in office. If the net worth increases dramatically, I think the experience of all of us is that it's nothing to do with remuneration.

Our responsibility is to make sure that members are remunerated sufficiently that they don't have a need for other funds, provided they live according to reasonable standards. We have a Members' Services Committee in this Assembly made up of members from all sides of the Assembly, chaired by the Speaker of course, who look at those things. If problems arise, if the members are having difficulty meeting their personal obligations at the same time that they're meeting their public obligations, that's where we expect those things to be dealt with. I hope that committee will, in future, consider a very serious obligation that it has to protect members from being in a position where they need to enter that gray area, the conflict area, in order to make ends meet. We've had some reference to that by members in recent days.

Now, where these things can come unstuck, in my opinion, is in two areas. One is in the definition of a conflict of interest. If we define it in such a way that an obvious conflict is not a conflict, then you have problems. I think a good example of that

would be the provision that presently exists, which is repealed under this legislation, to allow members to hold chairs in the Alberta Energy Company, to sort of single out that entity and say that it doesn't really matter what you do in respect to that; that's not a conflict of interest. Why? Because we say so in our legislation. Now, I recognize that provision is repealed, but I feel the language describing what is a conflict of interest here to be confusing, limiting, and vague in some very critical respects, and let me give an example or two without getting into clause-by-clause study.

Section 3 of the legislation is a very important clause, because it states where a member comes into conflict by use of his or her influence on a matter to further a private interest, but the reference there is to a decision of the Crown. Now, it is true that one of the ways that members can influence their private interests is by influencing decisions of the Crown. We also have to recognize that there's a whole range of bodies whose interests are vitally affected by decisions of the Crown, and their decisions may very well affect the private interests of the member.

I'm thinking, for example, of municipalities, which are certainly influenced by things that we do in this Legislative Assembly and things that the Crown does, but also private corporations as well. So if the Crown has influence on another body and the member attempts to influence that body to obtain a private benefit, that's equally a conflict of interest. Even though the actual decision that's being influenced is not a Crown decision, nonetheless the pattern of influence is clear. I think we have to take the position in this Assembly that all such conflicts ought to be illegal in this legislation, and I really think that the government should re-examine the wording of that to reflect that there are other agencies, some of them private, which are very much beholden to the Crown, and their decisions and activities by members that influence their decisions ought to be made illegal as well.

9:20

Section 5 provides, I think, the type of exemption that Harry Truman was referring to when he called himself an influence peddler. When he said, "I've done my share of influence peddling," he meant that he was doing things on behalf of his constituents, but the wording here leaves me a little bit cold.

> A Member does not breach this Act if the activity is one in which a Member of the Legislative Assembly normally engages on behalf of constituents.

Well, who the heck says what's normal behaviour for an MLA? All kinds of things go on between us and our constituents. I think we have a loophole there. I mean, is it normal for a member of the Assembly to try to influence a local council to put a business venture on some property that may be owned by that member? Is that a normal part of being an MLA? I suspect not, although it has happened in the past and may happen again. That's certainly one of the types of activities that most people would see as a conflict of interest, because you have a member attempting to influence an elected body in a way which may benefit him or her personally, yet someone could come along and say, "Well, that's a normal thing for an MLA to do." Nothing that involves a conflict of interest in that sense can be considered normal. So when you put a vague word like that into legislation, I think it potentially creates problems, particularly since the court dealing with this is the Legislative Assembly itself, which has many considerations to it that are a little bit different than the normal judicial type of court that we commonly refer to.

I really think that the primary defence against conflict of interest is public disclosure. If a member's net worth is public at the time of assuming office and the time of leaving, obviously any unexplained financial gain would invite questions that ought to be answered. I think that's one element of disclosure that's critical.

A second element is holdings and changes in holdings over time. If it's on the public record that a member owns certain properties, certain stocks, certain investments, any activity on the part of that member which would influence the value of those holdings would be obvious and easy to spot. I think that's our primary line of defence, but the notion of a blind trust, of course, runs totally against that. It puts a blind between the public and the member's assets, and that blind makes it possible for certain conflicts to happen. It's been said by many people who've experienced the problems with blind trusts over the years that it's one thing to have a blind trust, but it's another thing to have a seeing eye dog. There are some people who have blind trusts who seem to have seeing eye dogs that go with them, and that potential always exists.

I submit, with the greatest respect to the drafters of this legislation, that the ethics commissioner setup is not going to be sufficient to protect the public from that type of thing happening, from all of the myriad possibilities of things that take place. There are many types of assets that go into a blind trust that could not possibly be liquidated without the knowledge of the member. There are many such things, and if any of us thinks about it for a few moments, I think we could realize many examples of, you know, family holdings, private companies. There are all kinds of things that are connected with individuals in a way that no blind trustee relationship could prevent the member from knowing. These things have been gone over. In fact, if one looks at the Sinclair Stevens case fairly recently, I think there are many instances there to indicate that the issue of blind trust is one the public no longer has faith in, and it gets right back to the basic principle that openness and disclosure are our primary line of defence. I think the exceptions to public disclosure should be few, far between, and should be listed in the legislation. It should not be open to members to enter such a blind trust relationship and thereby avoid public disclosure and public scrutiny.

There are certain exemptions to this legislation that I find puzzling. For example, when we're dealing with the disclosure of debt – and debt is something that is equally important in determining a member's position with assets – why do we exclude such things as maintenance payments, unpaid taxes? These are obligations that we all have. Well, we don't all have maintenance payments, but the failure to pay taxes and to pay support for one's spouse and one's children are certainly a relevant aspect of the finances of a member. I see no reason why they should be excluded from disclosure under these requirements.

There are some serious deficiencies in this legislation. They, I think, miss the principle that public disclosure is the primary line of defence. It is in principle a vast improvement over where we are now. Where we are now is essentially dealing with British common law and parliamentary tradition, whatever those things may be from time to time. You don't have to be a member of the Assembly very long to realize that parliamentary procedure is somewhat elastic in terms of its ability to stretch to accommodate certain things that have to be done. That's why the existing system has not been working, because it's not clear enough, it's not crisp enough, it doesn't provide guarantees, and it doesn't provide the kind of assurance that people want. It's

exactly the same position that we're in with respect to the issue of freedom of information, where using parliamentary tradition and *Beauchesne* and all the rest of it provides an excuse to do almost anything. So we're light-years ahead with this legislation, but we still have a long way to go before we have a system that really satisfies the legitimate demand of the public to eliminate conflict of interest in the sense that I've described it.

Thank you, Mr. Speaker.

MR. SPEAKER: The Member for Vegreville.

MR. FOX: Thank you, Mr. Speaker. I'm pleased to rise and speak in second reading of Bill 40 and express my tentative support for the Bill. I guess my colleagues speaking in second reading have made it clear that it's our intention to support the principle of this Bill, the principle being that we should come forward with some new and bold conflict of interest guidelines and regulations that govern the conduct of elected members in the province of Alberta. That's a very noble principle and one that we all agree with, I'm sure, in this Assembly. Further, it's our intention, as laid out by the Member for Edmonton-Centre, to propose numerous amendments to the proposed legislation so that we can try and strengthen it and make it a piece of legislation that we can indeed all be proud of in the Alberta Legislature.

There's no doubt that the need for such an initiative in the province of Alberta is long overdue. I think all elected members are painfully aware of the low regard that elected members are held in by members of the public. People have developed a lot of cynicism and skepticism with respect to people who hold elected office. It's not difficult to understand how that's come about, Mr. Speaker. Over the last several years people have witnessed an endless variety of sort of misconduct on the part of elected members, be it at the municipal level, provincial level, or federal level. There's this widespread cynicism and perception that all people in elected office are there for one thing and one thing only, and that's for personal gain.

Now, I know that not to be the case, Mr. Speaker. I not only know that for myself but for the other members of this Assembly. I assume that all members in the Alberta Legislature came here for one reason, and that is to try and represent the people that sent them here and in that way to try and advance some policies and directions that each and every one of us believes would help make Alberta a better place to live in the future. Granted the Member for Vermilion-Viking and I may have some dramatically different views about what that province in the future might look like, and I'm thankful for that.

9:30

We come here for some obvious reason, and I think the reason is to serve, but because there has been a sad lack of adequate conflict of interest legislation and guidelines for elected members, people over the years have got themselves into trouble, and it's made all of us vulnerable, Mr. Speaker, to some degree. We may, on one side of the House, take some pleasure in noting a Sinclair Stevens, for example, getting himself into trouble in Ottawa. Likewise, members of the Conservative Party may take some delight in seeing a New Democrat MP being picked up for having inadvertently taken some contact lens solution with him. But I think when you get right down to it, all of those sorts of things affect all of us. The perception is general; we're all tarred with the same brush. The public perception is that politicians have sort of one goal, and that is to line their pockets, enter public office long enough to do that and then get out with a string of contacts in their pockets so they can go out and make their private life more lucrative after holding public office. It's a serious problem, and it's not something that's limited to Canadian Parliaments and Legislatures. I suspect it's something that's a problem around the world.

In response to that problem – and it's a real problem, not just a problem of perception; there is a real problem with conflict of interest in Alberta – the Official Opposition has taken the lead, I submit, in recommending strong conflict of interest guidelines. We have a Bill that was introduced in this Legislature on nine separate occasions by the leader of the New Democrat opposition in the province, the first couple of times by the late Grant Notley, and after Grant several times by the current leader of the New Democrat Official Opposition, Ray Martin. We introduced the Bill, like we introduce so many others, in the hope that it would provide some guidance to government, some of the many positive ideas that we in the opposition bring forward to the Alberta Legislature in the hope that we may in some sense light the way, help government find some direction. By providing concrete proposals about how laws could be improved, we hope that action will be taken.

Well, it's taken a long time, Mr. Speaker, and I know it's easy for members of the opposition to describe government initiatives using the same phrase all the time: it's too little too late. But I really think that that's a most apt phrase when looking at this particular Bill, because it is indeed coming too late. There have been several fairly serious examples of real or potential or perceived conflicts of interest in the province of Alberta over the last few years, and it's our belief that if stronger measures had been brought in when they were originally proposed by this side of the House, we would have avoided some of the problems that have occurred over the last several years. So it is indeed too late, Mr. Speaker, to have avoided some of the damage that has been done to the reputation of politicians all across the province, and I regret that.

I think it's too little, as well, Mr. Speaker, because it leaves many questions unanswered. It does not address many of the concerns that Albertans have about a strong definition of the difference between real and apparent conflict of interest, the matter of maintaining blind trusts, the matter with respect to the specific powers of the ethics commissioner and his or her relationship to the Legislative Assembly, and opportunities for legal recourse. These are all questions that are left begging upon reading the Bill, and are things that we intend to address.

I was telling members of the Assembly that it's been our desire to help light the way, to try and demonstrate how things could be changed in a positive way in the province of Alberta to help restore the faith of Albertans in their institutions and the people who serve in those institutions. Mr. Speaker, I'd like to point out to members that our desire in the Alberta Legislature to do these sorts of things is not unique. In fact, New Democrat colleagues of ours across the country have put a great deal of effort into trying to come up with concrete, positive proposals, some of which formed the basis for the Bill that we introduced in this Legislature on several occasions. We had a document produced by Ed Broadbent and the federal New Democrats called A More Fair, Open and Honest Approach to Government. We had a document . . . [interjection] Yeah, I'll let the Member for Vermilion-Viking read them.

The New Democrat caucus in B.C. released on June 12, 1990, a document called New Democratic Legislative Action to Provide Honest, Open and Fair Government. The Saskatchewan caucus released in January 1991 a very thick document called

Democratic Reforms for the 1990s, with a broad range of legislative proposals that relate to the operation and function of democracy in the province of Saskatchewan and the conduct of elected members. It would be fair for me to note that some of the things that they're recommending be done in the province of Saskatchewan are already done in the province of Alberta. I want to note that.

Another document from the federal caucus released just a few weeks ago: Making Parliament Work, a discussion paper on parliamentary reform by the New Democratic Party caucus action group. And then a very good statement made to the Ontario Legislature by Premier Bob Rae on December 12, 1990, where he made it clear that he considered it essential to establish certain fundamental principles. He said, and I quote:

> It is to be our governing principle that we must at all times act in a manner that will not only bear the closest public scrutiny but will go further and ensure public confidence and trust in the integrity of government.

A noble purpose, a noble statement, and one that I'm sure we all agree with, Mr. Speaker. The hon. Premier of Ontario went on to suggest that he felt that the most appropriate way for members to avoid conflicts is to divest themselves of potentially conflicting interests; the divestments must be made at arm's length and not to family members. That was something that he made clear to his colleagues in his party. He also made it clear that divestment would not be extended to spouses and family members, that they had to recognize some balance between, you know, the rights of individuals related to politicians but they were, however, going to require more stringent disclosure rules for family members.

AN HON. MEMBER: You're sure impressing Gordon Shrake.

MR. FOX: Another principle embodied in that statement made by Premier Rae that day was that parliamentary assistants, their term for executive assistants – hey, Gordie – would be "subject to the same duties that ministers have under the members' conflict of interest Act." They brought in a prohibition. A prohibition was placed on "acquiring land other than for personal residential, recreational or farm use," something that the government of Ontario is looking at on an ongoing basis.

You know, I want to be the first to admit again that you can't legislate against foolishness or mistakes. Certainly a new government in the province of Ontario with so many people who have not had experience in public office having to not only fulfill their function as MPPs but also cabinet ministers – they've got themselves into some difficulty, and they're working hard to find their way through that.

The point I'm trying to make, Mr. Speaker, is that we in the New Democratic Party in virtually every province in Canada have spent a lot of time over the years working on proposals to try and restore integrity to the democratic process and bring in new and innovative conflict of interest rules for elected members.

I'd like to bring to the attention of government members an initiative by this caucus, the New Democrat Official Opposition in the province of Alberta, a document released a week ago by the Leader of the Official Opposition and the Member for Edmonton-Highlands. It's called Restoring Open and Fair Government: New Democrats Working for Reform. We had a committee of caucus spend a lot of time working on these issues, and it was our conclusion, I guess, that there are a lot of things that are linked, that are related to one another, when you're dealing with the broad issue of conflict of interest and trying to restore the confidence of citizens in their institutions and their elected members. You know, you have to deal with several different things. So we divided our document into four sections. We thought we needed to work to restore Albertans' confidence in the Legislature so that people would be able to better understand what goes on in here, to feel that they had some access to process, reforms that would do some of the things that the Member for Taber-Warner and I have talked about: encouraging co-operation rather than confrontation between both sides of the House.

9:40

I would encourage members of the government to get copies of this document and see if there are some things in here that they agree with. I'd like to point out, Mr. Speaker, that many of the things that we've proposed in response to the concern about conflict of interest are indeed initiatives that we've taken in the past with respect to motions, private Bills, and discussions.

The second section dealt with restoring accountability to taxpayers. When people think of conflict of interest, they think of money; they think of people making money by elected members confusing what is in the public domain with their own private interest. We think we have to go a long way to try and restore that confidence. It's linked in the minds of people with just general accountability with respect to taxpayers' dollars, so we made a number of concrete proposals about fairness and openness in the way that money is collected from people and then accountability and fairness in the way those moneys are expended. Again, I think there are a number of excellent recommendations that I'm confident that members on the government side would agree with. It's not my intention to reiterate them here, Mr. Speaker. I just want to draw members' attention to it to illustrate that this is something that we, too, have worked very hard on over the last while.

A third section dealt with restoring Albertans' confidence in the way government does business, and that talks about the relationships between government and the public and private sector. It deals with things like freedom of information, access to information. Citizens not only tend to think that politicians are in it for themselves, but they also tend to feel that politicians shield a lot from them, that government has all sorts of information about people and won't release it, that government uses taxpayers' money to fund all sorts of inquiries and reports and investigations and doesn't ever release those things so that people don't know what's being done with their money. I think those things are linked, and I would very much have appreciated a more comprehensive package of proposals from the hon. Attorney General with respect to restoring the confidence of Albertans in the process of democracy, not something that dealt so narrowly just with conflict of interest.

We deal in that section as well with cooling-off periods. I know that's included in the Bill. We regret that it's not more extensive. I don't believe that six months is sufficient time for an adequate cooling-off period. We dealt with things like the tendering process and things like that to make it very clear to Albertans that there are ways of structuring the process of government in such a way that not only do members of government avoid benefit but friends of government avoid benefit as well, and I think those things are linked in the minds of Albertans.

The fourth section dealt with restoring Albertans' confidence in their elected representatives. This is where we talked about some specifics with respect to conflict of interest. We recommended the establishment of an ethics commissioner. The

minister has incorporated that in his Bill, and I'm pleased with that. We recommended the members' registry that would require full public disclosure of all business dealings, assets, and close associates, and certainly the Member for Edmonton-Jasper Place made an eloquent case for full public disclosure and some of the things that would need to be associated with that with respect to elected members.

The point I'm trying to make, I guess, Mr. Speaker, is that these things are linked, and if we really want to make an earnest and complete effort to regain the confidence of Albertans, to show Albertans that their elected representatives take their concerns seriously, that we are going to restore integrity to the process of the Legislature and integrity and honesty to the process of government doing business in the province of Alberta, that we're taking a broad and thorough approach to it, not just dealing with the narrow specifics of this particular Bill but that it's going to extend into the areas that they're all concerned with – freedom of information, public involvement, whether it be through their opportunity to have input to debate on Bills, for example.

Mr. Speaker, I think this is a most appropriate occasion for the public to have input, and that's why I have on the Order Paper a motion that proposes the establishment of all-party committees along the same lines as the standing committees that we have in the Legislature now, that would be able to deal with a broad range of things referred to the committees by the Legislature, whether that be during estimates debate to allow a more thorough consideration of specific budget estimates of government departments or to get into the substance of proposed legislation. I think it would work very well in the province of Alberta if, for example, we had all-party standing committees that dealt with justice issues, with social issues, with economic issues, and when a legislative initiative comes forward – the government proposes a Bill – it would be referred in committee stage to that parliamentary committee, legislative committee, and people would have a chance for input. The committee could decide whether or not extensive public input is warranted, and it could be invited. Then people would feel like they had direct access to the process here, and that would as well, I think, help to restore the integrity of the process and the people involved in the process.

So I would have liked very much to have seen a more thorough commitment from this government to bringing this in. I was a little disappointed by what I heard the minister say when he had his press conference, that we're bringing this in not because we really need it, because there have not been any problems, sort of thing, but because people think we need it, so we're going to bring it in. That's not my perception. I think there are some definite areas where conflict of interest has occurred in the Alberta Legislature and indeed with municipal governments in the province of Alberta, and they're of concern to all of us. I think if we have some strict, reliable, commonly understood rules, then it not only gives the public protection, it gives elected members protection as well. I think it does. I think that if we had extensive conflict of interest legislation and rules, people would be assured that rules are in place and being followed, and that protects members. We could refer, for example, to the full public disclosure. We could refer to the kinds of dealings that we've had with the ethics commissioner, and that's a process I think we should work very hard to define so that it would be above reproach.

I'm encouraged with the establishment of the ethics commissioner. My understanding is that that officer would function in very much the same way as the three officers of the Legislature that we currently have. There would be an arm's-length relationship with the Legislature, he or she would be chosen by an all-party committee of the Legislature, and the ethics commissioner would report to the Legislature through an all-party committee to gain that arm's-length relationship with the Lieutenant Governor in Council. I think that process has some real potential, and I'm pleased with it. We do intend to work with that section and work with the specifics of the office of the ethics commissioner during debate in committee so that we can come up with something that works very well for us.

Mr. Speaker, with those comments, I just want to again express my support for the principle of this Bill. I'm glad it's come forward. It's taken a little longer than I would have liked, but sometimes that's been the reality with this government. Nevertheless, we have the opportunity to move forward with it and make some changes in committee to ensure that this is a Bill that not only all 83 members of the Legislature can be proud of but all of the citizens in the province of Alberta can be proud of as well.

MR. SPEAKER: Edmonton-Beverly.

9:50

MR. EWASIUK: Thank you, Mr. Speaker. I also want to take the occasion to speak to Bill 40. As my colleagues have stated, I think it's a Bill that we welcome. It's certainly long overdue. As also was stated, the Official Opposition New Democrats have of course almost historically with their presence in the Legislature advocated this type of legislation, as we felt it was necessary.

Mr. Speaker, a little incident occurred today that I thought was very relevant and perhaps important to mention. One of my constituents, who was a census taker just recently, called me today, as a matter of fact, and advised me of the kind of cynicism relative to politicians that he found in the process of his work as a census taker – I guess in this case federal politicians. But I suspect that in many cases the cynicism that he spoke of could also very well have been applied to us and indeed the other levels of government.

So I think this Bill is not a session too early. I think it's important that it's here, and indeed we are of course going to support it. But as has been already stated, I think there are a number of deficiencies that we would think the minister may wish to look at, and of course our amendments would hopefully help to resolve what we think are deficiencies in the Bill.

For example, the definition of conflict of interest. There are numerous areas that it does not speak to which I think are necessary to really make this Bill more effective. Full public disclosure of assets and interests in dollar values is not required under this legislation: again, I think, a deficiency that needs to be addressed and the Bill could therefore be improved substantially. While there are requirements, of course, for disclosure, it's not necessarily complete disclosure and certainly not a public disclosure. I think those things need to be done.

The Bill details what needs to be disclosed to the commissioner, but section 14 of the Bill permits the commissioner to edit information that might well be made available to the public. Again, I think if you're going to disclose information, have a commissioner to whom you're going to make the disclosure, surely as public information it should be made available to the public.

The public trust, I think, has been addressed by numerous speakers. Again, while it works – it's something we've been utilizing in this Legislature for some time – it really is not, it has

many shortcomings, and I would just suggest that it should be removed and a more appropriate means established.

I agree also that the appointment of the commissioner is under the proper legislation. I think the positions we have now that are appointed under that particular piece of legislation are adequate. I think it certainly meets the needs, and I think it makes the job of a commissioner one that would be well respected and, of course, at length from the government. The difficulty I see, however, is that while the Bill appoints the commissioner properly, it takes away authority from him, at least as I read the Bill. The commissioner is really cut off at the knees when he makes a recommendation of censure. As it's stated in section 25(2), this legislation, in fact, can change those sanctions or, in fact, remove them entirely, so really, it seems to me that while we have a commissioner to deal with conflict of interest on the one hand, on the other hand, in the same legislation, we seem to take that power away from him. I would like to know: is that the way other jurisdictions handle this issue? Is that the way British Columbia, Ontario, in fact, the federal government – do they interfere with the functioning of the commissioner in that fashion?

Now, the minister in his opening comments did speak to the need for some disclosure from public servants, and that is certainly an area that I think needs to be looked at, but I'm assuming and I would think that what the minister stated will be done.

The other area that I think most people have spoken to is the cooling-off period. One can argue that perhaps six months is sufficient. It really means that when an individual leaves this House he should be able to get into some kind of activity rather quickly, and six months might be that time frame. However, I think that really six months is a short time. All of us are going to presumably receive some kind of re-establishment funds when we leave here, so there is a period for, I think, an individual to do certain things, but surely a six-months' cooling-off period is not sufficient, and I would certainly endorse the two years that has been proposed by other speakers.

MR. SPEAKER: Question?

Edmonton-Whitemud.

MR. WICKMAN: Thank you, Mr. Speaker. I wish to go on record and make a few comments on my feelings or perceptions about the Bill that we're dealing with, Bill 40, Conflicts of Interest Act. I think if we look throughout Alberta, if we look throughout Canada, and I'm sure in other parts of the globe, there is a growing dissatisfaction, a growing distrust, and a growing perception that those who are elected are not elected in the sense that they regard themselves as elected representatives to represent those that elect them but rather they're politicians there to serve themselves. It's unfortunate, and in all my years that I've been involved in politics either actively participating or working behind the scenes, I've never seen it as bad as it has been in the last few years. It continues to grow in that direction, and I think a lot of that accounts for the growing strength you see for what one may regard as the more fringe-type parties, although it's pretty difficult to any longer classify a party like the Reform Party as being a fringe party. But that's one of the reasons people I think tend to look towards something new, because of the dissatisfaction that they've come to have with the existing parties, and that's very, very unfortunate, because it's not the fault of all people that are elected.

I maintain that by and large people that do put their name forward for office do it with a very, very sincere intention. Their intention at least initially when they start off in most cases is that they want to serve the public. They want to make a contribution to their community, and their intent is extremely sincere. By and large, I believe that's true of most of us, most of us even in this particular Assembly. However, there are those that after a period of time in office find their resistance – the temptation may be a bit too strong, and they tend to take advantage of that position or abuse that position. There are others that may have a difficult time distinguishing as to what is perceived as being acceptable, proper behaviour from the point of view of the public, and there are others that simply – a very, very small minority, I believe – go in there and their intention is to abuse the system to the greatest extent possible to serve their own particular interests. But whenever those situations do occur, and we see them occur more and more on the various levels of government – we've seen some very, very sad instances on the federal level. We've seen accusations in this particular Assembly. We've seen accusations, of course, and charges in other provincial jurisdictions as well.

It extends to other levels of government. It extends to municipal government. We've seen a couple of instances in this term of the Edmonton city council where the public in large numbers have deemed that two of the elected representatives aren't fit to serve in office because of their particular behaviour. Then we can see that go down to the smaller municipalities as well.

I believe, Mr. Speaker, it becomes increasingly important as we go along, as we attempt to change people's attitudes, people's reflections towards elected representatives, that every effort possible be made to ensure that all of us as elected representatives are squeaky-clean, that we're not being perceived as trying to take advantage of our particular positions that are positions of trust, a great deal of trust, and positions that quite frankly very, very few people have the privilege of ever being in. One has to always remember it is an honour to serve those that choose to put you in that particular position, that do place that trust with you.

10:00

When we talk in terms of a conflict of interest piece of legislation, I believe we have to go beyond the elected representatives. I believe we have to have sufficient controls, we have to have sufficient restrictions that it applies to the bureaucracy, it applies to the civil service so that they are not in a position to take advantage of their particular positions or use the information they may gain for their own purposes.

When we talk in terms of conflict of interest, I think we have to talk in terms of that free-flowing information. If the public is under the perception that the information they seek to make particular judgments is not available, that in itself can place elected representatives in the position that they may be perceived as being in conflict of interest or may be perceived as abusing their political office simply because the public does not have the information they require to judge them differently, to judge them on their full merits.

I think one of the real problems we have when we deal with this type of legislation is trying to define what conflict of interest is, because conflict of interest can be so many different things to so many different people, and it becomes one of perception. I can look at the instance in the county of Strathcona, for example, that I raised in this House, where we have a body of elected councillors that see fit to take advantage of their position in the sense that they allow themselves the opportunity at taxpayers' expense to attend a leadership dinner for a political

party, the government party. That to me is a conflict of interest in that those individuals are not elected for that particular purpose. Very clearly they're not elected for that purpose. When they use those taxpayers' dollars that the taxpayers have entrusted to them and they spend it in a fashion which could be perceived as being abuse, that can be deemed as conflict of interest by many, many people.

The distribution of funds which has come under scrutiny within this House on a number of occasions to many people can be seen as a conflict of interest. If an individual is in the position that they have access to or can control large sums of revenues that come from the public pocket, and if those dollars are distributed in such a way that the public perceives they're being used to enhance the image or enhance the political advantage of a particular elected representative or representatives or a party or a government, that to many people can be perceived as conflict of interest.

The question of political appointments when an individual that is the elected representative resigns and the next day or a few days later is appointed to a political position that may pay a great deal of money – and we've seen that happen at this particular level of government, within this Assembly. We've seen it happen at the federal level. The Member for Vegreville made mention of the former leader of the New Democratic Party. Certainly that situation was not perceived as being totally clean by everyone. Many would have seen it as a conflict of interest to leave a position as leader of a party, then immediately go into a position that is created and paid to the tune of $100,000 a year. I imagine if I look deep enough, I would probably find some instances that would be quite questionable within the federal Liberal Party as well.

I'm not saying that any one particular party is squeaky-clean. I'm trying to point out that over a period of time, more so in recent years, many elected representatives and many parties have contributed to this growing distrust in elected representatives, this growing feeling that politicians or elected representatives are there not to serve the people or serve those that placed them there but rather to serve themselves. Many people will say to me that they perceive situations where one can sit in this very Assembly and draw a pension, double-dipping, as being a conflict of interest, and to them it isn't proper; it isn't something that is allowed to happen in the private sector on most occasions. They see that as an abuse of a political position; in other words, taking advantage of that position they were placed in.

Mr. Speaker, the point I'm trying to make is that when we talk in terms of conflict of interest, we have to broaden the definitions to an extent that it covers as many situations as possible. This particular Bill that's in front of us is by no means perfect, and I think most of us sitting here would agree; I think there would be members within the government party. A private member has already spoken and questioned from his point of view areas that he didn't feel were perfect. I believe if all of us spoke, we would have areas that we could address, some good, some bad.

Nevertheless, Mr. Speaker, as I sum up here, I do want to commend the Attorney General for the initiative of bringing this Bill forward. It does reflect the findings of the commission that was put in place, and even though it may not be perfect, it certainly is a step in the right direction. It will certainly go in a direction to allow for possibly some trust being placed back in the hands of the Members of the Legislative Assembly that are here.

As we take this Bill from second reading and as we vote on it in Committee of the Whole, I'm certain we are going to see some amendments. I'm certain we'll see some amendments from this caucus, and I would expect some amendments from the New Democratic caucus. Hopefully, we'll see some amendments from the government caucus prior to it being dealt with in Committee of the Whole that will lead to strengthening the Bill, to make it more precise, to more clearly define conflict of interest, not to take away . . . There are some areas there that may seem a bit tough; for example, the reference to one's spouse and disclosure. Some may question that and say: "Well, my spouse didn't seek elected office. Why should my spouse be held accountable?" But I think with a little bit of thought it becomes very, very clear that it wouldn't be difficult, if one chose to use their spouse to cover a conflict of interest, that that particular person or that particular elected representative may be choosing to abuse.

Mr. Speaker, I'm going to conclude on that particular note. I look forward to the Attorney General's response, and I look forward to the amendments that I anticipate will come during committee stage of this particular Bill.

SOME HON. MEMBERS: Question.

MR. SPEAKER: Attorney General, summation.

MR. ROSTAD: Thank you, Mr. Speaker. I certainly appreciate the general comments of speakers from the opposition in the sense that the Bill is needed for reasons we've all expressed are relatively unfortunate. The hon. Member for Vegreville I think was using a little liberty when he commented on remarks that I had made in a press conference where I said that we don't need this; we're only doing it because people want it. That wasn't the context at all. It was the context of the Wachowich report that said generally that elected officials in Alberta have been well behaved and conducting business with ethical principles. In that context I said that we bring it in, but we don't bring it in because we're trying to patch up something that's gone wrong. It was in that context.

Also, in the general discussion there seemed to be some misapprehension that there isn't full disclosure. There is absolutely complete and full disclosure. It leaves nothing to issue unless you, with intent, don't want to disclose something. It doesn't matter what you write into legislation; you're never going to overcome something like that.

We also had a reference to blind trust, that it isn't adequate. Well, blind trust is the absolute only trust that's allowed by the legislation, and the only things that can be put in a blind trust are securities. You can't put anything else in a blind trust. So if you've got a business, as I said in my opening remarks, the principle is: if it is in apparent conflict, the commissioner can definitely tell you to divest yourself of that or remove yourself from a minister's position. I don't know what else you can need. The commissioner – and I don't care whether he's called an ethics commissioner or a conflict of interest commissioner. He's called an ethics commissioner in the legislation because that was the terminology used by the Wachowich report. That commissioner is given total control with the mandate of this legislation to ensure that elected officials carry out their public duty so it is not in conflict with their private interests. With the context of some privacy, there will be public disclosure of everything you have – I think we need that – but also in the context that some things need to be kept private. That would be in discussion and in total discretion of the commissioner.

10:10

If we set out all the rules and regulations under which that commissioner works, I think personally we hamstring him. We give him the mandate and give him absolute open book to set his rules and regulations of how he will conduct it and how he will ensure that we are here, and if he does an investigation and has a finding, he will make his sanction to this Legislature. Now, his sanction's going to go. I still have a problem with saying whether we have a court. Fine, I guess we could say, put it to the court; the court makes a decision. We still have, as the highest court of the land, the same ability to change that court direction as we would have to change the direction of the ethics commissioner. If, as an officer of this Legislature, he brings forward his, I think we have to agree to the integrity of his office and that his sanction would be what would live here.

I certainly expected and I realize that there will be numerous amendments brought forward. I recognize that perhaps somewhat from a philosophical difference but also just because it's opposition, they'll bring numerous amendments. I just hope it's not innumerable and that we can get on with putting this legislation into effect and establishing our credibility as elected officials with the public. I thank the members for their kind comments in the sense of bringing the Act forward. I move second reading of Bill 40, Conflicts of Interest Act.

Thank you.

Point of Order
Member's Apology

MR. FOX: Point of order, Mr. Speaker.

MR. SPEAKER: What would the point of order be?

MR. FOX: I'd like to apologize to the Attorney General for the misconceptions I had about his comments in his press conference, and I appreciate him putting them in context for me.

MR. SPEAKER: Thank you.

[Motion carried; Bill 40 read a second time]

Bill 41
Natural Gas Marketing Amendment Act, 1991

MR. ORMAN: Mr. Speaker, I'm pleased to move second reading of Bill 41, the Natural Gas Marketing Amendment Act. Bill 41 provides for extension of netback arrangements where these arrangements are scheduled to expire. Expiration would remove the supply arrangement from the application of the Natural Gas Marketing Act. The amendments in Bill 41 are intended to preserve the purpose of the Natural Gas Marketing Act.

Mr. Speaker, the Natural Gas Marketing Act came into force in 1986 to coincide with deregulation of the natural gas market and prices. The original Act contains a voting mechanism to allow producers who supply natural gas to shippers to vote on contractual terms and conditions. Very simply, Bill 41 extends netback agreements and hence the producer's ability to vote on a contract offer. I should add that this legislation potentially is applicable to all netback agreements, domestic or export.

For clarification, Mr. Speaker, a netback agreement is an agreement between a shipper and a producer who has committed gas to supply that shipper where the producer has not identified a specific price for his gas. The shipper undertakes to negotiate prices with his customers and to pay the producer the result of that price, whatever it may be, after deductions for transportation and related costs. The netback agreement in no way determines the price. The price is established by negotiation between the downstream buyer and the shipper, and that's how the market operates: negotiations between a buyer and a seller. However, once that price is negotiated, the netback agreement provides that the shipper deducts costs and fees and pays the remainder to the producer.

I should say at the outset, Mr. Speaker, that the amendments in this Bill are subject to a sunset provision of November 1, 1994, or prior to November 1, 1994, by regulation. The legislation will also cease to apply in any situation where, one, there is no longer an affiliation between the shipper and his downstream buyer; two, the minister is petitioned and consents to hold a vote to remove the designation of a shipper under the Act, and there is a finding of producer support to end the extension of netback resulting from this legislation.

The Natural Gas Marketing Act sets out the rules under which the shipper reports the negotiated price to his producers and receives approval to participate in that market on those negotiated terms. Essentially, it provides a means to ensure that producers know the price they will receive before the shipper actually takes the gas. Clearly, this mechanism envisions an arm's-length negotiation between the two parties, the shipper and the downstream buyer, to determine the price. It also envisions producers committing supply without price certainty but having the producer voting mechanism to accept the result of the price negotiation. What this amendment does is extend the netback agreement in cases where the agreement would otherwise lapse. It ensures that the supply arrangement continues to remain subject to the Natural Gas Marketing Act as originally intended.

My position and the position of this government is that contractual changes must be commercially negotiated. Mr. Speaker, we have seen various jurisdictions exercise regulatory intervention in the marketplace in an attempt to influence the outcome of commercial negotiations. Regulatory interventions are unwarranted interferences in the market inconsistent with reliance on market forces.

In my view, the Alberta public interest is best served by Bill 41. It allows a mechanism to continue which has worked well since deregulation in 1986. As long as negotiations proceed on a commercial basis, the commercial decisions should be decided by producer acceptance of the renegotiated outcome. The clear preference of the government is to have successful resolution of issues through private contractual negotiations. However, failure to achieve private resolution of issues would frustrate the intent of the Natural Gas Marketing Act.

Approximately 65 percent of Alberta's gas is sold in markets within Alberta, in the rest of Canada, and in our export markets by shippers – another term is aggregators – who have supply pools operating under these netback agreements. This reflects both long-term arrangements which were updated to accommodate natural gas deregulation and market competition. It also reflects the choices of customers in new markets, customers who choose to buy from aggregators because of the long-term supply reliability they offer. In many of these arrangements shippers end up selling to affiliated downstream buyers. In such circumstances it is even more vital that producers are not forced to accept the results of non arm's-length negotiations. This legislation would apply to any such arrangement where netback agreements lapse and there are ongoing contractual commitments between the shipper and the producer. As such situations

develop and are identified, the shippers will be designated under the regulations.

Once brought into force, this legislation will have general application to any situation where, first, the shipper is affiliated with the major customer; second, the netback arrangements expire and the shipper has not renewed them; and third, there is a continuing contractual commitment by producers to supply gas to the pool.

I must stress, Mr. Speaker, that Bill 41 is generic. It could apply to any domestic and export netback agreement where the shipper is affiliated with the downstream purchaser. I would also like to emphasize that the legislation will only come into effect after it is brought into force by regulation. The preference of our government is clearly to have successful resolutions of issues through private contractual negotiations.

10:20

I recognize there are many complex issues involved here. However, the basic issue is that the Natural Gas Marketing Act was developed in 1986 as part of deregulation to reflect that reliance on a market requires price negotiation between shippers and their customers. Producers who commit supply to the shippers do not participate in that negotiation; they accept the price negotiated by the shipper. The Natural Gas Marketing Act provides the rules whereby they could indicate their acceptance of that price. Now this amendment ensures that a shipper cannot avoid the Act simply by refusing to extend netback agreements.

Mr. Speaker, as I indicated, I'm pleased to move second reading of Bill 41, the Natural Gas Marketing Amendment Act. I will be pleased to hear debate in this Legislature on this most important Bill.

Thank you.

MR. SPEAKER: Edmonton-Jasper Place.

MR. McINNIS: Thank you, Mr. Speaker. I will say that the minister read that beautifully. I just wonder if he understood what he read, because this is not anything to do with deregulation; this is reregulation.

We have the California Public Utilities Commission, which is doing its level best to get lower gas prices for its customers at the expense of Alberta producers and through them the owners of the resource, which are the people of the province of Alberta. The California Public Utilities Commission would like to see the netback system replaced by a system in which they would be directly negotiating with sellers in the province of Alberta. Of course, the netback system provides a certain degree of protection from predatory purchasing, the type of thing that the Americans are really big on these days. You know, this Pacific Northwest Economic Region that the government wants to join is involved in predatory purchasing, coalition buying, and this type of thing. What clearly the government is doing, and I think sensibly in this case, is putting a halt to that process to nip the approach of the California Public Utilities Commission in the bud. But deregulation it ain't.

Bill 41, as I understand it, extends the netback pricing arrangements through until November of 1994. Even though it's generic, as the minister stated, it's clearly directed at attempts by Pacific Gas and Electric through its gas purchasing arm, Alberta and Southern, to obtain lower prices for Alberta gas.

So I would like to say that the Official Opposition will be supporting this legislation.

MR. PAYNE: Mr. Speaker, I'm somewhat troubled by the previous speaker's reference to the Minister of Energy's purported reading of a document prepared by his departmental officials, with the snide remark that he probably didn't understand what he was reading. Now, that may very well have been a misguided and perhaps juvenile attempt at humour, but just in case it was a seriously intended remark, I would like to set that member straight. Perhaps I could refer to a discussion I had about this legislation with the minister about two weeks ago, when he was kind enough one night when we were in committee to sit in that chair, take out a pad and draw a map of the United States and Canada, and then take me through all the principles of this Bill. After about half an hour, it was patently obvious that the Minister of Energy was acutely aware of the issues and the jargon and the principles involved. I would hope that perhaps on reflection the Member for Edmonton-Jasper Place might reconsider that unfortunately snide remark.

Perhaps I could add, Mr. Speaker, that I have discussed the principles of this legislation with a number of producers in my constituency. I'm sure the minister's aware, but just in case he is not, I would like to emphasis that he has the industry's support. I'm happy to put that on the record during second reading.

Thank you, Mr. Speaker.

MR. SPEAKER: Calgary-Buffalo. [interjections] Thank you. Through the Chair.

Calgary-Buffalo.

MR. CHUMIR: Thank you. [interjections]

MR. SPEAKER: Order please. I'm sure you can talk to each other outside the Chamber. Thank you.

MR. CHUMIR: Thank you, Mr. Speaker. I'm rising to support this legislation as well and would like to thank the minister for a briefing which I received in a very complex document. He does understand it. I'm not so sure that I understand it thoroughly, but I understand the general direction and am supportive.

The minister did say this was generic in nature, intended to apply to any number of contracts which may fit the criteria set out in the legislation, and I agree that yes, it is generic. However, we can't overlook the fact that the key to this legislation is that it's an attempt to maintain a reasonable price in the California market, where we're under tremendous duress and where the present offer on the table is approximately 20 percent less than the current price of, I believe, $1.86 or $1.89 net to our producers.

This offer presents us with an ominous clue of the direction in which gas prices are going. Although I support this, I'm sure it's clear that no Albertan can be happy that we have had to resort to this kind of muscle, which is really totally at odds with a free market. It's not a deregulation, and it uses interference in the market as a weapon to battle what is perceived, at the very least, to be interference in the market on the California end. It's really a symbol of a very desperate problem that we have now in our natural gas sector with natural gas prices under severe downward pressure. This pressure imperils our provincial royalty revenue and drilling activity in this province, and it threatens to lead us to a situation in which, if it continues over a period of time, we will be exporting the heart of our gas supplies at low prices below the cost of future replacement.

The evidence of downward pressure is everywhere these days, unhappily. Spot prices in this province are down, the average border price is down, the U.S. bubble has turned into a sausage, and coal seam gas is being discovered at great rates, fueled by the United States government's subsidies of approximately $1.30 per mcf before taxes. Now we see California trying to take advantage of this situation. What they do will obviously serve as some form of precedent to other purchasers such as Ontario, which is going to be renegotiating effective November 1, I believe, and so on with a domino effect. So it's a very troubling situation.

I think it's important to reflect that perhaps to some extent we in Alberta are authors of our own problems. Now, I don't say that we can do any better in dealing with the natural forces of the free market than Canute could do in attempting to push back the waters, but I think it is important that we do question some of the decisions we made in the past six or seven years and see whether at the very least we can learn something for purposes of future decision-making.

Now, one of the first things we have to ask is a question which I've been asking in the House since 1986, and that's whether we weren't naive and foolish in the way in which we entered into deregulation with such gusto in 1985. As I remember, at that time there was almost an unquestioning faith in this province that the free market, that deregulation would solve all the problems of our energy industry. I believe this led our negotiators to really stop thinking. It seems to me obvious that if you deregulated the gas markets at a time when you had a 25-year supply of gas thrown onto the market all of a sudden – and it was that 25-year supply which was there; it had to be kept pursuant to our rules to protect consumers – buyers were going to have a field day, and sellers would be falling all over themselves to get rid of their gas. This in fact is the heartland of what's behind our problems. Too much gas, too many sellers, often desperate sellers looking to get some immediate cash flow.

10:30

What could we have done? Well, to some extent you can't avoid a free market in some areas where you actually have to compete, but the reality is that because of the nature of the energy industry, where it takes such heavy investment, where you have pipelines, where you don't have open competition all the time; you have to force yourself into it. There are naturally limited or quasi-monopolistic situations. If you have a situation where you have a 25-year supply overhang, you have opportunities to then negotiate and take advantage of these obstacles and roadblocks in order to protect yourself. So a special arrangement that might have been looked at at that period of time might have been to arrange for, say, a 10-year phase-in period with the agreement of purchasers with respect to pricing provisions, which would have protected us from a complete collapse as a result of that 25-year overhang. I think such a provision would have been fair ball because from the consumer's point of view the 25-year overhang was there to protect them. So as a result we now have the worst of all worlds, and this 25-year overhang of supply, which was for the benefit of consumers, is being now used against us to drive prices down. Although I'm very unhappy with this in the world of realpolitik, I quite frankly can't blame California in any moral sense for attempting to take advantage of this opportunity against which we didn't adequately protect ourselves. I mean, what else can you expect them to do?

Now, I suppose to some extent the Natural Gas Marketing Act in 1986 was a partial recognition of the need for some type of protection, and we're now seeing a continuation of it. It's within that spirit of recognition that I am very supportive of the minister and his efforts to fight this battle at this stage, but I think it's important that we do reflect back upon what was a thoughtless euphoria. We just have to get smarter in terms of the long term.

Now, there is also another element in this area that I can't help but note with some black humour. I noted in a recent news article the minister and a representative of the oil industry were quoted as saying that the philosophy they were acting under is that the price of our gas should be set in California, based on the cost of alternative fuels in California. The reason we want to do that is because the price is higher there. The corollary, of course, is that in California it's the opposite. What California says is: "We'd like to buy in Alberta, where the price is lower. We want to take advantage of the low Alberta prices." What we have is our industry and the minister suggesting the philosophy or the theory that pricing should be based in Calgary on the philosophy of competing alternatives. Now, if that concept sounds familiar, it should, because that's the rule that was being applied by the National Energy Board in this country across the board until 1988 in approving exports from Canada.

One of the three tests that was used by the National Energy Board in approving exports was, and I quote, whether the offered price would be "materially less than the least cost alternative for the buying entity." If the offering price in California was materially less, then there was no export approval. If they offered you and you wanted to get the 20 percent drop, they provided protection. Well, this rule was somewhat troublesome. It was most troublesome, of course, to the United States, because that beefed up the price they had to pay for our gas, which was kind of nice for us but not so nice for them. So they got us to give that up. I must say that it was also troublesome for some Canadian gas producers that were anxious to sell gas that had a financial problem or otherwise. They felt they could make a deal with some purchaser at quite a low price and understandably, and I certainly don't blame them, wanted to export.

Wouldn't it be nice, and I bet the minister would just be absolutely delighted at this stage, if he were to be in the position of being helped right now by having a National Energy Board criterion such as that that he could use to tell the California Public Utilities Commission that they weren't going to get any of our Canadian gas unless we received a price comparable to that of the price of competing energy in California, which is quite high. In fact, thanks to the information provided by the minister, I know it's higher than the price we've been getting.

I speak in the past, of course, with respect to that competing alternatives test, because in annex 905.2 of the free trade agreement this provision, the least cost alternative test, was the only one of the three National Energy Board tests eliminated. So we're now at the mercy of market forces as interpreted by the California Public Utilities Commission. What you see is that we've come full circle in effect. Having lost the protection of that clause with respect to the National Energy Board, we're now using Bill 41 to try to do indirectly what the National Board rules used to do themselves.

Let me say with respect to free trade, Mr. Speaker, let there be no mistake that I believe in the concept of free trade, but each agreement has to be looked at on its own merits. In my view we virtually gave away access to our energy, we gave away the energy farm for little or no overall benefit.

MR. FOX: Why did you guys support it? Why did you support it? Your leader supported it in the election.

MR. SPEAKER: Order please.

MR. CHUMIR: Don't get silly, Derek. You know I didn't support it.

The fact is that . . .

REV. ROBERTS: Laurence Decore supported it.

MR. CHUMIR: I did not support this energy agreement, so kindly don't say things that aren't true.

MR. SPEAKER: Through the Chair, please, hon. member.

MR. CHUMIR: The fact is that we had an ace in the hole, a wonderful ace in the hole, in respect of our energy resources, and I believe we gave it up without receiving adequate compensation.

10:40

Some people say, and it was common to pass along the illusion, that we got access to the U.S. market. Well, did we get access? The fact is that there was no access problem with respect to oil. They'll take all the oil we want. The only question that we had with respect to access was with respect to natural gas, and there was only one access problem that we had with respect to natural gas, and that was regulatory interference, initially by the Federal Energy Regulatory Commission. In fact, efforts are now being made to recharge FERC, as it's called, with greater powers with respect to our pipeline costs, and now we see regulatory interference by the California Public Utilities Commission.

What remedies do we have? If this gave us access, what remedies does the free trade agreement provide? Well, I'll tell you what remedies. If you want strong muscles, strong things that you can do under this, it says that

> if either Party considers that energy regulatory actions by the other Party would directly result in discrimination against its energy goods or its persons inconsistent with the principles of this Agreement, that Party may initiate direct consultations with the other Party.

Well, isn't that strong medicine? Can you imagine? We couldn't have had direct consultations if it weren't for this agreement. For that we gave up access to our energy resources.

In any event, we are going to support the legislation because it's an essential component to really protecting us from the problems of cold-turkey deregulation that should have been protected by the minister's predecessors. He's not the one who negotiated these types of provisions. We're now in trouble, and this is what should have been within the spirit of a sensible scheme of deregulation which I'm hopeful in the long term will work to our benefit, but in the short term we're up to our you-know-what in alligators in terms of the free market. Let's get on and get this agreement in place and get a good price out of California.

MR. SPEAKER: Minister of Energy, summation.

MR. ORMAN: Thank you, Mr. Speaker. Notwithstanding the gratuitous comments from the Member for Edmonton-Jasper Place, I do appreciate the support and the discussions, the two hours I spent with his critic, the Member for Calgary-Forest Lawn, and also the Member for Calgary-Buffalo on this very important issue. I guess the three of us, being Calgary MLAs, recognize the import of this legislation and this amendment and, at the same time, understand the situation as it currently exists, as was just most recently pointed out by the Member for Calgary-Buffalo.

Mr. Speaker, this legislation, in fact, has very little connection with deregulation that occurred in 1986. In fact, with the United States market deregulating, if we for some reason or other had not deregulated gas in Canada, we'd be priced out of the market. That is, if we'd set a price at the Alberta border of $4.25 and deregulation in the United States brings $2.37 through the El Paso line into California, then we are out of the market. So we had very little choice on deregulation. This is in response to regulatory intervention on behalf of the California Public Utilities Commission. They are trying to effect rules and regulations that are forcing the utility company, Pacific Gas and Electric, to change contractual arrangements as a result of that manipulation. So they are in fact skewing meaningful negotiation between buyer and seller.

The comment about alternative fuels is a good one. As a matter of fact, in the Iroquois project the price negotiated with the New England states is really a basket of fuels: fuel oil, coal, alternative gas supply, and other series of fuels that compete with natural gas. Quite frankly, offering a personal view, it would make sense that this is the type of negotiation that producers would pursue in California, but, Mr. Speaker, I digress. This legislation, as I indicated, is not California specific. It is generic, and it catches domestic and export contracts that are subject to a netback pricing where gas is being purchased from an aggregator who is an affiliator of the end user.

We have personal views, and we have shared those, but at the end of the day governments should provide an environment where meaningful negotiation can occur and they promote sanctity of contract. Unfortunately, that situation is not occurring from the California side, so for that reason we are forced into a situation where we must enact legislation to preserve an environment where meaningful negotiations can occur.

Having said that, Mr. Speaker, I do appreciate the support of the opposition, and I do appreciate the discussions that I had with the opposition critics. I look forward to further discussion as we move this Bill into committee study and third reading and Royal Assent. Thank you very much.

[Motion carried; Bill 41 read a second time]

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

[Mr. Jonson in the Chair]

MR. DEPUTY CHAIRMAN: I would ask the committee to please come to order.

Bill 30
Securities Amendment Act, 1991

MR. DEPUTY CHAIRMAN: Are there any questions, comments, or amendments to this Bill?

HON. MEMBERS: Question.

[Title and preamble agreed to]

[The sections of Bill 30 agreed to]

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

[Motion carried]

Bill 33
Landlord and Tenant Amendment Act, 1991

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

The hon. minister.

MR. ANDERSON: Mr. Chairman, the government has a number of amendments to this Bill. I should mention that since it was read in second reading, we have consulted with a series of Albertans once again, in addition to the consultations which had taken place prior to the introduction of the Bill itself, and have circulated to the House a series of amendments. By and large, these amendments are technical, and they are designed to improve the working of the Bill and do not change the principles.

10:50

I'll very briefly, if I may, Mr. Chairman, go through the sections and indicate what is there in those amendments. A, the amendment to section 3, is really just a change in definition to improve the operation of the Bill. B takes outs the reference to other people and only allows for heirs in that case and again is not significant but rather a definition. Again, in that whole section the clarifications are required and changed. C has some impact in terms of its change. In the definition of those exemptions that we would allow, in this case educational institutions, we've received a concern that some of the dormitory circumstances would require further definition to be exempt so that they're under the jurisdiction of those institutions. That section allows for that particular event to take place under the jurisdiction of educational institutions.

In terms of 1(1) under D, this is a significant section. We have in the original Bill a proposal which will of course require landlords to give reasons to tenants before they evict them. This particular addition will enable us to make sure that takes place by having a tenant able to challenge a landlord if they in fact have evicted the tenant but have not, in accordance with the reason they gave, completed the changes to the apartment or the other reasons which they may have in fact indicated in the eviction or the termination notice.

E is a minor change again, just striking out unnecessary terms. F, the changes to section 13, is again just a definition of who is to be given notice with regards to sections of the Act and will serve to tighten up the Act in that respect. G is clarification to ensure that the operation is proper with respect to the landlord and the fixed tenancy terms. H and I are again technical changes. All of J through M are sections which are required to place under another Act those parts of our Act which dealt with commercial tenancies, since it's now proposed that this Act be restricted to dealing with residential tenancies. So all of those would then move to the Law of Property Act in order that they can continue to be observed in that respect.

N is again just improved legal wording suggested by the Law Society, and O is details for the provisions of how notice is served or documents are served. P deals with removing the word "common" as referred to common law in the Act since some of the law is not common law but in fact written law, and we would want all to be covered in that respect, again a detail, as are 59(4) and (5), both clarifications dealing with the Act.

Mr. Chairman, I believe the amendments are necessary to improve the reading of the Act, by and large, with the possible exception of the addition of the definition on student residence and the ability for a tenant to take action if they're dismissed without the landlord carrying through. These are legal amendments designed to improve the operation of the Bill itself.

MR. DEPUTY CHAIRMAN: We are now dealing with government amendments A to Q. I would also draw the committee's attention to amendments which will be dealt with in order later from the Member for Edmonton-Beverly and the Member for Edmonton-Whitemud. They've also been circulated.

Speakers on the government amendments? The Member for Edmonton-Beverly.

MR. EWASIUK: Thank you, Mr. Chairman. I rise to basically state that I have no particular problems with the amendments brought forward by the minister. I think these amendments will indeed improve the existing legislation, and it is our intent to support them.

MR. WICKMAN: Mr. Chairman, I echo the words of the Member for Edmonton-Beverly. I'll support those amendments, and I have no problem supporting the amendments that will be presented by the Member for Edmonton-Beverly. In exchange, I expect the minister of consumer affairs and that member to support my amendments when they're introduced.

MR. DEPUTY CHAIRMAN: Any further speakers? Are you ready for the question on the amendments?

HON. MEMBERS: Question.

[Motion on amendments carried]

MR. DEPUTY CHAIRMAN: We're now dealing with the second set of amendments.

Does the Member for Edmonton-Beverly have any remarks?

MR. EWASIUK: Yes. Thank you, Mr. Chairman. Just a couple of comments before I go into my amendments. As I think I stated during the second reading of this Bill, it's a Bill that we welcome. I think it's a Bill that's certainly perhaps long overdue. It's been a long time coming. However, I think there was a lot of consultation taking place with landlords and tenants and the public generally. I think the total accumulation of those consultations is attempted to be reflected in this Bill.

However, having said that, I do think there are still some shortcomings in this particular Bill. Two areas that I think I particularly want to address are the areas of security deposits and maintenance of facilities. I think those are still deficient in the Bill, and it is in those areas that some of our recommendations have been advanced.

The other area that I think is a major concern – and I'm not sure whether it can be addressed in legislation. While the legislation is going to help – certainly it's going to make many tenants' and landlords' functioning easier – there are, however, people in the province who are falling through the cracks, who do not have access to landlord and tenant boards. The only recourse that I would suspect they have is basically through the court system. I'm talking primarily of our rural areas. Edmon-

ton, Calgary, Medicine Hat, Lethbridge, and some of the others have landlord/tenant advisory boards, and they can utilize them if there's a dispute or disagreement. However, for those in other communities – and there are many, particularly in our resource development centres – there is no recourse to tenants or to landlords, for that matter. I believe that if we want them to use the courts, then I think it becomes another problem. We then have a problem of costs, and quite often I think they will not proceed to that recourse. The other thing is that if they in fact have the money and want to pursue it or insist on pursuing it, the backlog of court cases is to such an extent that it makes the whole exercise not relevant.

With those few comments, Mr. Chairman, I want to then move on to my amendments. I did circulate those earlier this evening. I gave the minister a copy of them several days ago in hopes that we could perhaps expedite the process this evening.

11:00

The Bills are really quite clear. In section 3(c)(i), (ii), and (iii), all three of those particular clauses, the amendments would improve the provisions for roomers, boarders, and seasonal workers. While the Bill does make some reference to these and make some things easier for them, I think the amendments that I am suggesting here would in (c)(i) accommodate the roomers, in (ii) include boarders, and in (iii) it would speak to seasonal workers. I think we in this province, because of our . . . Take a place like Banff or Jasper, where seasonal workers are used quite extensively. I think that by the adoption of (c)(iii) in my amendments we would alleviate some of the difficulties and potential problems that seasonal workers may have during their stay when they're working in these resort areas.

In clause 2(2)(c) on page 4, the provision there is that we would exclude from this Act "rooms in the living quarters of the landlord, if the landlord lives in those quarters," and I'm wondering why. I think in spite of the fact that they're living together, there's no reason that the Act should not be able to apply to the tenant and landlord in this case, and I would suggest the striking of (c) from the Act. That would thereby not exclude that particular provision.

Also on page 4, in (d), again I'm suggesting an amendment here by striking out "if a person resides there for less than 6 . . . months," and substituting "if the premises is occupied for vacation purposes and is not used as a principal residence or as an accommodation provided in conjunction with employment." Again this is in reference to seasonal workers. With the inclusion of my amendment, I think we would then address the concern of seasonal workers under this legislation.

I would suggest the striking of (j): "any other prescribed premises." Why are we excluding any other premises? I think that it takes away power that excludes other residents from the Act. There may be other residents that might well be included in this Act, and by making that sort of all-encompassing provision, we are thereby removing those provisions and, I think, exposing some tenants to not being covered by this Act.

Under 4.1(2), "No landlord shall terminate a periodic tenancy for the reason that the tenant . . .", in (b) I think after "the Public Health Act" they also should add "or the Individual's Rights Protection Act." I think both of those should be included so that a landlord cannot evict a person because of a complaint. That is a tendency of the minister on a number of occasions, and I think that including the Individual's Rights Protection Act is also a reason why the person shouldn't be evicted. I think it would be of value to the tenants there.

Also, under (b) I'm proposing another clause, (c): if a tenant forms or becomes "an officer or member of a Tenant's Association," he also should not be evicted as a result of that association. I think the legislation at the present time is silent on that issue. I'm suggesting a new clause (3):

> No landlord shall terminate a periodic tenancy for any reason other than those set out in the Regulations.

That's a clause that would make it more difficult and in fact prohibit a landlord from making up reasons for evicting a tenant. I think the reasons for eviction have to be spelled out in the regulations.

We move on to section 2.1. It's a new clause. We're suggesting here that

> A Landlord shall not increase the rent payable under a residential tenancy agreement unless the landlord has, throughout the tenancy, maintained the premises in a reasonable state of repair, sound, safe and fit for occupation and has maintained all appliances and facilities supplied by him sound and fit for the purposes for which they are intended.

This, Mr. Chairman, is one of the major amendments that needs to be adopted in this legislation to make it the kind of legislation I think most tenants have complained about. In all public hearings I have attended with tenant organizations, it's the lack of maintenance of facilities by landlords that's rated highest probably next to the security deposit issue. I feel very strongly that this one needs to be in the legislation if indeed we want to make this an Act that's going to have a balance so both tenants and landlords are satisfied with the legislation.

I'm suggesting two additional clauses to deal with this particular area:

> Any rent increase which is made except in accordance with this section is not binding on the tenant.

Also,

> A landlord who increases the rent payable except in accordance with this section is guilty of an offence under Section 50(1) of this Act.

It really means there are penalties being imposed on landlords who increase rents illegally. I think it's important that the tenants are protected from landlords who may attempt to circumvent the legislation, and these two clauses would give the tenant some protection against those kinds of actions.

Section 13 of this Bill deals with inspection reports. Here again I am suggesting a number of amendments. In section 15.2(1) I am suggesting that we strike out "within one week before or after a tenant takes possession of the residential premises" and substitute "prior to a residential tenancy agreement becoming binding on the tenant"; we add "written" before "report" so there is in fact a written report when there is a tenancy agreement reached; and we add "fairly, reasonably, accurately and completely" before "describes" so the provisions there are clearly spelled out as to what is being agreed to. More specifically, in (b) I'm proposing striking out "or after" and substituting "or on the day on which"; adding "written" before "report"; and adding "fairly, reasonably, accurately and completely" before "describes." The landlord will have the opportunity to have that inspection report completed within the one-week period so that it's fair, reasonable, accurate, and complete. So again, in the event that the tenant leaves the premises, the initial report was done properly, completely, and fairly.

11:10

In section 28, which deals with security deposits, here we're suggesting that the landlord should not be the person that is in trust of the security deposits but in fact it should be a public, Crown-funded department, hopefully under Consumer and Corporate Affairs. Accordingly, in (b) and (c) we're asking to

strike the word "landlord" and substitute the "minister," so that in fact it is the responsibility of the department and the minister that the trust funds are properly and adequately administered.

In section (d) it's a new section I'm suggesting; that's on page 17 of the Act. It's a new clause (5), where I'm saying:

> (5) A landlord may not collect a security deposit if the landlord and tenant have failed to complete the inspection report required under section 15.2 of this Act.

I believe this is a protection for the tenant where the landlord may be lackadaisical about completing the reports but then collect his deposits. We're saying the landlord must complete the inspection report before a security deposit is collected from a tenant.

In section 29, where we're talking about the interest accumulated and paid at the end of the tenancy, again, here we're suggesting that we strike out the reference to the "landlord" and substitute it with "the minister," strike out "annually" and add "accrued" before "interest", and strike out "calculated at the prescribed rate."

In section 33, which deals with penalties, we're suggesting that on page 19 in 50(1)(a), we add to the person who this contravenes. We're also adding the sections 4.1(3), 13, 14, 37.1(5) in that sequence. This deals with eviction beyond reason in the Act and notice of rent increases and security deposits paid. I think that'll be included under that particular section.

In the proposed section 50(1)(a): by adding the costs as determined by the court of $5,000. We're also asking here: "and costs as determined by the court." In addition to the guilt, if there's an offence that one's guilty of, I think the guilty party should be also legislated that they also pay the court costs. I'm making the same suggestion, same amendment, that the "costs as determined by the court" will also be paid by the guilty party. In section 50.1(c) this Act is amended to prescribe that "any class of residential premises is exempt from the application of this Act." We believe this should not be in the Act. In fact, it should be struck out because classes of residents are excluded, and I don't think that's proper.

Amendment J. Section 36 is amended by striking out the proposed clause 51.2(c) and substituting "providing for the rights of tenants to form Tenants' Associations." Again, I think the legislation does not provide for the formation of tenants' associations. I think that by changing section 51.(2)(c) as amended, that will make those provisions.

Those are my amendments, Mr. Chairman.

MR. ANDERSON: Mr. Chairman, before commenting specifically on the amendments proposed by the Member for Edmonton-Beverly, I'd like to first thank him both for his kind words with respect to the Bill itself and for giving me a copy of the amendments in advance. They are reasoned amendments, and by and large I don't disagree with the principles involved with them, with some exceptions. Nonetheless, I regret that for reasons I'll outline, I don't believe acceptance of them by the House would improve the Act at this time, though there are a couple which bear some consideration in the future, one or two which I might say that when looked at initially, I considered recommending to the Assembly but in discussion with legal counsel was advised differently. I'll try and generally go through the sections which the hon. member has outlined and indicate the position which I take with regards to those.

First, he suggested that all services and amenities be included in the rental agreements and in terms of the rent itself. That one I don't agree with. I think there needs to be that flexibility for the tenant and landlord that if I want to have cable TV but others do not, I pay extra for that, or if I don't have a car and others do, perhaps others should be paying for parking. I'm not sure that that would improve the circumstances for tenants or landlords.

Section 3(b) that the member spoke to. By and large, those items that he suggests be added are in fact there only we've written the Bill in the reverse way from the hon. member's suggestion for inclusion. We've in fact said that if there's not an exclusion, then the Bill applies. So with respect to apartments and townhouses and nonprofit housing and government-owned residential property with some exception on the subsidized unit end, most of those are provided for. I suppose the one area where there is a difference of opinion, as slight as it is, is that we are recommending that anybody staying in a hotel or motel who makes it a residence for six months or longer has the protection of the Act. The hon. member really is suggesting four. I think six is the reasonable one, but that's an arguable point in itself.

11:20

Mr. Chairman, the member suggests striking out some of the clauses that would allow for exemptions, and I wouldn't agree with that. I do believe we need the flexibility. A good example is just the amendment I previously brought through this evening which spoke about the student residences. There was one dimension we hadn't considered even though we've been through a couple of years of lengthy discussions on this Bill. I think those kinds of circumstances need to be allowed for in the Bill, and consequently wouldn't support that.

Section 6, inclusion of the Individual's Rights Protection Act. When I received it, I had initially given instruction to my department officials that we consider adding that to the Bill as suggested. However, in discussion with the legal counsel involved, the suggestion was that because the protection is in the Individual's Rights Protection Act and does apply, we might confuse the circumstance for someone trying to obtain redress under that particular section by adding it to this Act and, therefore, not being sure where one goes through the process to obtain redress; that the Individual's Rights Protection Act process was, in fact, strong in dealing with that and that we shouldn't interfere with it. As I say, on first glance it was one that I thought we should add and perhaps had overlooked, but I'm advised that we could get into difficulty if that were the case.

In dealing with the tenants' association, which the member deals with in a couple of different places in the series of amendments, the fact is that now we are going to require the landlord to give a reason for eviction of the tenant, and one of those reasons for eviction will certainly not be that a member has joined or been involved with a tenants' association. Therefore, the principle that the hon. member suggests is in fact in the Act. It isn't mentioned as such again because we have done it by requiring exclusions as opposed to trying to add in all of the list that would be there in terms of what's necessary. In another part of the amendments the member talks about the ability for tenants' groups to form associations. That was indeed in the MacLachlan report, and I support that. It is, however, one of the basic rights of assembly that we have in the Charter of Rights and Freedoms. I checked again with counsel, and it's suggested that that isn't required to make it happen. It is in fact something that is secured in the Act itself.

The section in which the member suggests that rent increases not be payable to a landlord unless the landlord has throughout the tenancy maintained the residence in a reasonable state of repair again sounds reasonable. However, determining what would be maintaining that residence would, I believe, be next to

impossible, and trying to determine what the tenant has been responsible for in terms of damage versus the landlord in terms of state of repair is something that I don't know how we would carry out even if this Assembly were to vote me another $10 million on my budget. I'm not sure that would make that a possibility and consequently again don't make that suggestion.

Another section that I thought had some merit to it and still would like to explore further is the one week before or after the matter of signing a tenancy agreement after there's been the inspection report signed. I'm advised that that would be very difficult to make workable and to judge the circumstances, and that therefore the section suggested was probably not operable. But I understand the reason for the suggestion, and it is something that perhaps in future years we might consider for change.

Mr. Chairman, a number of the amendments deal with the suggestion that rather than a trust account for security deposits under the landlord's jurisdiction, we take all of those security deposits, as the government under the minister would be responsible for those. I just don't believe that's a workable solution: trying to administer, among those hundreds of thousands of premises in the province, the taking in and the returning of damage deposits and the judging of where those are appropriately dealt with and where they're not. It would not seem to be administratively feasible, as much as it might seem to be desirable by some parties.

The MacLachlan report suggested that a residential tenancies commission do that job. That's been our problem in acceptance of the recommendation, which I thought was an innovative and, again, a reasonable one. But the administrative difficulties involved are great and of a sort that I don't believe we could be involved in without costing taxpayers dollars, without adding to the delays and problems for tenants and adding difficulties in the same respect for landlords. So I wouldn't support that particular area.

The suggestions with respect to the court costs. It's my understanding that the courts can now assess those costs in addition. They don't do it as often as I would like to see that happen; nonetheless, I understand that that in fact is possible at the moment.

Mr. Chairman, due to popular demand I will in fact . . . I think I have answered most if not all of the sections. There was again the tenants' association suggestion, which I agree with, but that is inherent in the Act or in the Charter of Rights. Consequently, I don't recommend acceptance of the amendment package, but I do congratulate the member on a thorough job and some reasonable suggestions, some of which I think we may well utilize in days to come.

MR. DEPUTY CHAIRMAN: Ready for the question on the amendments?

HON. MEMBERS: Question.

[Motion on amendments A to J lost]

MR. DEPUTY CHAIRMAN: We are now considering the amendment proposed by the Member for Edmonton-Whitemud.

MR. WICKMAN: Thank you, Mr. Chairman. To begin with, I wish to say that the amendments have been distributed. I did have the opportunity to give them to the minister a few days ago to allow him the opportunity to pursue them, and I've had an opportunity to discuss the amendments with him. Let me say right at the outset that it's refreshing dealing with the minister of consumer affairs in that he does treat the opposition with intelligence and respect and sees us as full, participating members of this Legislative Assembly, which to us is a very, very meaningful process.

Speaking to my amendments, there are four amendments which actually entail three concepts or three principles. I'll go through them very briefly, Mr. Chairman, because I know the minister's positions on them.

The first one; we have to couple A and C. Basically, what amendments A and C are stating is that we are asking for the removal of the section that only allows a rental increase every six months. We're doing that not for the reason that we feel that landlords should have the opportunity to increase rents at will, but we're doing that because we fear, despite the minister's good intentions, it could backfire. In other words, a landlord could sit back and say, "Boy, I can't increase the rents for another six months, so I've got to make sure this is a hefty enough increase to cover the unexpected." So there could be that negative reaction to it. At the same time, too, it does reek to a limited degree, to a minor degree, of a rent control, and I think it's been proven time and time again that rent controls aren't the answer.

11:30

The second amendment B deals with the landlord's responsibility for maintenance of properties that are rented. I understand there can be difficulties in enforcing this type of amendment; nevertheless, I feel it's necessary. We can go throughout the city, and particularly in areas like the older neighbourhoods, the inner city, we can see many, many premises that are rented out that simply aren't fit. At the present time it is not the landlord's legal responsibility to ensure that they reach certain standards other than those minimum standards that are set out by the municipality, and those minimum standards are not sufficient. They simply aren't reasonable to expect people to live in those conditions.

The third and possibly the most important. If this particular amendment could somehow be incorporated, there may not be a need for a lot of the other amendments proposed by the Member for Edmonton-Beverly that are in front of us at the present time. The present situation is where we have the Landlord and Tenant Advisory Board that doesn't have power; their mandate is to advise. In other words, they bring the two parties together, the landlord and the tenant, and they attempt to resolve disputes through a mediation process, without any clout. That's the difficultly: without any clout. If one party refuses to participate in that mediation process, nothing will come out of it. I realize that my amendment refers to a mediation tribunal, but the intent of it is to get the minister thinking about some type of mechanism that would allow for decisions to be made, for those disputes to be handled by an independent tribunal, a commission, beefing up the Landlord and Tenant Advisory Board to give them that clout so that a lot of these cases that presently go to small debts court don't have to be resolved in that fashion or in a lot of cases aren't resolved because one of the two parties chooses not to go to small debts court or they're not familiar with the legal proceedings.

That amendment, if it could somehow be incorporated in some form, would certainly go a long way to resolving a lot of the disputes that are there. It would go a long way to satisfying many of the concerns of the renters, satisfying the landlord and tenant advisory boards that are out there at the present time. So I would hope that if the minister is not able to respond to

that particular amendment positively at this time, he can somehow give it some consideration and somewhere down the road come up with some type of mechanism that is workable, that will withstand a challenge within the courts, and I'm referring there to the Ontario situation.

On that note, I'll close by just highlighting again the three amendments: the removal of the restriction on the rent increases, the responsibility for the maintenance of the properties, and the establishment of a tribunal to settle disputes between landlords and tenants.

Thank you.

MR. ANDERSON: Perhaps I could briefly respond to the three points raised by the hon. member. Once again I'd like to thank him for his words and for his advance copy of the amendments.

Doing away with notice for a rent increase. I just simply am on the opposite side from the hon. member. I do believe it is reasonable that a person who is living permanently in an accommodation has time to either find alternative accommodation or to plan their finances to deal with changes that take place. I don't think six months will inhibit the market unduly or is unreasonable. Most of the landlords I've talked in fact say they wouldn't even consider raising the rent two times in a year, but there are those, that small percentage, who have done it with more frequency than that and I think cause too much upheaval for a tenant.

Mr. Chairman, on B, with regard to keeping the premises in a reasonable state of repair, essentially that is in the legislation at the moment. Section 29 of the Bill does indicate that the landlord has to have it habitable when the tenants enter, and through court rulings it's been indicated that they really have to keep it in a reasonable state of repair throughout the tenancy. What hasn't, in fact, taken place are very many complaints in accordance with the Act, and that's been largely because of the ability of the landlord, we think, to evict the tenant without reason. That is being changed in the Act, and therefore we feel that the essence of that section will be there, although anything much firmer would be very difficult to police, as the member suggested.

The other point the member raises is with respect to a tribunal to settle disputes between landlord and tenant. I happen to personally agree with the hon. member in that regard. I think a tribunal which did not have the costs or the delays associated with it that the courts do would be of benefit to both landlords and tenants. We have not proposed it because of the constitutional questions involved with taking jurisdiction from the courts – that has taken place with Ontario – but I would like to pursue that further, and I appreciate the member's suggestion in that respect.

I can't support, however, the amendments at this time for the reasons stated.

MR. DEPUTY CHAIRMAN: Edmonton-Centre.

REV. ROBERTS: Thank you, Mr. Chairman. I just wanted to clarify something on the record here. I mean, this first amendment by the Member for Edmonton-Whitemud seems to me to fall very much out of line. I just can't understand why he would want to strike the section which proposes that notice be given to tenants about rent increases. I mean, the member must know – maybe he doesn't know because he doesn't live in Edmonton-Centre, where 90 percent of my constituents are in fact tenants. The insensitivity of this member who wants not to have any kind of notice of substantial increase to their rent . . . You know, most of the people who live in rented accommodation are on fixed income, middle or lower income, and have very fixed budgets.

To have the rents go up, as we saw in the last couple of years, in significant ways over and above inflation, over and above their own income and salary, is hard enough. I mean, here at least government is on record now as saying, "We're going to slow that down, make it more reasonable," as well as saying when it's going to be coming down, there's due notice given so they can find other accommodation or they can reduce their car payments or reduce something else in their fixed budgets so they can pay for the increased rental. I'm quite amazed that the Member for Edmonton-Whitemud on behalf of the Liberal Party in this Assembly here should want to strike this out. I don't know where he's coming from. I mean, we're on record supporting it. The MacLachlan report, I thought, supports such warnings, such notice being given. And government: I mean, they're the ones we need to persuade. They've been persuaded; it's on the record. Now the Liberal Party wants to take this step backwards. It's an offence to my constituents, Mr. Chairman, who are tenants and who very much appreciate this section being included, and I'm going to certainly remind them about this attempted Liberal amendment in the near future.

SOME HON. MEMBER: Question.

MR. DEPUTY CHAIRMAN: Ready for the question?

[Motion on amendments lost]

MR. DEPUTY CHAIRMAN: Are you ready for the vote on the Bill itself as amended?

The Member for Calgary-Fish Creek.

MR. PAYNE: Are we back on the Bill?

MR. DEPUTY CHAIRMAN: Yes, we are.

MR. PAYNE: Mr. Chairman, perhaps it's a reflection of the demographics of my constituency, but I've actually had more calls from landlords than I have from tenants, and I think, therefore, it's appropriate for me to reflect some of their concerns. I've noted quite properly that most if not all of the comments tonight have been from the perspective of the tenant, so possibly in the interest of balanced discussion I would like to bring forward a couple of the comments that have been passed along to me by landlord constituents. Now, I look at my watch, and I know it's 11:41 p.m., so I will be mercifully brief.

Section 16.1(2) triggered the first of . . . [interjections]

MR. DEPUTY CHAIRMAN: Order, please, in the committee. Please proceed.

11:40

MR. PAYNE: Section 16.1(2) triggered the first comment, which is a philosophical one. That section, Mr. Chairman, provides that

> a landlord shall not refuse consent to an assignment or sublease unless there are reasonable grounds for the refusal.

One landlord has observed that this provision takes away the landlord's right to enjoy or control his own property for whatever legal purpose he wishes. Section 16.1(5) reads that "a landlord shall not charge for giving consent to an assignment or sublease." It's been observed to me that the landlord has to go

the trouble and expense to check out a new tenant. That involves the cost of the credit bureau, his employees' time, and so on and has put forward the suggestion that perhaps a reasonable charge could be considered.

Thirdly, section 23(1), Mr. Chairman. The landlord may have to go court to remove a tenant for substantial breach. It's been suggested I ask the minister: is he in fact aware of the associated costs? The landlord must pay something like $75 to Provincial Court to obtain what's called an originating notice of motion, and of course there are additional costs if a lawyer has been involved. In raising this question, these landlords have pointed out that unscrupulous tenants who know the law can generally beat the landlord out of two or three months' rent before the landlord can regain possession of his property, and of course they then ask the obvious question: should the tenant be responsible for all or some of the court costs incurred by the landlord?

Section 26.1(1). I won't read this provision for the record, Mr. Chairman, but I simply raise yet again another comment, the suggestion rather that perhaps this provision could read: "If the person or persons are not registered with the landlord, they are trespassing, and therefore the landlord should be able to remove them from the property without having to go to the expense of court action."

Finally, Mr. Chairman, with respect to the question of trust accounts and security deposits, I would like to ask the question of the minister: does he see a risk that in order to get around or circumvent the hassle and costs of trust accounts and security deposits some landlords in the province will simply roll those potential costs into the first, the second, or even the first three months' rent as an alternative to what would be necessitated under the provision of section 37(1).

Thanks, Mr. Chairman.

MR. ANDERSON: Mr. Chairman, I'd like to respond briefly to the hon. member's remarks, which appropriately talked about the balance necessary in this Act between the rights of landlords and tenants.

Very quickly, in terms of the landlord not being able to refuse the assignment of a premises to another tenant without a good reason, that in my mind is a reasonable provision which allows the landlord to have his space occupied, and though it may be seen as a limitation on the right of property, indeed the Act we have is a limitation. It is that which needs to be understood when one enters that particular market, where you're dealing with the homes and lives of 40 percent of the people of Alberta who can't afford accommodation of their own.

A similar comment would apply to some other portions. The member mentioned the costs involved. I personally would not like to see those costs there. I'd refer the member to my comments on the arbitration or mediation mechanism which was mentioned by the Member for Edmonton-Whitemud. I believe that would be the better process, but in our Bill we cannot circumvent the court process and therefore the costs involved with that at this point in time, but perhaps in the future that could be a consideration.

With regard to the trust accounts, I don't believe they will in fact encourage landlords to move those dollars into the first or second months' rent. I think they have to respond to the market conditions and compete with their fellow landlords. Establishing a trust account should not be a complex or expensive proposition. It will require, in my opinion, minimal work on the part of the landlord, albeit a bit of a burden. I should mention that we have maintained the interest payable to tenants at a lower rate than the landlords can generally obtain from the banks, and that administrative costs should be able to be covered in that excess amount of money.

Those are comments on the hon. member's questions.

MR. DEPUTY CHAIRMAN: Are you ready for the question? I'm sorry.

The Member for Edmonton-Jasper Place.

MR. McINNIS: I have a question for the minister in respect of the no eviction without cause. I'm certain that the landlords in the province are grateful they have the Tory government to protect them, as I'm sure the tenants are with the New Democrats, and then, of course, the Liberals sort of take votes from the tenants and money from the landlords, promising to protect each one from the other.

My question is about putting the eviction criteria in regulations as opposed to in the legislation. I appreciate that the minister tabled draft regulations. I would say that I like the look of them, but I wonder what the thinking of the government is in putting it in a regulation as opposed to in the Act itself. In my experience dealing with landlord/tenant matters and mobile-home tenancy arrangements, the fear of arbitrary eviction and the incidence of arbitrary eviction is probably the single most difficult area that I have to work in. I appreciate this is a step forward and supportable, but I really wanted to inquire as to why in the regulations and not the legislation.

MR. ANDERSON: Mr. Chairman, a quick answer to the member. First of all, I would indicate that our party gets votes from both landlords and tenants and believes in that balance for all Albertans, but with that statement . . .

The reason for the inclusion of regulations dealing with reasons for eviction is the need for flexibility in dealing with circumstances that may arise. In reviewing all other provinces involved with this, we find that in some circumstances where all of the items are entrenched in the Bill, they've been unable to respond to either tenant or landlord concern areas that have come up. The legal interpretation, of course, when you're here in the Assembly, sometimes is not clear in terms of how the judges will judge those particular words. So the ability to respond is necessary.

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

MR. WICKMAN: Just very, very briefly, Mr. Chairman, before we take the vote, as we record it in Committee of the Whole. Despite the fact that the four amendments that were proposed were not passed, we will be supporting this Bill. The Bill as brought forward improves it substantially, and I'm particularly delighted with the minister's reference to attempting to set up some type of mechanism that will give some clout to settle disputes. I want to make it very, very clear that the very first amendment proposed talked in terms of doing away with that restriction of two rent increases a year. In other words, putting it back in place as it is at the present time with the 90-day notice is based on a great deal of input from the community, where there was a genuine fear that it would result in higher rents for tenants – again I stress that it would result in higher rents for tenants. The intent of all these amendments is to decrease the impact on renters: minimize the discomfort they may have, minimize the lack of conditions they may have; in other words, make it better for them.

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

SOME HON. MEMBERS: Question.

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

REV. ROBERTS: Just a quick point, Mr. Chairman, while we're on this Bill and this whole area. I just want a quick comment to the minister. I'm sure it's more under the Legislative Assembly Act. It's the whole issue of campaigning in apartments during election campaigns or even between elections. What I've experienced often is the fact that tenants want to see their MLA both at election time and between elections. Often I've been very much prevented by landlords and others who say: "No. You have no entry, you have no access, and you're not allowed in." The Legislative Assembly Act I know does allow for a written thing to go in at election time. But even between elections having that tightened up so we can have access to our constituents who may be renters and tenants would be helpful and appreciated at some point in some legislation.

11:50

SOME HON. MEMBERS: Question.

MR. DEPUTY CHAIRMAN: The hon. minister.

MR. ANDERSON: I think, in fact, it would be more appropriate for the member to address those to the Election Act, which deals with the entrance issue.

MR. DEPUTY CHAIRMAN: Are we now ready for the question?

[Title and preamble agreed to]

[The sections of Bill 33 as amended agreed to]

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

[Motion carried]

Bill 39
Motor Vehicle Administration Amendment Act, 1991

MR. DEPUTY CHAIRMAN: There are some amendments proposed by the Member for Edmonton-Highlands.

Does the minister have any opening remarks?

MR. FOWLER: Mr. Chairman, I'm glad to see that this has reached committee this evening, and I hope we can deal with it as expeditiously as possible. I look forward to any comments the opposition may make on this.

In respect to the government amendment, it is a simple amendment. What it does, precisely, is allow for the collection of the storage charge by the person that is in fact in charge of the vehicle that is being stored. Thirty days after the vehicle can be released, which would be a total of 61 days after it was seized, the vehicle can then be sold for the rent that is due on it, the storage charge. This is exactly the same, Mr. Chairman, as occurs now in respect to vehicles that are towed away for reason of abandonment, overparking, or whatever. They can in fact be sold to pay the rent.

This is the government amendment I'm referring to, Mr. Chairman.

MR. DEPUTY CHAIRMAN: Hon. minister, has the Table been provided with a copy of the amendment?

MR. FOWLER: Well, it was on my desk and the desks on both sides of me, Mr. Chairman.

MR. DEPUTY CHAIRMAN: Well, that's a reasonable assumption, yes. Could somebody provide us with a copy?

SOME HON. MEMBERS: Question.

MR. DEPUTY CHAIRMAN: Right. The question on the government amendment to sections A to D.

[Motion on amendment carried]

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

MS BARRETT: Thank you, Mr. Chairman. A little while ago when I realized that the Bill was going to be called in committee tonight, I handwrote an amendment – a copy of the amendment is on everybody's desk – and in haste referred to the wrong section in my amendment. The amendment proposed in the copy that is on your desk refers to section 15 of the Bill, which in turn refers to section 110.1 of the legislation proposed to be amended. Indeed, I should have written section 17 of the Bill, which refers to section 112(1) of the legislation. So if members would be kind enough . . . I have alerted the minister, and he's agreed that we should save 83, actually probably more like 90 pieces of paper. If you would strike out on the piece of paper the first reference, to 15, and the second one, to 110.1, and substitute 17, which is the section of the Bill that I'm proposing to amend, and then substitute 112(1), which amends the legislation.

HON. MEMBERS: Agreed.

MS BARRETT: Thank you.

The reason I propose this amendment is that I think it would solve the problem of principle that the New Democrats have with this Bill. What I'm proposing in this amendment is that we strike the words "charged with" in the context of "Where a person has been charged with an offence under" and substitute "convicted of," so amended it would read: "where a person has been convicted of an offence under." Now, let me put this in context, Mr. Chairman. It'll only take a minute.

The point of this Bill, I understand, is to, "get tough on drunk drivers." I'll tell you what: I don't know an Albertan that wouldn't agree with the idea of getting tough on drunk drivers. I also don't know of an Albertan who is of fair-minded capacity who would agree that if you have been charged but not convicted, not even brought to trial, you should be subject to the punitive measures imposed by this legislation. The impounding and seizure of a vehicle for up to a 30-day period just because you got charged with something is not exactly fair. It overrides the concept that is fundamental in our society and entrenched in our own Constitution of due process in law.

Now, I understand that the courts are backlogged. We've asked questions about this. The Attorney General has said, "Are you kidding; you're nuts," denied it all the time, and then when

nobody's looking, allocated more resources to the judicial system. If it is a serious priority to get drunk drivers, (a) off the road and (b) eliminate them doing that ever again or in the first place, then why don't we have a judiciary that can process those cases quickly? That's what's at issue here. What this Bill proposes to do, unless it is amended as I'm suggesting, is the fascist alternative, and I do not understand how anybody in conscience could support this.

When you are charged, you are not also at the same time found guilty. You need to be found guilty before you can be subject to a penalty under the Criminal Code for every other violation. A judge cannot sentence you until you are found guilty. How on earth in what is called the highest court in the land can these Conservatives deem themselves to be a judge on an a priori basis? It is impossible. You cannot do it. I do not believe that this BIll would stand a Charter challenge, quite frankly. If you want to fix the system, fix the system.

Now, that is not the same as section 110 of the legislation where you have the authority upon charging a drunk driver to seize and impound the vehicle for a 24-hour period. The reason that this is legal and would not be Charter challenged is because if you have somebody who is drunk, you charge them, you process them, you kick them out of the police station. The last thing in the world you want them to do is drive themselves home. This is a reasonable position, and it is not challenged. But you cannot reasonably ask that the Legislature become de facto the judgment system upon conviction. The judiciary has to do that, and it has to (a) be given more resources so that it can get through the cases faster so that we're not talking about a year down the road where the person charged, and who may be guilty, has plenty of opportunity to commit the offence again. That's not right. Nobody likes that. Let's speed up the judicial process. Don't tell us that we're going to – just because you're charged.

Now, I'll tell you, if you were charged under certain circumstances and if there were extenuating circumstances that were spelled out in this legislation – that is, sort of exceptions – one might have to say, yes, I can go along with it. I cannot go along with this Bill unamended. It is a fascist response. It overrides the concept of due process through the judiciary, and it basically puts black boots on every Conservative in the Assembly. I urge members to reconsider this Bill in light of the amendment that I'm proposing, and if you can't do that, then drop the Bill and come back with a better one. The Official Opposition New Democrats would be only too happy to receive any positive measure that will prevent people from drinking and driving or (b) deter those who already have done it from doing it in the future, but not by fascist measures.

12:00

MR. DEPUTY CHAIRMAN: Ready for the question?

MR. SIGURDSON: There were three of us wanting to speak.

MR. DEPUTY CHAIRMAN: My apologies. I heard somebody say "standing vote," and I thought . . .

The hon. Minister first, perhaps.

MR. FOWLER: Mr. Chairman, in respect of this amendment I fully understand the opposition's stand on this. As a practising defence lawyer, as I say, I understand that. I do have some sympathy towards this type of legislation; however, I must keep in mind that to do as requested in the amendment can render the whole of the Act almost useless for the very reason that if it were to be on conviction, that conviction could be many months later or the following year.

It has been recognized by the hon. Member for Edmonton-Highlands that in fact the judicial system should be speeded up. I don't disagree with that, and I think we are trying to do that. However, if we were in fact to put that amendment through, Mr. Chairman, then we'd better add some more amendments which are going to prohibit that driver from divesting himself of the automobile so that when he comes to trial and is convicted of driving while suspended, we may find there is no automobile to in fact put in a seizure position. We have that very problem in itself.

In respect of the constitutionality, Mr. Chairman, this has already been tested in the Manitoba courts and was held to be constitutionally valid by the Court of Appeal, which is the highest court in the province of Manitoba. Our wording is in fact identical to that in Manitoba. Again, we have not invented new legislation, because it exists in British Columbia as well and was found to reduce the incidence of driving while suspended up to 15 to 20 percent. Therefore, I think the amendment should be defeated.

MR. DEPUTY CHAIRMAN: The Member for Edmonton-Jasper Place.

MR. McINNIS: Thank you, Mr. Chairman. You know, this whole exercise looks less attractive the more one looks into it, and that's what we have to do in committee, notwithstanding the fact that the government calls this legislation on or about midnight. This to me is a primary example of what's known as the politicians' syllogism. It goes like this: something must be done about drunk driving; this is something; therefore, this must be done. That's the kind of logic that gets more ministers in trouble and I suspect may get this one.

We all want to do something about drunk driving and about people who may abuse their driving privileges by driving while they're under suspension. Whether the measure is the right measure to meet the desired ends is the question before the committee. It's not just a question that you make a case that there's a problem, that something has to be done, and therefore we all have to sit back and accept whatever it is. The minister spoke about his experience as a defence lawyer as if that had anything to do with the situation here.

What the legislation says is that if you're under suspicion, you can be deprived of property. It ignores, quite conveniently from the political perspective, the fact that this may have consequences for more innocent parties. Now, we all know that innocent parties are hurt by drunk drivers every day of the week, and we're committed to do what we can to stop it. But there are also innocent parties who may be business partners and family members of somebody who's in a situation like this, and merely being suspected of driving without a licence – suspected, not convicted – means that the vehicle is seized for up to a 30-day period at a cost to be borne by the vehicle owner. Now, that may leave other people who use the vehicle in a pretty tight spot; for example, a business partner. Let's say you have a vehicle which is a welding truck, and there's a partnership involved with somebody who needs to use that equipment in order to earn their livelihood. They didn't drive the vehicle while under suspension. In fact, we don't even know whether the person actually did that, because all we have is a suspicion, not a conviction. The minister as much as anyone ought to know as a law enforcement officer that there is a world of difference between suspicion and proof. That's what we have a

judicial process for. But on that suspicion an innocent third party can be deprived of access to their livelihood or, in the case of a one-vehicle family, the ability to function, period; that is, to take kids to school, to get bread on the table, and to look after emergency situations.

So it's not necessarily the case that everyone who suggests there ought to be some safeguards in the legislation is opposed to the purpose of it. The minister comes back here with an argument that, "Well, we can't accept this amendment, because it would render the legislation useless." Therefore, I think he chooses or desires to characterize people who have that concern as being somehow inimical to his purpose in the legislation. His purpose and the effect of this legislation may be two different things, and that's the point we have to get back to him, because of the politicians' syllogism. You know, just because something needs to be done and because this is something doesn't mean this needs to be done. I wish the minister would examine his logic very carefully to see that in fact he has fallen prey to the politicians' syllogism.

[Mr. Moore in the Chair]

But I'll tell you this, Mr. Chairman: if this legislation passes, I don't ever want to hear any member of this government talk about property rights again in the framework of law and legislation. Here we have legislation which empowers a government to take away your property without due process, to confiscate your property. I don't ever want to hear anybody who votes for this legislation to stand up and say they want to protect property rights in the Constitution or any such twaddle, because this is deprivation of property without due process, pure and simple. The Solicitor General I think ought to understand that in our country certain people get upset about that notion. You know, they get upset when your land is zapped in a restricted development area and the government decides to make an offer when they want to and what they want to, and you're deprived of the right to enjoy your property and the benefits therefrom. I think they will get upset if people's property is seized. In fact, it may not even be the beneficial owner who it's seized from without due process.

So my colleague for Edmonton-Highlands has put forth an amendment which suggests that there should be some due process surrounding this power, which is an extreme sort of a power. I'm certain the extremism in what the government would consider to be a virtuous cause may be no vice in their minds, but extreme measures can cause hardship to unintended parties. That's why we have a committee of the whole Assembly and a Legislative Assembly to debate.

So I plead with the minister to consider the implications, and I plead with the members of the government who like to play games around the issue of property rights, especially around election times. Do they consider what it's going to look like on their record when they stand up and vote for legislation that allows property to be seized and confiscated without any due process at all?

MR. ACTING DEPUTY CHAIRMAN: Edmonton-Belmont.

MR. SIGURDSON: Thank you, Mr. Chairman. There are two possible situations here. One is what the Solicitor General has described, where an individual that has had his licence suspended for impaired driving, especially for impaired driving but for any reason – if that individual chooses to drive and is caught, under the Solicitor General's scenario, the car, the vehicle would be impounded. There wouldn't be any court date. There wouldn't be any opportunity for a person to go before the courts to be convicted of this charge. So what effectively is happening is that we're taking away a person's vehicle at the same time that their licence has been suspended. We've told them, "Now, physically you cannot drive your vehicle while your licence is suspended."

Well, I want to paint a different scenario that would then return justice to the process, and that is if an individual has a licence that's suspended and they drive their vehicle and they're caught driving while that licence is suspended, they're charged. Then they have a court appearance, and the Solicitor General points out that this process may take six months, perhaps a year. Well, in that year the licence of the individual, if it's a first offence for an impaired driving charge, would normally be returned to the individual. But if they've got a court date after they've had their licence returned to them and they're found guilty of having driven their vehicle while under suspension, the court could then impose the fine of having the car impounded for 30 days. Would there then not be a greater penalty, because once you've given a person their right to drive, what you're doing is saying in your scenario, sir, "Well, we've suspended your licence, and now we're taking away your car for 30 days." You may have six months left on your suspension and you're going to get your car back for the five months that your licence is still suspended. Big deal. All you're doing is taking a vehicle away from somebody that's not supposed to be driving anyway.

But if you've got a court date, if you go through the process of natural justice and there would be the possibility of having your vehicle or your licence back, your right to drive, but the car is impounded for 30 days, then there's a greater penalty. It doesn't mean that the person no longer has the right to drive; what it means is that the person is going to have to go through other expenses in order to be able to drive.

12:10

So I would suggest that you can create a greater penalty for the impaired driver, the driver that is suspended and still chooses to drive. By allowing due process, by allowing that individual the right to go before a judge and have that charge heard and be convicted, you're creating the potential or there is the potential there for an even greater penalty to be applied. I think that's been overlooked with this particular Bill, and I'd certainly appreciate hearing the Solicitor General's comments on that.

MR. ACTING DEPUTY CHAIRMAN: Calgary-Buffalo.

REV. ROBERTS: He's not even standing.

MR. CHUMIR: Well I was.

REV. ROBERTS: He was standing, sat down, and is still . . .

MR. ACTING DEPUTY CHAIRMAN: Well, hon. member, Calgary-Buffalo was on the list.

MR. HYLAND: Calgary-Buffalo's been up three times.

MR. ACTING DEPUTY CHAIRMAN: Calgary-Buffalo.

MR. ELZINGA: Look at how long I've been standing.

AN HON. MEMBER: Sit down, then.

MR. FOX: I recognize you; you're Peter.

MR. CHUMIR: Thank you . . .

MR. FOX: What about poor old Butch?

AN HON. MEMBER: He looks like a Butch.

MR. CHUMIR: I'm not disturbing you guys, am I? Come on, Butch, give him a muzzle.

I'm standing, Mr. Chairman, to support the amendment. What we have here is a very clear departure from the presumption of innocence, which is provided for in our Charter of Rights. I sit here listening to the arguments, listening to the minister reading the section, and I ask myself: if we want to hit out hard at someone who is caught and charged with driving a vehicle while their licence is suspended, why stop at seizing the vehicle? Why don't we immediately rush the individual off to prison for 30 days? Why worry about a trial? I mean, what's the difference?

MR. McINNIS: If we see that in legislation, it's your fault.

MR. SIGURDSON: A government amendment on Friday.

MR. CHUMIR: A government amendment; that's right. They're accepting that one.

Well, what's the difference? I can't see any difference in principle other than perhaps the minister's or the government's view may be that a vehicle is insufficiently important, that this is really a trivial consequence. But obviously it isn't a trivial consequence. That's why this is being brought forward here. The only justification for this Bill in fact is that the seizure of a vehicle in this way will be seen to hit hard. It is a very serious, very draconian type of sanction, and if imposed after a conviction, it would be a sanction that I would applaud, because I think draconian, very tough sanctions are merited in terms of impaired driving.

In fact, I've been on this issue right since I was elected. It was my first pamphlet that I issued in 1986 in running for office for the Legislature. I did a whole pamphlet on impaired driving. I was on a committee of the Canadian Bar Association at the end of 1985 and became somewhat learned on the topic, certainly very concerned. I've spoken out in this Legislature, and I've spoken out on this issue of what to do about those who drive while their licence is disqualified. I have never once suggested or even thought for more than a passing moment that seizure of a vehicle simply on the basis of a charge was adequate. Our proposals have always been to apply sanctions after a conviction. This is done in British Columbia. There's an automatic seven-day prison sentence. It's done, I understand, in Prince Edward Island.

Now, I can understand, for example, where there would be a principled rationale for seizing a vehicle in the event that someone is charged with the offence of impaired driving and on the spot the assessment is made that you have to put that vehicle out of commission for some period of hours in order to prevent the individual who has been charged with starting the vehicle up and driving it again or coming back in an hour or two. That's different. That is principled. But this is just not principled. It's tough. It has that to say for it, and if toughness is the criterion, then we've got that. I think we can have tough, and we can also have a proposal that comports with the Charter of Rights.

[Mr. Jonson in the Chair]

So I'm wondering whether I might ask the minister here – I'd be interested in his comments – why it is that he doesn't simply provide for a prison sentence after conviction. Is there any particular reason that has been rejected? I know that clogs up our prison system a little bit. It's some expense to the system, but it certainly is a hard-hitting measure. It's hard-hitting and principled, so I would appreciate hearing from the minister on that.

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

REV. ROBERTS: Well, I'm standing now. Maybe I'll sit down and then be recognized.

Mr. Chairman, I hate to add to the weight of the arguments now in favour of this amendment. There is almost I think enough of a weight to push the minister himself over, and I'm sure that he's aware of the fact that we've got some very salient points here, although I thought the Liberal Party was supporting this Bill. I'm surprised that at second reading on principle they thought this was just a fine way to proceed, so we'll have to get some further clarification there.

12:20

What I wanted to raise is not a matter that I'm totally familiar with, but it was raised at second reading, and this tough hard line from this top cop in the province doesn't seem to have responded to it in any way: it's the impact and effect of this Bill, as it currently stands without this amendment, on rural Alberta. I heard the minister throw around some figures about reducing rates here and there. I'm just wondering what look he's had at how those who drive in rural Alberta – well, two matters. Firstly, at the time of impoundment if the RCMP pull someone over halfway between here and Erskine in the middle of the night somewhere and take away their vehicle, do they walk to the nearest . . . Do the police drive them? What exactly is the procedure? Even that whole circumstance is very draconian, although I'm sure some arrangements could be made to call the person a cab or something or other.

More especially is the time afterward, when in fact in rural Alberta it seems to me people are more reliant on their own vehicle than in the cities. I mean, people could get around on transit and buses and taxis and friends and the rest, but the whole situation in rural Alberta, it seems to me, would be exacerbated by this kind of draconian legislation that suspends not just all of the principles that have already been debated but the actual impact of this in the various extenuating circumstances for those rural Albertans. This was raised, as the minister knows, by several of my colleagues at second reading. Again, I thought they were legitimate points, but I heard no response, no sensitivity, no concern, just saying, "This is the way it is." That's why I feel somewhat compelled now to raise it again and hope to get some response from the minister.

I guess the other issue for me – and I know it's a tough one. You know, we're always in here talking about trying to balance issues and balance different sides of an argument and concerns. I know that's what is at the root of it here. I want to focus in, though, on another side of it: what to do with this whole issue of what I understand to be recidivism. Again, I don't want to take away presumed innocence, but I guess the issue is what to do with folks who keep doing things that we don't want them to do and repeated patterns and rates of recidivism that are high,

particularly when it comes to operating a motor vehicle. It seems to me, for heaven's sake, that if that is the pattern – I know they're still a danger to society, and they could be a danger to themselves and the rest. But how to remedy that? It doesn't seem to me that it's just going to remedy it by taking away the vehicle. It seems the better remedy would be to enable them, to give them, to help them have a sense of their own self-worth and responsibility. Whether, then, there are treatment programs and counseling programs, programs that can get at the issue of what is causing this unacceptable behaviour, is the issue, and that's what we want to get at.

I think simply thinking, as in the political syllogism the Member for Edmonton-Jasper Place outlined, just to say, "Well, this has to be done, this is the way to do it, so we've done something," really hasn't done anything. We know in terms of psychological analysis and behaviour that there are other ways to achieve necessary ends. I think it has a lot more to do with not exacerbating the situation – that makes someone feel even more on the run and even more devious about ways to try to beat the system – but concentrating more in a sense of enabling them to get a greater sense of their own self-worth and hence responsibility to the public at large.

Those are just a couple of added points to at least 10 that I can count here tonight that have been made in support of this amendment, and as I say I think the weight of them is quite large enough to speak to the minister.

Thank you.

MR. DEPUTY CHAIRMAN: The hon. minister.

MR. FOWLER: Thank you. Thank you for the comments from the side opposite. I guess I'm at a bit of a loss or a very great loss; I'm wondering why there would be any desire to protect these purveyors of human carnage on the road. I just don't understand it. I wonder here if any of the people opposite, or anyone they know of, who spoke on this and are worried about the driver who is driving while suspended have had any connection with people who have been victimized, either as victims themselves or as part of the family or whatever, have been to funerals or continually visit hospitals or people in wheelchairs and what not. It leaves me at a loss.

In respect to the Member for Edmonton-Belmont I didn't understand fully what he was saying, and I can't respond to it. I will in fact read *Hansard* tomorrow just to try to see what I missed, but it won't be in time to respond to it.

"Personal freedoms cannot be interfered with." I cannot believe that there is an analogy being made or something, that a person is the same as an automobile: "If we take an automobile away, then why don't we take the person away too?" Well, believe me, this minister knows very well the difference between personal freedom and what property rights are, and there's a very great difference. What we're doing is not in fact new at all. A very serious sanction? You bet your bottom dollar, Mr. Chairman, it's a very serious sanction. There's no doubt about it. There are over 60,000 suspended drivers out there; over half of them are driving. What are we supposed to do? If we catch that one between Erskine and Stettler or around Erskine, are we supposed to pat him on the back and say, "Well, it's late at night; you jump back in your car and come see us tomorrow, and we'll have a little discussion with you about that," and let him continue driving? That's nothing short of nonsense.

I don't think any legislator particularly likes bringing in legislation which is tough in respect to law-making, but the situation we have there demands it, and that's what we are responding to. I have not heard any objection to this legislation, which has had first and second reading, other than in this House. In fact, it's been entirely the opposite: outside this House there's very great support for all of the actions we take to make highway safety a real fact.

MR. DEPUTY CHAIRMAN: The Member for Edmonton-Jasper Place.

MR. McINNIS: Well, if the minister wants a fight on this, he's going to get one, because you don't have the right to stand up and say that we're defending people who are perpetrating crimes.

MR. FOWLER: Well, you are.

MR. McINNIS: Nobody said that.

MR. FOWLER: You are defending them.

MR. McINNIS: Nobody on this side of the House said that. Not a soul.

AN HON. MEMBER: You'd better read *Hansard*.

MR. McINNIS: You'd better read *Hansard*, because you're distorting the debate.

MR. DEPUTY CHAIRMAN: Order please.

MR. McINNIS: That's a distortion. [interjections]

Chairman's Ruling
Decorum

MR. DEPUTY CHAIRMAN: Order please. Order. [interjections] Order, hon. member. Order. [interjections] Order please.

It is certainly appropriate for the chairman to call the committee and the member to order. Although it's not the same procedure as when we're in the session where the chairman stands up, I would ask you to respond when order is called. Now, I think there was an exchange there. We should come to order as a committee and get on with the essence of the debate.

Debate Continued

MR. McINNIS: The essence of the debate is the vicious distortion put out by the Solicitor General of the province of Alberta in terms of what this debate is all about. Nobody here is defending drunk drivers. I've heard him use the statistic time and again that he knows there are 60,000 drivers under suspension and half of them drive. Well, if he knows half of them drive, why doesn't he charge them with an offence? Why doesn't he crack down on them instead of bringing in this kind of stuff? This is fluff. This is fluff legislation, and it's designed to enhance his image as a crime fighter. Well, if you know of the 30,000 drivers who are driving without a licence, why don't you charge them with an offence? Why don't you use the laws that presently exist? If you don't know them, then why do you keep using the statistic?

The reality is that concerns were raised about what happens to innocent victims of legislation which purports to deprive people of property without due process. The Solicitor General never addressed that question. Instead, he chose to make up

another question which was never put to him in this committee, a question of: do we want to defend the right of people who have no licence to drive? Of course we don't, but we do want to defend the right of other innocent third parties. What about family members who depend on a single vehicle, in some cases, to bring children to school and groceries home to the table? What about business partners involved with a business vehicle? Why should they be made to suffer, especially in this period before an offence is taken? That's the whole essence of the amendment. It's not to defend illegal activity, but it's to give people who are alleged – alleged, not proven – to have committed an illegal activity the right to a day in court, the right to be heard. That's what the amendment's about. It's got nothing whatsoever to do with defending the right of people to perpetrate carnage on the roadway. I think the Solicitor General should be ashamed of himself for putting that imputation into this debate. We all would rather be doing other things at 12:30 a.m. than debating this particular legislation. It's not our fault that the government likes to do these things by exhaustion, but we do have some right to have our arguments listened to and heard and responded to and not some other phoney argument pulled off the table or under the table or wherever he got that stuff and to address that. So how about it, Mr. Solicitor General, why don't you address the arguments that are being put to you instead of the ones that are in your mind already?

12:30

MR. FOWLER: "What about . . ." "What about . . ." "What about . . ." Mr. Chairman, the simple answer to that is don't drive the bloody vehicle and we won't touch it. If you've got a suspended licence, stay out of that vehicle. Why don't we get out and charge the half that we feel are driving? Well, quite simply, when the surveys were done in three provinces, these people didn't give us their names when they responded back to the survey, and we couldn't go out and arrange 30,000 summonses because the survey was a blind survey, a mail-in back to us.

I can't help my impression. I don't think I'm wrong. I see these people being protected by the opposition, a desire to keep them on the road; if not keep them on the road, just charge them and then we'll have the trial three or four months down the road, then we'll go get the vehicle, and maybe it will be there and maybe it won't be there. Maybe it will be sold; maybe it won't be sold. So what will we do? Do you spend a few thousand dollars finding the vehicle? It's well known, Mr. Chairman, that justice, to be justice, should be quick and should be certain. This legislation is both.

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

MR. CHUMIR: Thank you, Mr. Chairman. I'm sure that if the minister's former criminal law professor were listening, he or she would be rotating at high speed. The allegation that this side of the House is here defending criminals is tantamount to suggesting that a lawyer who defends a individual of murder is defending murderers. Surely there are higher principles involved in the role of defence counselor and the role of legislators who seek to defend the presumption of innocence. I mean, what is the presumption of innocence doing in our Charter of Rights? I mean, the onus is on the minister in this instance to make a strong case as to why the presumption of innocence should be overridden, and he's certainly not making that case here.

Now, yes, I would like to hear him perhaps get analytical and attempt to justify it, and there are some arguments that can be made. For example, we are closer to something that is administrative in nature in the sense that you already have had a conviction for somebody who's been disqualified from driving and you're relying on the computer. But that really isn't an answer, because if you look in the *Edmonton Journal* you'll see a story this very day, a fascinating story of somebody who spent some six weeks, or it may even have been more, in prison as a result of a charge in light of a mistake made through a computer identification of disqualification of drivers.

Mr. Chairman, the minister has talked about the need to get the car as if there's some magic in getting the vehicle. I mean, if someone is intent on driving a vehicle . . . The individual is still there. You can go out and borrow a vehicle, attempt to rent a vehicle. There are all kinds of ways an individual who is disqualified from driving his vehicle that's seized can go out and get another vehicle if he's intent on driving. You haven't solved the problem. I mean, no single step is going to solve the problem, and that's the difficulty I have here. There seems to be this feeling that we're pushing through with this thing that at least cuts very close to the offensive end of offending against the presumption of innocence.

In any event, Mr. Chairman, I would like to hear some answer from the minister, if he would be gracious enough to provide it, as to why the suggestion we have been making in the Liberal Party for a compulsory jail term after conviction, as they have in B.C., is not a tough enough measure to deal with this particular instance.

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

MR. SIGURDSON: Thank you, Mr. Chairman. The Solicitor General's last comments about if you charge an individual, six months following, when they appear in court, their vehicle might be sold begs the question: what do you care about the vehicle? What's the offending body? Is it the driver or is it the vehicle? If the individual had borrowed a car, stolen a car, what's the offending action? Is it the vehicle for having been stolen? Is it the vehicle for having been borrowed? Or is it the driver that stole, borrowed, or took his own vehicle? I would suggest, I would argue that it's the driver.

MR. DAY: Yeah, let them all have guns.

MR. SIGURDSON: Well, you know the hon. Member for Red Deer-North shouts out about letting everybody else have guns. You're attributing this to being in favour of going soft on drunk drivers, of having carnage on the road. Well, don't do it. Don't for a moment even suggest it, because I'll tell you, it's beneath you. You shouldn't try and confuse the issues.

MR. FOX: Order. There's nothing beneath him.

MR. DEPUTY CHAIRMAN: Order on both sides of the committee.

MR. SIGURDSON: You shouldn't try and confuse the issue, nor should the Solicitor General.

Mr. Chairman, what we have to have here is the opportunity for charges to be laid and for those that are charged to be heard. Again, what it comes back to is: does it matter? I put it again to the Solicitor General, one more time: does it matter if the person is charged and convicted while they haven't got their licence in their possession, and they're told that for 30 days,

while they've not got their licence, they can't drive? Big deal. But if they have been given back their licence following the term of their suspension and they're then told that their vehicle is going to be impounded for 30 days whilst they have their driver's licence in their possession, then they are given a greater expense to deal with, because they may have to lease a car. They may have to borrow a car. They may have to rent car. So surely to goodness there is incentive to allow the courts to deal with the charge at any time. If a court takes six months or three months and the person has their licence back, that's all right by me. Let the judge, let the courts deal with it. Let the court impound a vehicle at that point or take away their privileges for another 30 days.

If the Solicitor General is so concerned about the vehicle having been sold, that the individual may not own a vehicle, there's an alternative to that. You could impose the jail sentence. You could indeed put them behind bars. That's certainly more than acceptable.

MR. FOWLER: I think the members opposite, at least the ones that practise law, should know that we can't make a choice to put people behind bars. That's done by the judicial system. I think those that practise law would also know, if they read recent law reports in any case, that the courts are becoming increasingly reluctant to accept minimum sentences, which in fact are laid down by legislators, and that continues to be an argument.

In respect to the Member for Edmonton-Belmont, I've been accused of trying to change the argument as to protecting drunk drivers that are caught driving while suspended, which is a result of their argument in any case. I just want to say that we are not suggesting people have their car removed merely because they're not in possession of their licence. That's nonsense. The police know by computer contact whether a licence has been suspended or not. That check can be made very easily.

I thank the Member for Calgary-Buffalo for referring to the matter of the man who is in jail. If you read the paper and take your research from that, you believe he's in jail because of a mix-up in the motor vehicles division. Well, Mr. Chairman, he was in jail serving 60 days for the failure to pay a fine for drinking and driving. That's what he was in jail for, not because of any mix-up in the names and whatnot. So he wasn't hard to find at all.

12:40

I still believe that this legislation is correct. I was only a practising lawyer. The Manitoba Court of Appeal felt, by a unanimous decision, that the legislation was correct, too, and upheld the legislation without any argument having to be made by the prosecution side.

MR. McINNIS: Well, that's all very interesting, but maybe now we can speak to the amendment. The amendment puts forward the proposition that a conviction is required before penalty can be issued. I thought I just heard the Solicitor General lecture the lawyers on the opposition side, correcting them and pointing out that the government doesn't hand out penalties and it's the courts who hand out penalties. Well, gosh darn, if that isn't the whole issue that we're dealing with right here, right now. The issue is whether or not the government hands out penalties roadside, street-side, house-side, or wherever else you may decide tomorrow you want to hand out penalties or whether they're handed out by the courts. The amendment says very clearly that you have to be convicted of something before the penalty is handed out, not merely suspected by the police or somebody in government of having raised that conviction.

The Solicitor General has to this moment not even addressed my question about the innocent victims of this policy that's in this legislation. What about other people who need access to that vehicle? I realize that years ago we took away the privilege of people convicted of drunk driving being able to drive for business purposes. I fully support that because that person has committed a serious offence and needs to be punished. But what about the other people who need access to that vehicle? Why is it that the Solicitor General refuses to address that question?

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

MR. CHUMIR: Thank you, Mr. Chairman. Lest I forget later, I might just note I don't have any formal amendments, although I've had the suggestion that we put an amendment so the vehicle is defined not to include a wheelchair.

Having got that one out of the way, I would like to move on, shift gears a little bit on this matter. Looking reality in the face, the minister seems intent on proceeding with this Bill as is, without accepting this sensible amendment. I was wondering whether or not the minister could give us some kind of explanation as to what his intentions would be in relation to the appeals to the driver review board that are provided for, because I'm sure the minister will admit that there is scope for error.

Am I out of order at this stage? I see the chairman leaning forward in a menacing manner, and perhaps if I am out of order at this stage, we'll wait till we knock off the amendment, and then I'll ask this question.

MR. McINNIS: I'm afraid it's not quite that simple. Look, this is the third time I've asked the Solicitor General to deal with the question of the innocent victims of this policy. I would like to know why he refuses to even address that question before the committee. I don't care what hour it is. He feels quite content to stand up and throw totally unsubstantiated accusations about the motives of other members of this committee, but he won't deal with . . . It's just a fact, as my colleague has pointed out, that the motor vehicle itself doesn't commit a crime.

Now, there are other technologies that can be used to prevent certain individuals from driving vehicles. That would be a somewhat more creative solution to the problem than merely copying down somebody else's legislation and putting it forward. But there is the, I take it, unintended consequence of this legislation that other people who may depend vitally on a motor vehicle for their life support or for business or employment purposes may lose access without any process, and he won't address that, and I would like to know why.

MR. DEPUTY CHAIRMAN: Ready for the question?

SOME HON. MEMBERS: Question.

MR. DEPUTY CHAIRMAN: All those in favour of the amendment as proposed by the Member for Edmonton-Highlands, please say aye.

SOME HON. MEMBERS: Aye.

MR. DEPUTY CHAIRMAN: Those opposed, please say no.

SOME HON. MEMBERS: No.

MR. DEPUTY CHAIRMAN: The amendment is defeated.

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

[Eight minutes having elapsed, the Assembly divided]

12:50

For the motion:

Chumir	McInnis	Sigurdson
Fox	Roberts	

Against the motion:

Ady	Fischer	Nelson
Anderson	Fjordbotten	Osterman
Bogle	Fowler	Paszkowski
Bradley	Gesell	Payne
Cardinal	Hyland	Shrake
Cherry	Isley	Speaker, R.
Day	Lund	Stewart
Elliott	Mirosh	Tannas
Elzinga	Moore	Thurber
Evans		

Totals: For – 5 Against – 28

[Motion on amendment lost]

MR. CHUMIR: I'm interested, Mr. Chairman, in the circumstances in which an appeal might be made to the Driver Control Board under section 23.2 of the legislation. The concern is that although there's a reliance on the computer, there's always the possibility of error. There's also the issue of third-party owners of the vehicle coming in. A very prompt appeal is very much in the interests of justice in this particular instance. There are very few provisions here. It's just a bare skeleton of a scheme, and it's left to the regulations to provide for the criteria, the timing, the conditions.

I'm wondering whether the minister could indicate whether he has given some thought to the need for a very quick review, perhaps within 48 hours, for an individual who may allege that there is computer error, an error with respect to identification. It may not happen that often, but on the other hand when it does happen, that's what our legal systems are set up for, to protect the innocent. Perhaps the minister could give us some indication of how he envisages the appeal system working in respect of the Driver Control Board.

MR. FOWLER: Mr. Chairman, it's the intention of the department and my personal intention to take the appropriate time to develop the regulations on this. I have heard the hon. Member for Calgary-Buffalo mention it on two occasions, and I'm cognizant of his comments and take seriously his comments to ensure that we have a very quick review by the Driver Control Board. I don't believe the 48 hours he has referred to is out of order at all. In developing the regulations, we will have much regard to those suggestions.

MR. McINNIS: Is the Solicitor General saying that in the context of the regulations he's yet to develop, he's going to make some provision for innocent third parties such as business partners and associates and family members who absolutely depend on that vehicle? Is that what he's saying, that that would be part of the regulations?

MR. FOWLER: I'm referring only to a registered owner who was not in fact the driver of the automobile at the time the automobile was seized and impounded.

MR. McINNIS: Just for clarity. He's not planning to make any provision whatsoever in respect of an innocent third party who may be affected by seizure under this legislation? This is it, right?

MR. FOWLER: None whatsoever.

[Title and preamble agreed to]

[The sections of Bill 39 agreed to as amended]

MR. DEPUTY CHAIRMAN: Hon. minister.

MR. FOWLER: Thank you. I move that the Bill be reported as amended.

[Motion carried]

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

[Motion carried]

1:00

[Mr. Speaker in the Chair]

MR. SPEAKER: Hon. Member for Ponoka-Rimbey.

MR. JONSON: Mr. Speaker, the Committee of the Whole has had under consideration certain Bills and reports Bill 30. The committee also reports the following Bills with some amendments: Bill 33 and Bill 39. Mr. Speaker, 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: Those in favour of concurrence in the report, please say aye.

HON. MEMBERS: Aye.

MR. SPEAKER: Opposed, please say no. The motion carries.

[At 1:01 a.m. on Friday the Assembly adjourned to 10 a.m.]