

## Legislative Assembly of Alberta

Title: **Wednesday, October 26, 1994**

**8:00 p.m.**

Date: 94/10/26

[Mr. Deputy Speaker in the Chair]

MR. DEPUTY SPEAKER: Please be seated.

May we have unanimous consent from the Assembly to revert to the Introduction of Guests?

HON. MEMBERS: Agreed.

MR. DEPUTY SPEAKER: Hon. Member for Edmonton-Glenora.

MR. SAPERS: Thank you, Mr. Speaker. Events transpire more quickly than the commissionaires have been able to seat my guests. They're somewhere in the elevator at this point, so with your permission could we postpone it for just a minute or two?

MR. DEPUTY SPEAKER: Hon. members, I think we've given permission to the member to introduce his guests, and it's most unfortunate they are not here at this moment.

So we'll call upon the Clerk.

head: **Government Bills and Orders**

head: **Second Reading**

**Bill 41**

**Government Organization Act**

Moved by Mrs. Soetaert that the question for second reading be amended to read that Bill 41, the Government Organization Act, be not now read a second time because the Assembly feels that the Bill does not recognize the need for the Legislature to approve the creation and establishment of government departments and the delegation of powers, duties, or functions to any person.

[Adjourned debate October 25: Mr. Evans]

MR. DEPUTY SPEAKER: Are you ready for the question?

SOME HON. MEMBERS: No.

MR. DEPUTY SPEAKER: The hon. Member for Calgary-Currie.

MRS. BURGNER: Thank you, Mr. Speaker. I would like to respond on behalf of my colleague the hon. Member for Calgary-Varsity and speak to the issue of the reasoned amendment. A number of points were raised by our colleagues in debate last evening, and I feel it's important that we put these on the table to clarify some of the concerns that were raised.

There was a concern that was raised by the hon. members for Edmonton-Whitemud and Edmonton-Meadowlark addressing the enhanced productivity and to ensure the output measures. It's important for you to understand and for the Assembly to recognize that it was never intended that this Act deal with those issues. So it was something that you have flagged, but it's not part of the actual Act.

The issue of fees, again from Edmonton-Manning and Edmonton-Meadowlark. There was considerable discussion on fees. They have been broadened in this Act. Generally fees are supposed to be revenue neutral. They should go to assist in covering the cost of this program.

Another point that was raised dealt with the establishment of departments, and I know there was considerable discussion from the hon. members for Calgary-Buffalo and Redwater and again

from Edmonton-Manning. While historically Alberta has established its departments by statute, not all provinces do so. For example, New Brunswick does not establish by statute. B.C.'s and Manitoba's and Ontario's current practice is to establish by order in council, although some departments have been established by statute. The number of departments does not dictate the number of ministers, and departments are established after ministers are appointed. So I wanted to clarify that for you.

The issue of delegation – and I know it's an area of concern, particularly from the Member for Edmonton-Manning. There are a number of provisions that allow for delegation, and quite frankly that is the way that the government wants to move on this issue: to establish the framework and then delegate the appropriate responsibilities.

There is a concern that there are no schedules for Family and Social Services' authority to establish programs, and this was raised by the Member for Redwater and again by Edmonton-Manning. While this concern was expressed, that the broad authority of ministers to establish programs could be done without regard for costs, the Act in no way authorizes any expenditures. Money for any program must be appropriated by the Legislature, and I would suggest that the sponsor of the Bill would continue to be very diligent in assisting us in meeting our fiscal targets. So while I appreciate that the initial debate of that may raise that as a concern, please be assured that there is nothing in the Act which will authorize expenditures.

Lastly, under the intergovernmental agreements – that was raised by the Member for Redwater – the provisions relating to intergovernmental agreements are currently included in section 5 of the Department of Federal and Intergovernmental Affairs Act. So there is a continuation of that issue.

Having clarified that for the hon. members, the final one that was addressed was the issue of the loan guarantees, and this came from Edmonton-Whitemud, the concern about Treasury Board approving without an order in council. Well, the main purpose of the Bill in regards to loan guarantees was to repeal the provision that allowed members to give guarantees under their department Acts. It was not intended to deal with the giving of guarantees under other authorities. With regard to section 74(2) of the Financial Administration Act it must be remembered that the authority to give the guarantee must be contained elsewhere and that 74(2) is not an authority unto itself.

All of the above – I would again identify the different members that I've spoken to – have made reference to the effect that what this Bill does is allow government to govern itself by regulation instead of allowing the Legislature to deal with some of these matters. Although there are a number of aspects of the Bill that do increase government by regulation, the labour statutes deregulation schedule and a number of examples cited in the debate erroneously refer to existing provisions as being in the new regulation-making authorities. I would just like to clarify that that is not the case. There are a number of issues that I believe will come forward as we go through the committee process.

I think it's important to recognize that back in 1905 under the Liberals and the Premiership of Alexander Rutherford – you didn't know I knew all this stuff – these issues were initially tabled, and what we're seeing here is a fruition of some of those initial objectives. It also provides a framework in order to implement some of the legislation and the initiatives that were taken in the spring session. I think it's important to understand that in order to implement the changes that occurred in the earlier session, we have to go through this process of identifying Act by Act and recognizing where changes need to be made. Having

given you that wealth of information and points for your consideration, I would like to adjourn debate on that Bill at this time.

Thank you, Mr. Speaker.

MR. DEPUTY SPEAKER: The hon. Member for Calgary-Currie has moved adjournment of debate on Bill 41, the Government Organization Act. All those in favour please say aye.

SOME HON. MEMBERS: Aye.

MR. DEPUTY SPEAKER: Those opposed please say no.

SOME HON. MEMBERS: No.

[Motion carried]

### Bill 49 Civil Enforcement Act

[Adjourned debate October 24: Mr. Decore]

MR. DEPUTY SPEAKER: The hon. Member for Edmonton-Strathcona.

MR. ZARIWNY: Mr. Speaker, is this 49? I didn't hear it.

MR. DEPUTY SPEAKER: Hon. members, I'm sorry; the Chair did not hear the Clerk call out what Bill we're debating. Forty-nine.

We've recognized Edmonton-Strathcona, but Edmonton-Ellerslie wishes to speak to 49 or ask a question?

MR. ZARIWNY: Mr. Speaker . . .

MR. DEPUTY SPEAKER: Before we recognize Edmonton-Strathcona, for the moment we would revert to the question asked earlier. Are the hon. members in agreement to revert to Introduction of Guests?

HON. MEMBERS: Agreed.

MR. DEPUTY SPEAKER: Opposed? Carried.

head: **Introduction of Guests**

MR. DEPUTY SPEAKER: The hon. Member for Edmonton-Glenora.

MR. SAPERS: Thank you, Mr. Speaker, and thank you, colleagues. It is my pleasure to introduce to you, Mr. Speaker, and to all members of the Assembly 14 members of the 129th Lutheran Place scout troop. They are visiting the Legislature tonight in hopes of attaining their civics badge. Accompanying the troop are four leaders: Rob Sopher, Rob Bowen, Parnin Goutan\*, and Art Tester. I would ask that they rise and be welcomed by the Assembly.

head: **Government Bills and Orders**

head: **Second Reading**

8:10

### Bill 49 Civil Enforcement Act

*(continued)*

MR. ZARIWNY: I'd like to speak to Bill 49, Mr. Speaker. This Bill deals with, as we all know, the privatization of bailiffs. I

think at this stage it's important to identify really what a bailiff is. A bailiff or a sheriff, as he's commonly called, is one who enforces a court judgment. If there's an individual that goes to court and asks for a judgment in costs, for example, and the court grants that judgment, that individual can then execute a writ of execution, file that with the sheriff, and the sheriff then enforces that judgment. That enforcement will be privatized according to Bill 49.

History in Alberta has shown that when creditors are going to exercise the legal remedies that are available to them, they use the sheriff. There is a reason for this recourse. The sheriff has traditionally been a neutral person. The sheriff, as my colleague from Calgary-Buffalo had indicated in the last session, is someone that's not from a bank, someone who's not an agent for a collection company. He's a government employee; he's a civil servant.

The debtor in this case, the person who owes the bill that's being collected, is normally confronted by a sheriff, who can claim everything that usually is in that area as being part of the makeup of that particular judgment. The debtor, on the other hand, can object to what the sheriff is claiming by filing a notice of objection. For example, the Exemptions Act, which I understand would be in part if not all eliminated by Bill 49, exists to allow Albertans certain rights even if the debtor owes somebody some money and he or she cannot pay it.

Normally the bailiff or the sheriff at the request of a creditor seizes, as I mentioned earlier, everything in sight and states: if you don't like it, then go to court and make an application to stop me. I think the question that has to be asked by the Member for Lethbridge-West, who sponsored this Bill, is: does he have the confidence in basically a for-profit sheriff being a neutral person who will be paid for every seizure, as I understand according to this Bill? These people may make a mistake, and I think you can guess on what side they would err. Probably on the side of the debtor, who, for example, may be a farmer, and I'd just like to dwell on this example a little more. Presently the farmer, if his machinery is seized, can rely on the Exemptions Act and say, "Okay, this tractor here is something which I need for one year; this particular part of the equipment is something which I need for my occupation," and make a claim to court. Now, I'm not sure that that's going to happen or will be allowed to happen presently under Bill 49.

We have been told that the Law Reform Institute here at the University of Alberta supports the Bill, and I understand that they now do, having reviewed the Bill. It's important to point out that the sponsor of the Bill alludes to, as being the basis for the changes in Bill 49, report 50 put out by the Law Reform Institute, yet we know that if we look at the bottom of paragraph 71 of law report 61, called Enforcement of Money Judgements, the Law Reform Institute states, and I quote:

We do believe that private bailiffs should not be used for enforcement seizures. The use of private bailiffs would require substantial supervision and quality of inspection. We think the public resources required for training, testing of qualifications, and supervision of the operations of private bailiffs would be better directed to the maintenance of high standards of competence and efficiency in the sheriff's office.

On page 72 of that same report the institute makes the following recommendation.

Sheriff's Exclusive Authority to Seize

The present requirement that seizures must be carried out by the sheriff, or a person authorized by the sheriff, should not be changed. As I said, the institute now feels comfortable with the areas in the Bill and is quite pleased, according to Mr. Rick Bowes of the

\*This spelling could not be verified at the time of publication.

institute, with the present arrangement, but I thought it was important to note that at one stage the institute did have objections to the privatization of sheriff's duties.

The main focus of the Bill seems to allow sheriffs to contract out to private agencies for bailiffs' services, and it has been left up to the regulations and policy directives to determine the criteria which must be met for the private agency to exist. There is some question as to whether or not the Criminal Code provides the same protection to private bailiffs as it does to bailiffs who are Crown employees. I think that is not addressed in the Bill. This could put us in a situation where the bailiff, upon encountering any type of trouble in carrying out his or her duties, would require the intervention of the sheriff, thus negating any benefit of having a private bailiff.

The other part of the Bill which I would like to spend some time on is the elimination of the Exemptions Act. I mentioned earlier what the Exemptions Act does. It says that there is certain property which is exempt from seizure. The Bill as presented would remove the strict legislation present in the Exemptions Act, and it would replace it with a series of regulations found in section 88 of this Bill.

Section 100 of the Bill is rather a lengthy number of regulations, many of which should be legislated and not left to the whim of the cabinet to decide on. Those laws should be brought back here and decisions should be made about them.

Now, there's also the question of intermingling of exempted funds. The intermingling of exempted funds received by the debtor from the sale of an asset is unclear. If we look at section 89(2)(c), we can't tell exactly how the intermingling funds could be dealt with. Can the money be placed in a bank account or combined with other money while it is being decided what will be done with the money? That's one of the questions I have and I would very much like to have answered. Or upon placing it in an account that says that there's only \$10, will it lose its exemption status? This is not clear.

I think that on the good side of the Bill there's basically one point that I would like to stress, and that's that the Bill does in fact streamline and centralize records and computer data bases. This enables an individual to register a claim against a debtor only once and not in all 12 judicial districts to have the action on the claim take place in any part of the province.

With that, I would conclude my presentation and wait for responses, Mr. Speaker. Thank you.

**MR. DEPUTY SPEAKER:** The hon. Member for Edmonton-Whitemud.

**DR. PERCY:** Thank you, Mr. Speaker. This morning in Public Accounts the Auditor General noted that the background or the cover of the latest annual report was gray, and they had moved away from the black and white format because most things in life, in fact, turn out to be gray as opposed to stark white or stark black. And it is so with this Bill. There are some obviously positive points to it.

I guess I would just like to highlight what I think are some concerns in terms of the principles related to this Bill. First, I realize that the government has said that a number of these Bills are housekeeping, but even with housekeeping one has prioritization as to what one does first, whether it's sweeping, cleaning, or scrubbing. It's not clear that this would rate high on any priority list, yet it's a piece of legislation that we have before us. It's here, and clearly from the perspective of someone in government it has a high priority, but in terms of other types of issues that are facing the province at this time, particularly in terms of reorgani-

zation and restructuring, it's not clear why it's here, except if one looks for this philosophical theme that seems to be evident, and that is the continued privatization of an array of services that were formerly undertaken by government.

#### 8:20

If one approaches in that light and argues, then, that it's philosophically driven, one still has to ask: what are the benefits and costs of this proposed legislation? It's not at all clear, Mr. Speaker, when you read the Bill, what the anticipated benefits or the anticipated streamlining are going to yield. On one hand, it is true that there is going to be centralization of the records so that you now need only file one claim, one judgment as opposed to doing so in all of the 12 judicial districts. That's clearly a benefit.

On the other hand, there are some uncertainties introduced into the Bill, and my colleague from Edmonton-Strathcona alluded to one that I think is very evident, and that is the intermingling of funds; for example, in the instance of joint accounts. Now a third party is going to have to demonstrate why their share is more than 50 percent. I think once we get into that realm, there's a whole array of partnerships, for example. The amount of litigation that's going to be generated with this may be very high or at least the additional draw on lawyers' services in order to set out exactly who has what in terms of joint accounts. I think it's going to pose some significant bookkeeping problems and basically issues related to trust and specification of shares in partnerships and of joint accounts. That certainly is going to make many small businessmen now very, very much more thorough in vetting their potential partners in case that potential partner in fact has a judgment levied against them and then joint accounts that exist are suddenly free and open goods.

Now, the reason I bring that point up, Mr. Speaker, is that one of the other provisions of this Act is that there's a reward for initiating the claim. It's kind of like homesteading: if you're there first, you get the good claim. Well, that's good in prospecting. I think it's very good in oil prospecting. There's a payoff to being first. On the other hand, to the extent, then, that there are efforts by a debtor to arrange a favourable settlement with their creditors, there's always now going to be a person that says: well, you know, if I jump the gun and get in there first, I get the first \$2,000 or 15 percent, whichever is greater, or the full amount of the initiating claim.

Well, on one hand, that seems to suggest that there's a payoff to litigation, and perhaps this provision was in fact written by a lawyer. I don't know. But it certainly strikes me when I read this that it's not at all clear to me why we want to reward the person initiating the claim, why there is that potential bonus for the individual. It's clearly going to make it more difficult now for informal arrangements to emerge, or in the case where there is a debtor with a number of creditors, it's going to lead to instances where in fact there will be a breakdown in any co-ordination among the creditors, and there will be an effort then to leap in first. By so doing, they probably will reduce the possibility that some type of working receivership or soft receivership or what have you would have allowed this individual to in fact pay off their debts in an orderly fashion. So this provision in fact may be quite counterproductive to the objective. Certainly in terms of the debate I would like the sponsoring member, the Member for Lethbridge-West, to address that issue. Exactly why is that provision there, and is it really necessary?

The other issue I would like the hon. Member for Lethbridge-West to address is: where exactly are the potential savings from this going to occur? Again, as the hon. Member for Edmonton-Strathcona alluded to, there are a number of provisions in here

which may make the privately hired bailiff quite gun shy in terms of facing potential litigation, and in fact we may see the sheriff called in in every instance, where that wouldn't have happened in the past. That may in fact lead to the very perverse result that a Bill that is aimed at streamlining the system, first of all because of the payoff to being first in initiates more judgments and, second, because of the complexity of the Bill and the fact that some of the rights of the bailiff are not fully articulated, may lead to even greater participation by the sheriff in these types of seizures because of legal concerns by the privatized entity collecting the judgment.

So, Mr. Speaker, with those points I would like to conclude my comments on Bill 49.

**MR. DEPUTY SPEAKER:** The hon. Member for Edmonton-Glenora.

**MR. SAPERS:** Thank you, Mr. Speaker. The Civil Enforcement Act, Bill 49, might be called Kneecappers R Us or some other kind of commercialization. It always amazes me when I sit back and reflect on the number of things this government is willing to get out of the business of while at the same time, of course, maintaining their interest in being in the business of interfering in business. It seems that this government knows no bounds when it comes to those things which they will break from tradition on and from what people can come to rely on.

What we have here is a Bill that will allow for the privatization of bailiffs. Now, this may allow creditors to use private enforcement agencies to conduct their seizures, but those private enforcement agencies may or may not be available to every ordinary Albertan, depending on the amount they charge and the difficulty of the task at hand, et cetera, et cetera.

One of the biggest problems with this initiative, as with all of the government's privatization initiatives to date, is that the government is proceeding without any study, without any standards being in place, with what appears to be very little forethought. It would be really refreshing, Mr. Speaker, if the government would bring legislation to this House accompanied by some kind of cost/benefit analysis, some kind of indication of where the savings would be, where the potential pitfalls are, how this legislation as proposed would guard against those pitfalls. It would be helpful if all private members had the ability to reflect on standards for privatization, to look at what issues should go to the private sector, what can be commercialized, what heretofore government services the government can safely move out of and that we can still somehow be assured that those services and those duties will be discharged to a level that we can all be confident in, where we can believe that there will be competence.

Mr. Speaker, once again the dilemma of the opposition is that faced with a Bill that may have within it a kernel of a good idea, just a little bit of a good idea, it is accompanied by no detail. We're not given the benefit of any of the government's planning, if they've done any. We don't know who it is that asked for this Bill. We don't know what audience it's supposed to best serve. It's clearly not in the best interests of all those people who rely on the government process.

I've been in the position where I've had to go to small claims court. I've had a judgment in my favour and had to go to the sheriff and to the bailiff, and when I went and I registered my claim, when I went to the bailiff, I had some confidence that I knew what procedures were going to be followed, that I knew what was going to happen, when, what the sequence of events would be. I knew where to go if there was a problem, if there was a complication. I knew in fact what I could expect. Mr.

Speaker, laying this all open just to either the lowest bidder or the highest bidder seems to me to be putting people at some risk, and I would like to be assured and I'd like to be able to assure my constituents that in fact they won't be at risk if this is allowed to go through.

Once again we don't see any of that kind of detail. Instead what we have is yet another Bill which is government by regulation, government that has really dismissed any of the tough questions to some behind-closed-doors discussions about regulations. I don't know who it is that will be consulted in the making of these regulations. I don't know who it is that will have their voice heard when these regulations are formulated and then signed off in secret by order in council.

Mr. Speaker, we just saw the Act about pharmacy, which took years and years in the making, that was passed in 1988, proclaimed just today, six years later, because it took the government six years – six years – to deal with the regulations. For people who are waiting and depending on judgments to be satisfied, on property to be seized, that kind of uncertainty seems to me to be unwarranted.

### 8:30

I would suggest, Mr. Speaker, that if the government is convinced that this is an appropriate direction to move, then they should present the Bill with all the background information that I'm talking of; they should present the Bill complete with draft regulations. Those regulations should be circulated to the general public, to the legal community so that every Albertan can have a clear picture of what the government's got in mind when it comes to civil enforcement. Then we can have some debate in this Assembly to make sure that it's the best possible law for the people of the province.

Unfortunately, the government has chosen to do it a different way. They've chosen to privatize bailiffs the same way they've chosen to privatize liquor sales or the same way that they're going to be privatizing children's services or advanced education services, and that's with no study, no detail, very little forethought. It appears, at least to this member of the opposition, that this is again a bottom-line driven Bill.

What we have is somebody somewhere in the government who decided, hey, maybe we can save some money; maybe there's a cheaper way to do this. It doesn't necessarily mean a better way, but maybe there's a cheaper way to this. Maybe this is a way we can squeeze just a couple more bucks out of the budget, and maybe this is a way we can pass on through some kind of hidden tax to the taxpayers, some new charges. So people who require bailiffs, who require that civil enforcement, will now be forced to pay out of pocket, and they'll be at the mercy of these commercial operators, and that's just not acceptable, Mr. Speaker.

I would hope that members on the government side would address these concerns. I would be pleased, Mr. Speaker, quite frankly, if they have given thought to these issues, if they could provide members on this side of the House with some of the answers to these concerns so we can get on with formulating what could be a good law but, presented as it is, looks terribly flawed.

Thank you, Mr. Speaker.

**MR. DEPUTY SPEAKER:** The hon. Member for Leduc.

**MR. KIRKLAND:** Thank you, Mr. Speaker. My comments this evening will be very brief to Bill 49. As I read the explanation from Lethbridge-West and the rationalization or justification for introduction of this Bill, I did in my mind find that an explanation for the need of it was lacking. I could not determine from his comments or from the Bill how we would arrive at substantial

savings by implementing this particular Bill. In my own thought process in attempting to apply the bailiff mandate as it is, I couldn't quite understand how we would arrive at that particular savings as well. So these were two critical areas to me that swayed my thoughts on the Bill one way or another. Though I see positives in the Bill, there are some areas that I would like to see addressed or at least a better explanation offered, particularly to the two points I just addressed. If they are in fact clarified or qualified, I'd certainly be more apt to speak to that.

My experience in this area, Mr. Speaker, certainly is limited, but from my knowledge – and I would have to assume of the members that are chattering away there that their knowledge is limited too. That's why they're glued to their seats and their tongues are glued to the roofs of their mouths.

Back to the point, Mr. Speaker. This system has been around for approximately 125 years, 100 years, better than. In my travels throughout this province I haven't run into anyone that considers the system to be broken. I'm not convinced that we have to fix it. I would suggest that it's probably driven more by this government's obsession with privatization than with real savings or real efficiencies, though I would qualify my last statement there because I do see some efficiencies in the data collection and the likes of that.

One thing that the bailiff system certainly established – and I think it's critical and important when we're dealing with matters of this nature, of seizure and the like – was the neutrality. The neutrality of the bailiff in my estimation is taken away. It's diminished, it's removed when we move into the privatization of those bailiffs.

I would suggest, Mr. Speaker, that a bailiff certainly would be in a position to be very self-serving. When we look at a percentage of their bottom line or their profit related to the seizure, then I clearly see that self-serving potential to be put into a distorted view. I think we have all in this House heard many times of collection agencies and how tenacious some of them can be. Some certainly have been very tactful in prying the dollars owed to company A or B or C from us. Others have been very, very tenacious. These are real examples that we can all relate to.

I would suggest that these real examples and actual application that we experience and know in today's society will surface in the bailiff aspect as well. I would suggest that the bailiff aspect would be distorted, as I indicated, because it is self-serving and because frequently I could see where a bailiff probably seizes more than is required, perhaps to err on the side of caution, perhaps because they're a little greedy. I don't see anything in the Bill that can guard against that, and I'm not sure that we can ever write that into the Bill. It seems to me, though, that there should be some safeguards, particularly when we tread in new areas such as this. I was not able to uncover in my review of the Bill any recourse for those who may have felt that their property was wrongly seized or too much property was seized, so those cause me some concerns.

[Mr. Speaker in the Chair]

As I indicated, I did find positive in the Bill. In the one area where I was looking at the garnishment of wages or salaries and the fact that we now had access to joint bank accounts, I had to assume that that was a necessary change to fulfill the mandate of Bill 22, which we discussed last year in this Assembly with maintenance enforcement. I have spoken at length about the improvements needed in that particular system. So I welcome that change as far as this Bill is concerned, though I do have some concerns about exactly how one provides the onus going into a

joint bank account as to who contributed the most and exactly how we determine what amount can be removed from that.

So, Mr. Speaker, those are the deficiencies and the concerns that I have noted in this Bill. I would like to close my comments this evening by indicating that there is positive here. If there's streamlining in that collection of data and sharing of data and elimination of filing of some of the papers associated with seizure or the bailiffs, I applaud that. If some of the concerns that I have brought to the Assembly here this evening can be clarified or set aside, I would find myself in the position of supporting this Bill.

Thank you, Mr. Speaker.

MR. SPEAKER: The hon. Member for Edmonton-Mill Woods.

DR. MASSEY: Thank you, Mr. Speaker. I would like to address my comments specifically to part 9 of the intended Act, Bill 49. Given the kind of experience we have in our constituency office, this is of special interest to me, and that's the whole business of garnishment and garnishees.

The first point I'd like to make is on the notion or the concept of continuing garnishment. I think there's general support of the draft Act's attempts to remove some of the technicalities surrounding the law of garnishment by permitting, among other things, continuing garnishment. I think it can be assumed from the draft Act that that is what is intended. It's intended that continuing garnishments should apply to deposit accounts at banks and other financial institutions, although the wording is rather difficult in this regard if you look at the Act.

Part 8 of the Act defines the concepts of, and I quote, a "current obligation" and a "future obligation." It's not clear whether those two concepts really embody what one would presume a continuing garnishment would imply. I think there is some doubt there. It's not clear whether an amount which a judgment debtor may have to deposit into an existing bank account sometime after the bank receives a garnishment notice would be encompassed in that section.

8:40

The second item I'd like to talk about is the conflict with the Bank Act. Section 89(2)(c) of the draft Act seems to be directly contrary to sections 461 and 462 of the Bank Act. The suggestion has been made that banks should therefore be excluded, that there should be written into the draft express exclusion from section 89(2)(c) of the draft Act. I think that even on constitutional grounds they'll be able to ignore that section even if they aren't written into it.

To the extent that section 89(2)(c) would be applicable to banks or their subsidiaries, it puts a tremendous obligation, an onerous obligation, on banks or other financial institutions, and you can imagine what the first bank, if the draft Act were to be implemented in this form, who was to receive a garnishee summons in respect of a particular client and had to determine within 48 hours which accounts were registered in the name of that client in its branch network throughout Alberta and which of the accounts were affected by that garnishee. It's been suggested that the garnishee summons should apply only to the branch or office of the garnishee on which it is served and that they then make reasonable efforts within some limited time period to identify whether that same person has accounts at other branches or other offices located in the province. The garnishee summons should then only apply to accounts at the branch on which the garnishee summons was served and which existed at the time of the serving of such notice or on any accounts identified by the financial institution after they'd had an opportunity to make some inquiries.

I'd like to talk about the grace period that is included; for example, a guaranteed investment certificate or a similar instrument is issued by a financial institution and is maturing. When we have a term deposit maturing, the payment instructions on maturity are normally, I would suggest, put in place a number of days prior to the maturity. Often once you have made that choice, it's irrevocable. You cannot go back and change your mind. Again it's important that there be a grace period between the serving of the garnishment summons and the time at which the garnishment becomes effective. It has been suggested again that a limited short period otherwise applicable to employment income under section 9 is appropriate.

The next point I'd like to talk about is the garnishment of joint accounts and the difficulties that implies. The draft Act introduces a provision that is similar to that one that's contained in the Maintenance Enforcement Amendment Act, 1994, Bill 22, which is designed to permit garnishment of the interest of a judgment debtor in a joint deposit account. This section operates by deeming the joint holder to beneficially own a proportionate interest in the joint account – so it's divided up, and each one is awarded a portion – and to permit the creditor to seize the portion of the individual that is affected.

Affected parties including the other joint account holders can apply to the court for a determination that the actual interest of the judgment debtor is a greater or lesser percentage of this amount. Burdensome as this requirement may be in respective amounts standing in a deposit account at the time a garnishee summons is received, it becomes practically unworkable in the context of a continuing garnishment. Presumably, the enforcement debtor being garnished will not be permitted to make withdrawals from the account until the amount being garnished is satisfied. But what is the position of a joint account holder? What happens to them under those arrangements? If they are entitled to make withdrawals during that 60-day period when the garnishment is effective, the ability to have the court recalculate the entitlements subsequently becomes somewhat meaningless or totally meaningless. Further, it would be impossible for a financial institution to know how much it should permit a joint account holder to withdraw, as the only way to do this, presumably, would be to calculate or recalculate the joint account holder's pro rata share of each deposit less the withdrawals that have occurred from time to time. It just seems that that's an impossibility administrationwise.

With those comments, Mr. Speaker, I'd like to end. Thank you.

MR. SPEAKER: The hon. Member for Edmonton-Manning.

MR. SEKULIC: Thank you, Mr. Speaker. It's a week and a day since we returned to the Legislature after a summer away in our constituencies, and this Bill in itself is 110 pages of legislation. I haven't read the entire Bill, so I'll just speak to those parts that I have.

First of all, I'm not sure what the initiative bringing this Bill forward is. I haven't heard it put forward by the Member for Lethbridge-West. This is something I'd like put forward the next time he has an opportunity.

Some of the admirable highlights that I see: the Bill does attempt to streamline the process of debt collection. That is, I think, a positive. The Bill replaces three existing Acts – the Execution Creditors Act, the Exemptions Act, and the Seizures Act – and that's fine. The Bill allows for the privatization or the commercialization of bailiffs. It enables creditors to use private civil enforcement agencies to conduct seizures. As I said earlier, I wasn't sure where this initiative has come from. Is it just an

Americanization of our Alberta model? Do we have a failure in the Alberta model that necessitates this?

Also, the establishment of contracting of private civil enforcement agencies is to be done at the sheriff's level. Although the Bill includes extensive legislation on what a bailiff, public or private, can or cannot do, it is left up to regulation or the sheriff's policy directives to determine the conditions under which a private civil enforcement agency operates. This Bill legislates the seizure of property, including land, cash, securities, and personal property, and legislates the garnishment of monetary assets such as employment earnings and deposit accounts.

Although there are some good aspects to this Bill, there are also what I consider some serious concerns that are being relayed to the opposition from the legal profession. I'll just cover a few of the principal concerns or suggestions that I would have to this Bill. There are three of them.

The first one is the provision of the draft Act dealing with garnishment which fails to reflect the Bank Act requirement that a writ served on a branch of a bank applies only to accounts maintained at the branch served, as was mentioned by the previous speaker. In addition, Mr. Speaker, I believe there are significant conceptual and practical difficulties with the proposed method of permitting seizure against joint accounts. I'm sure that when the Member for Lethbridge-West takes the floor again, he will clarify some of that.

The second concern, Mr. Speaker, is that the garnishment rules and the provisions of the draft Act affecting third parties place too much responsibility and potential liability on the garnishee. The provision should be amended to protect a garnishee who makes a bona fide effort to indemnify the funds being garnished. Further, although a 10-day grace period has been established for employers who are garnished, other garnishees and, in the case of the seizure of securities, intermediaries are not given this courtesy. Employers are not the only ones who prepare payments in advance. Garnishees and other third parties need a reasonable period between the time a garnishment summons is received and the time by which the institution can effectively indemnify funds or securities for the enforcement debtor. I would suggest that a garnishee should have at least a 10-day period, similar to that proposed by the draft Act in respect of employers, between service of the garnishment summons and the time the garnishment becomes binding.

Thirdly and finally, Mr. Speaker, I would prefer a consistency between the Civil Enforcement Act and the Personal Property Security Act, the PPSA, to the extent possible. One of the principle merits of the proposed draft Act is the opportunity it represents to make the law and procedure in this area consistent and rational. Divergences from the system established pursuant to the PPSA may inadvertently reduce the advantage significantly.

Mr. Speaker, with those few comments I'll put the floor over to one of my colleagues.

MR. SPEAKER: Is the Assembly ready for the question?

HON. MEMBERS: Question.

[Motion carried; Bill 49 read a second time]

8:50

#### Bill 41 Government Organization Act

Moved by Mrs. Soetaert that the question for second reading be amended to read that Bill 41, the Government Organization Act, be not now read a second time because the Assembly feels that the Bill does not recognize the need for the Legislature to approve the

creation and establishment of government departments and the delegation of powers, duties, or functions to any person.

[Adjourned debate October 26: Mrs. Burgener]

MR. SPEAKER: The hon. Member for Edmonton-Ellerslie.

MS CARLSON: Thank you, Mr. Speaker. I'm very pleased to have the opportunity to speak to this Bill this evening. Speaking to the amendment to the Bill, I have initially a few comments about the Member for Calgary-Currie's comments earlier this evening. She gave us some points of clarification, and I have some concerns with those clarifications. She indicated that fees are revenue neutral. In my estimation and in this side of the House's estimation, fees are never revenue neutral. There's always an impact on the user and always a negative impact. Most importantly, generally speaking it's those who can least afford it who are most negatively impacted every time you bring in a user fee. In our belief, user fees are nothing but a regressive tax.

She talked about delegating appropriate responsibilities with this Bill by sending them off to committees. We don't believe that's how you delegate appropriate responsibility. You do not go behind closed doors and away from the openness of the review process here in the Legislature.

She talked about the loan guarantees outlined in here. It's interesting how this Bill has to incorporate anything to address loan guarantees when the government has spent the last any number of months trying to convince us that they are never going to enter into them, even though that's been proven not to be true. They're now putting in provisions for handling loan guarantees in the future. I don't think that bodes well for this province by any means.

This Bill 41 does not recognize

the need for the Legislature to approve the creation and establishment of government departments and the delegation of powers, duties, or functions to any person.

We have a need in this Legislature to create more openness, not more secrecy. There is already a consolidation of power here in this Legislature, and it's centred in the hands of the ministers.

I'd like to share with you a few quotes that have occurred over the last few months. When I read these quotes, I would like to remind you that these quotes occurred after the Bovar incident, where we had another loan guarantee approved by this government. The first one is:

Since Ralph Klein became the Premier of this province on the 15th day of June, there has not been one guarantee, direct loan, or investment made by the government of the province of Alberta; i.e., the cabinet of the province of Alberta.

That was made by Ken Kowalski, and this quote is from *Hansard*, March 1, 1994.

### Speaker's Ruling

#### Referring to a Member by Name

MR. SPEAKER: Order please. There is a distressing tendency of hon. members on both sides of the Assembly to use names of members in this Assembly. Hon. members on both sides, in the front row of both sides, please be aware that we have ministers who have responsibilities by portfolio and we have members who represent constituencies. We do not have people who go by their names in this Chamber.

The Chair apologizes to a certain extent to the hon. Member for Edmonton-Ellerslie, but this has become too frequent by all members on both sides of the House. Please refrain from using names. We have the Member for Barrhead-Westlock, and we

have the Premier, and everybody knows or should know. If they don't know by this time in this Assembly, they shouldn't be here.

So please try to follow the rules. Hon. members, this also applies to the front row of the government side.

### Debate Continued

MS CARLSON: Thank you, Mr. Speaker, for reminding me of this point. I apologize, as I took these quotes directly out of *Hansard*.

To go back to that quote, it was made by the former Minister of Economic Development and Tourism. It came directly out of *Hansard*, March 1, 1994, page 333, some great length of time after he was a main participant in approving the Bovar loan guarantee.

The second quote:

The facts say something loud and clear, and that is that the government should not be in the business of business, and that is why under the leadership of the Premier of this province this government is getting out of the business of business.

This quote is from the Provincial Treasurer, *Hansard*, March 24, 1994, page 861, who was also a primary participant in the approving of the Bovar loan guarantee sometime prior to this comment.

The third quote:

As a matter of fact, this government, outside of Pacific Western Airlines . . . has not granted a loan guarantee.

That's the quote; that's the direct quote.

MR. DINNING: Give me a break. It's from your research, your bad research.

MS CARLSON: No, no. This is directly out of *Hansard*. I looked it up myself, Mr. Treasurer, and if you're saying that there's a problem with *Hansard*, then I'd perhaps suggest that you discuss it with them. This was a direct quote from the Premier of this province made on February 23, 1994, again some time after he was a main participant in approving the loan guarantee for Bovar.

This House at that time was deliberately misled and information was withheld. So if the government members do not accept this amendment as proposed, they will be a party to further consolidating power in the hands of a select few. These select few have already proven that they do not consult with their own members, much less the entire Assembly, and have proven with this Bovar fiasco that they are prepared to mislead their own members, the entire Assembly, and in fact the entire province. Remember, it was one of these select few who stated, and I quote: if there was something to hide, we'd do it. That's a quote by the Premier of this province from the *Calgary Herald*, September 3, 1994. So this is just one of many examples which show the existing dangers of a government which is not open, as they claim, but which is in fact closed and secretive.

I believe there is a great need

for the Legislature to approve the creation and establishment of [all] government departments and the delegation of powers, duties, or functions to any person.

In fact, there has never been a greater need in the history of this province for the Legislature to actually have the ability to scrutinize, to review, to debate and discuss the business of this government and to approve or defeat legislation that they propose.

9:00

We are facing unprecedented changes in legislation, much of which will have a radical impact on the life-styles of all Albertans. Albertans have a right to full disclosure and full debate on these changes. This is already a serious problem with regard to full disclosure and in some instances like Bovar a problem with

any disclosure at all. That we would move further away from a model where the government can be held accountable is, simply put, not acceptable. It is not acceptable to me, my colleagues, the people of this province, and from what we hear is also not acceptable to your own members. Are private members on that side of the House going to be satisfied or more importantly satisfy the requirements of their constituents by not knowing, by not having access to information about what the government is doing and where the government is going with respect to their activities and their actions? I certainly hope not.

We on this side of the House have serious concerns about moving towards greater secrecy in government and, in particular, with this government. My colleague the Member for Calgary-North West brought up a concern in prior debate which needs to be addressed. On page 79 of this Bill the Bill states that

- The Lieutenant Governor in Council may make regulations
- (a) respecting the management of records in the custody or under the control of a department, including their creation.

What this means is that regulation can determine what is going to happen to all of the information about individuals that this government holds. This means that the government can pass a regulation under this particular section that deals with records management. They can define and classify records, state which ones can be released, which ones can't be released. Think of how this could affect your own family for just a moment. Regulations can determine what will happen to all of the information that people want to get about their records in Family and Social Services, their medical records, their records with WCB, and their personal and corporate tax records. I'm sure that when the people of this province understand the effects of that particular regulation, they're going to be very concerned.

It also means that the government will be better able to withhold information damaging to them. Now, remember back a while to NovAtel and that in fact in order for us to get the information, we had to go to California and access their freedom of information Act. We've got MagCan and any number of situations that need to be investigated that this government has withheld information on in the past. We've only started to scratch the surface on the Paddle River dam scam. Now Bovar again – and this Bill is very dangerous from that perspective because it can supersede the freedom of information Act. I think that's something for us to be significantly concerned about.

If we pass this Bill, what will end up happening, in fact, is that many of the responsibilities, many of the checks and balances that currently occur that we have built into our system today and that require this government or any government for that matter, whether it's this government now or another government some time in the future, particularly after the next election – it puts into place all the checks and balances that would be pushed aside and pushed out of this Chamber and into other rooms where the public doesn't have any access. This, Mr. Speaker, I think should be cause for concern, because what ends up happening when the public is denied the information is that we get people really wondering: why is it that the government is being secretive and what in fact is it that they're trying to hide? If we go on the past record and we talk about NovAtel, they hid a considerable amount of information.

Under this Bill the different bodies that are not a part of the government are now going to be able to make decisions and make regulations. We have a question, then, about accountability. How does accountability come back into the Legislature? This again is a very serious concern. If we look at the Auditor General's report, he specifically said, Mr. Speaker, that there is a need for increased accountability, and in fact he lists a whole

series of guidelines. Here's another quote from the Auditor General's report: "We propose the following guidelines as a basis for developing a practical accountability framework." So by proposing those, what he's saying is that there is now no practical accountability framework and that it's required in order for there to be increased accountability within this government.

By bringing forward this Bill, by not adhering to the amendment that's been brought forward, we are going to lose the ground that we have gained over the last little while. There's a long way to go before we really are open and accountable, and to take a step backwards at this stage is definitely not what's in the best interests of the people in this province. The Auditor General highlights areas where in fact accountability has not been achieved or if we take a look at lotteries has been hidden by the failure of the production of three-year business plans. My belief is that the trend is to move away from that kind of reporting and not regress to a stage where nothing is open and accountable. If we have a section like this in the Bill which specifically lets outside departments make the decisions of the government and it becomes a piece of the legislation and the minister therefore is not accountable for it, well, how are we ever going to ensure that there is accountability to the taxpayer in this province?

Again that's what the reasoned amendment speaks to, keeping all public debate public. This is a public forum for us to debate issues. It's open to everyone in the province to come and participate by watching in the galleries. TV cameras are allowed in on a daily basis so that the public has some record of what's going on and can then intervene by accessing their MLA and having them speak on the issues and to the issues, and that's not going to happen if all of the decisions are made outside of this legislative body.

So those are just a few of the reasons why I support the amendment to this Bill, and I would urge all of my colleagues to do likewise.

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

MR. ZARIWNY: Thank you, Mr. Speaker. I would like to speak in support of the amendment. As the Member for Calgary-Currie had indicated, Bill 41 is indeed a Bill of delegated legislation. Bill 41 will become a statute which delegates to the administration two broad types of responsibilities. I think it's important to describe these responsibilities. One, there will be a delegation of powers to enact subordinate legislation, and I say subordinate to this House, subordinate to legislation passed by this House. This will be done by order in council or departmental regulation. The second thing that will happen is that powers will be delegated to render judicial or quasi-judicial decisions in disputes arising on administrative questions with little or no opportunity of recourse to the courts.

Now, delegation in itself is not wrong when the sheer weight and complexity of government becomes unbearable or if the government does not have either the time or the special knowledge to enact its own legislation on many complex matters. It would seem to me that none of these characteristics or none of these traits apply to this particular government.

If we follow this train of thought, the question we have to ask, Mr. Speaker, is: what are the reasons? What are the reasons for this delegated control to nongovernmental agencies, the ducking of responsibility that would explain the delegation of responsibilities that I have described? Could one of the reasons be that the pressure upon this Legislature is so great that it is desirable to leave some procedural and subordinate matters for regulations so that the Legislature can concentrate on essential principles of legislation? Is that one of the reasons? It would seem to me that

maybe this could be considered a reason: that matters of great technology where expert knowledge is required are best left to delegated authorities. Is that one of the reasons for this Bill? Could this be a reason: that Bill 41 allows greater advantage in permitting flexibility in scope of management? Could the fourth reason be that there is a need for government to act quickly in an emergency, as in wartime?

Mr. Speaker, I think that not one of these reasons applies. The reason is that this is a sneaky way of ducking responsibility. Sure the delegating of some legislative powers as envisioned by Bill 41 is inevitable and indispensable, but the kind of delegation that is contemplated in this Bill will lead to abuses and dangers which we all need to guard against.

**9:10**

Now, my colleagues have alluded in their many presentations that Bill 41 is undesirable or potentially dangerous in character. How many of the amendments in Bill 41 will allow ministers to introduce user fees, taxes, without coming back to this Legislature for ratification? But what I fear most, Mr. Speaker, is the power that British parliamentarians have called the Henry VIII clause. As a historical note the nickname came about because Henry VIII was associated with the attempt to make royal proclamations equal in force to statute law. His statute of proclamations of 1539 claimed this right and remained in force until his death in 1547.

DR. WEST: What relevance is this?

MR. ZARIWNY: Let me just finish, minister from Vermilion-Lloydminster. These clauses are potentially dangerous legislative powers that allow the ministers to modify provisions of their Acts or regulations without coming back to this House. There's the relevance. Those normally deal with minor matters and apply to technical concerns and usually are intended to eliminate the need for amending legislation or creating new legislation.

The last area of concern I have is: how many powers have been off-loaded or will be off-loaded to the private sector through Bill 41 in such a way that judicial control of the use of these powers is excluded? Now, the courts if given extensive powers of deciding disputes, for example, would be overloaded with cases. They would lack the special knowledge to settle disputes and as a result might apply less sympathy and understanding in consideration of the facts. This situation is a reason for delegation, but the government's rationale is not what I have just mentioned. Instead, the government has abandoned logic and prepared Bill 41 for other reasons.

Mr. Speaker, the clear justification for such comprehensive measures that are proposed in Bill 41 would have to refer to public safety. That would have to be the rationale, if there was going to be any rationale. When does public safety become a concern? When there's war. Why do we need this Bill? There's no war. If the delegation of the type contemplated in Bill 41 is to occur, it should but does not allow for full legislative scrutiny and effective criticism. We should be able to look at everything that you decide to do in that Bill.

In conclusion, Mr. Speaker, I submit that Bill 41 is not needed unless it clearly is necessary for the purposes intended. Thank you.

MR. SPEAKER: The hon. Member for Edmonton-Whitemud.

DR. PERCY: Thank you, Mr. Speaker. I would just like to again make clear what the reasoned amendment is that we're discussing, and it states that we

not now read a second time because the Assembly feels that the Bill does not recognize the need for the Legislature to approve [legislation] the creation and establishment of government departments and the delegation of powers, duties, or functions to any person.

I think that's the nub of the issue with this Bill.

As I mentioned earlier, things are not often black and white. While one can appreciate the need to try and streamline and consolidate, there are real concerns that the Liberal opposition has with this Bill. Now, let me give you an example of why we have those concerns. Certainly, if you go through the Bill in detail, clause by clause, there is section after section that does delegate to ministers, and those ministers may in turn delegate to others who are not subject to the authority of this Legislature. The minister may be accountable but we have not really seen ministers standing up and saying: what has occurred in my department is my responsibility. In fact what has often happened is that officials have been fired, but ministers have not resigned as a result of perhaps releasing information that they ought not to have, undertaking actions that were not consistent with the Legislation. So ministers have not heretofore, at least, accepted cabinet responsibility as the linchpin of parliamentary democracy.

One would expect, Mr. Speaker, that if we saw a system where ministers said, "Yes, it occurred in my department; it occurred when I was on duty; I was captain of the ship; I will accept the consequences," it might then be reasonable to accept a Bill that allows so much delegation and so much regulation as opposed to legislation, but we have not seen that willingness to accept responsibility for decisions. For example, with regards to the loan guarantee on the Swan Hills waste management, the former hon. Deputy Premier couldn't even remember signing a \$100 million loan guarantee or being at the cabinet table, despite the fact that the order in council suggests that he was there. So there's sort of a lack here.

Mr. Speaker, although the former Deputy Premier and Minister of Economic Development and Tourism would routinely sign orders in council, we've heard the Premier stand here and say, "Well, he didn't really know what he was signing; it was really routine," despite the fact that it required the expenditure of hundreds of millions of dollars. Ultimately a minister is responsible for what goes on and for every piece of paper that minister puts his or her name on. So as we go down this route of delegating more and more to ministers who then farm out that responsibility, there has to be a corresponding rise in ministerial accountability, and we haven't seen that to date. We've in fact just seen the reverse arguments, where the Premier will say that a minister can sign a piece of paper but that doesn't mean boom all. So I think there is a real problem here as we look at the intent of this Bill, which is to allow much greater government by regulation as opposed to legislation, because what legislation does is clearly define the rules of the game and set up the benchmarks and hoops that must be met as you want to undertake new operations.

Now, my hon. colleague for Edmonton-Strathcona talked about perhaps the reasons that one would undertake a Bill like this. There are other reasons. Certainly we've heard the term entrepreneurial government. Entrepreneurial government is an oxymoron. In fact, if we look at the history of how we acquired a \$30 billion debt, it was precisely because we had entrepreneurial government. We had TRT and NovAtel, where they thought: well, just one more investment; if we just make one more loan to a cellular, we'll get those purchases of NovAtel phones. That was entrepreneurial. It was idiotic, but it was certainly entrepreneurial, and it was undertaken and backstopped by a government entity. [interjections] There is some life over there, Mr. Speaker. It's a good thing to see.

As I was saying, when you look, then, at the history of entrepreneurial government and you look at this government in particular, Mr. Speaker, that's set up entity after entity after entity . . . In fact, this government, under former Premier Lougheed, a Progressive Conservative government, set up Crown corporation after Crown corporation – the Municipal Financing Corporation, AADC – every mechanism known to man to avoid legislative scrutiny. [interjections] This is a Progressive Conservative government. They set up all of these vehicles for avoiding legislative scrutiny. Well, that backfired. We now find ourselves with a \$30 billion debt, so they said: "Well, we're not going to go down this route anymore; let's try it through the back door, through regulation. Let's see how we can sort of avoid legislative scrutiny."

9:20

Legislative scrutiny is a good thing. It allows for reasoned analysis. It allows one to evaluate the benefits and costs of proposed policies. Had there, in fact, been debate within the Legislature on the creation of the Alberta Special Waste Management Corporation, perhaps we wouldn't have been locked in to what is in fact an obscene deal, obscene by any criteria: a guaranteed rate of return, a loan guarantee, a private-sector corporation that doesn't put up a dollar of equity, not a single dollar. They finance it through a bank debt, and they get a guaranteed rate of return. That's free enterprise, certainly, for them, but it's very expensive to the taxpayers.

That's what entrepreneurial government gets you. It gets taxpayers hit with losses, bad deals, and arrangements that the market wouldn't touch with a 10-foot pole. When you read this Bill, Bill 41, what this does is legitimize government intervention by stealth. It legitimizes the delegation of powers to individuals who were not elected and who are not accountable. Again, if ministers would stand up and say, "My department and agents within my department made a mistake; I'm responsible; I carry the can; I will resign," perhaps we might have some faith, but that's not been the case with this government or its predecessors. There's always someone else responsible, usually it's the NEP, but it's not the ministers themselves, because it's always forces beyond their control.

Now, what's going to happen with this Bill? We're going to see a variety, then, of delegated organizations which will screw up. And what will the minister who made the delegation through regulation say? "Well, we're not accountable. It was them. It wasn't us." If this were in fact legislated, if in fact ministers had to come through to this House, then perhaps we might see a higher level of accountability. After all, that's what the Auditor General requested and desired in the report that just came out. It wanted mechanisms of accountability. What this government is doing, as I mentioned, is intervention by stealth. They're going to intervene, set up these various DROs, give them through regulation powers to intervene, but the government will always disclaim responsibility.

Let's look at its track record, Mr. Speaker, with regards to various autonomous boards that they've set up, the various regional health boards. What is the sole purpose of those regional health boards? On one hand, one would expect it would be to consolidate and streamline the delivery of health care services in this province. On the other hand, it's a vehicle for the Health minister to always disclaim any responsibility for the provision of health care in this province. The minister will always say, "Well, that's not my responsibility; it's the health board." And this is exactly what we're going to see as a consequence of this Bill. We're going to see minister after minister after minister point their finger at somebody else and say: "It's them; it's not me.

It's that darn old regulatory mechanism that we set up, and it's the individuals, this privatized entity that screwed up, but it's not us."

So what we'd like to see, Mr. Speaker, is an ounce of backbone in the front bench. We'd like to see, then, a willingness to accept responsibility for decisions undertaken by agents under their responsibility. We'd like to see a move, then, to accepting responsibility and being accountable for results. I would urge all hon. members to read the Auditor General's report, because that sets out a very clear framework of accountability, and if one then compares the framework of accountability set out in the Auditor General's report to Bill 41, they're completely and utterly different. There are no mechanisms of accountability in this Bill. There are mechanisms of subterfuge. There are mechanisms by which accountability can be off-loaded onto others. There are mechanisms by which responsibility could be delegated to others, but certainly no mechanism by which accountability is held to the minister that delegates.

This is a Bill that is an abomination because it undermines the authority of the Legislature. It is completely and utterly inconsistent with any framework of accountability that this government has discussed and said: "We want output measurement, performance-based measurement. We want accountability in the system." Well, everybody else is going to be accountable, but the front bench isn't going to be accountable. It's always going to be someone else's responsibility but not theirs.

I'm willing to bet money that we're not going to see any minister get up and say, "I was responsible for a mistake undertaken by my department." There are going to be plenty of opportunities for ministers to say that in the coming days, but I lay you odds that there's not going to be a-one of them stand up and say: "We made a mistake. It was undertaken by an agent within our department, and I as minister am responsible." What this Bill does is exactly symmetrical to the setting up of these regional health boards. It's just a mechanism by which cost cutting can be imposed on others, responsibility for the consequences can be imposed on others without any mechanism of accountability whatsoever for the minister in question.

So when I look at this reasoned amendment, I would urge all hon. members of this House to support this reasoned amendment, to say: send it back.

Thank you, Mr. Speaker.

MR. SPEAKER: The hon. Member for Edmonton-Avonmore.

MR. ZWOZDESKY: Thank you, Mr. Speaker. It's a great pleasure to rise before you again, especially twice in one day. I've been giving the debate very careful scrutiny, and I've been listening particularly to my hon. colleague from Edmonton-Whitemud on this Bill. I'm a bit shaken by the intent and purpose of what's behind this Bill, and sort of reflecting on what it is that we're here to do and what it is that we're here to protect. The essence of it all comes down to that word "democracy."

As I review the definition of democracy, I always turn to what I said in this House the very first time I spoke, because part of it is entrusted and spelled out in *Beauchesne*. I quoted it the first time on my feet in this House, and I will quote it several times more I'm sure, Mr. Speaker. I just want to remind the House that one of the main things we're here to do is to protect the minority from the improvidence and tyranny of the majority. That is part of the democratic oath that we took when we assumed this job.

When I see a blatant attempt to again centralize total power by the government in a typically big brother fashion, I ask myself: what purpose is it really? What is the government really up to here? I have to speak on behalf of the minority, perhaps, in this

case. The minority in this instance might be those people who would feel that they have a case to argue with the government that might culminate in some sort of a lawsuit being brought forward, but through this Bill we see evidence that in fact they wouldn't be able to.

The issue of democracy is kernelled in the word "trust," Mr. Speaker. When I look at the word trust in terms of what it is to us as legislators, we have a huge responsibility in this House with the power that people have entrusted us with to make the right decisions. I don't think this is the right decision with this consolidation. This asks for ultimate and complete trust and faith to be placed in the government. Why would anyone in Alberta right now give that complete and total trust to this government? Well, they could give it if they had any examples of that trust being in good capable hands, where it was warranted. Trust isn't something you simply pick up and take. It's something you earn. You work for it. You make right decisions based on what the majority feel in the province, and you protect the rights of the minority in doing it. I don't see that as having happened here.

9:30

Can you trust what has happened, for example, in the area of health care, Mr. Speaker? Can we honestly say to ourselves that the public has been listened to when we see, as in the Edmonton-Avonmore, Edmonton-Mill Woods, Edmonton-Ellerslie ridings – for example, the Mill Woods hospital rally attracted 15,000 to 20,000 people on two separate occasions, and their pleas were basically ignored. That's not trust the way that we would know it. They could have at least stopped and listened to what those people had to say. I can appreciate that the Premier has said on many occasions that he will not go to large rallies, he will not attend them. He may attend them if they're in his own best interest. But sometimes you have to venture out there and listen to what the other side is saying, especially when it is such a large number of people. Here we have a prime example of trust having been abused.

We see the same thing in the so-called consultative processes that led up to the education restructurings. We traveled the province a great deal this summer and last spring, meeting with many, many people, some of whom sat in on those public consultation meetings, as they have been falsely labeled by this government. Again, the words back to us time and time again were that it seemed as though the government even then had an agenda last summer and the summer before and all they were looking for was a group that would yield a rubber stamp onto that. That's not public consultation. That might have gone over better if it had been said to the people: "We have some ideas. Will you please come and reflect your comments on these ideas. Will you look where we can improve them." But that's not quite what was done. So, again, a fundamental trust has been abused here.

So I have some difficulty, as do many, many Albertans, perhaps most Albertans, in bestowing even more trust into the hands of this government. Seniors trusted this government, and then as the days wore on and the years went by, more and more of the goalposts kept shifting along the way. Now the goalposts have shifted yet again. They've gone from the hon. Member for Calgary-Nose Creek, the Minister of Community Development, just when seniors were perhaps getting used to dealing with him and his people, over to the Health people. That may turn out to be a good move. I don't know. The point, Mr. Speaker, is that when you design a game and you set out the rules and you put the goalposts in place, surely when you're the referee and you're the biggest player in the game, you should at least try and be fair in

your mannerisms and the way you play that game. That's not what's going on here, and that's not what's gone on.

There's a dangerous trait starting to develop on the other side, and I wish I could impact the members opposite a little more strongly other than just with words by telling them that it's not appropriate for them to just jump up and claim the fame and then when it's convenient shift the blame. That seems to be a modus operandi that we've seen once too often. So the purpose of this Bill centralizes that power in the Big Brother fashion, and I'm not in favour of that.

Government ought to be much more accountable, is another point. We saw references to that in the Auditor General's report. We've been reading those same comments for many, many years. Now, I know that we're going to probably see a few attempts made by some of the members opposite, including the Provincial Treasurer, I'm sure, now that I've got his attention. I'm sure that you'll be trying to do that, hon. Treasurer, and I applaud you in advance for your efforts in that regard, should you choose to do that and act on his recommendations, because accountability is what this is all about, Mr. Speaker. I ran on accountability. I stand accountable to my constituents every day when I meet with them and so do most members in this House, I'm sure.

The point is that when we go looking for answers to that accountability, so seldom are they there. Who's accountable for the NovAtel fiasco, for example? Has anybody yet claimed responsibility for that? Taxpayers want to know. Who's going to be responsible for the Bovar affair? Who's going to be responsible for the Paddle River affair? We have one issue that's been shoveled off to Saskatchewan for a ruling because there are conflict of interest charges. We have another issue now that's gone off to B.C. No doubt by the end of the week we'll have another one probably going to Manitoba. I mean, we're going to run out of provinces pretty soon. We won't have a place to refer things to. So accountability is paramount here.

We can't have accountability when we see the preferential awarding of transportation contracts, for example, or the lotteries dispensations being done the way they've been done. Now, I know there are undertakings to change that, and in fairness I want to watch that one very carefully just to see if the promises get delivered on it, because we can't have more broken promises. I think that it's really a double standard that the government sets up for itself when it gets into a situation such as advocated by this Bill, where they really exercise their power and control by suggesting that it's okay for them to go and sue common ordinary citizens, hardworking businesspeople, small businesspeople, be it in the liquor industry or wherever, but it's not okay for those little businesses and those little people, those ordinary citizens to have a fair chance, a level playing field in return and get back at government. Broken promises, double standards, and, as the Member for Redwater said today – heaven forbid it should ever come to pass – double cross.

Why then would we trust more power? Why would we allow that to happen, Mr. Speaker? I can't find a reason. I've been searching through here. I've been listening carefully. I've been reading *Hansards* for the previous couple of days, and I can't find a single reason to accept putting more trust and allowing more power to be consolidated under that side of the House as it stands, at least the front bench.

So as I look at this reasoned amendment brought forward, I stand to speak in favour of it. With that, I would like to adjourn debate.

MR. SPEAKER: On the motion to adjourn?

MR. DAY: No.

MR. SPEAKER: The hon. Member of Edmonton-Avonmore has moved that the debate be now adjourned on Bill 41. All those in favour, please say aye.

SOME HON. MEMBERS: Aye.

MR. SPEAKER: Opposed, please say no.

SOME HON. MEMBERS: No.

MR. SPEAKER: The motion fails.  
The hon. Member for Medicine Hat.

MR. RENNEN: Thank you, Mr. Speaker. I'll be brief, very brief. I've been sitting here for two days listening to the opposition go on and on and on about how terrible this Act is and how they have to bring in a reasoned amendment because they have such grave concerns about this Act. So I took the time to read an Act, and I would just like to quote a little bit from an Act that I'm reading here. In this Act it says:

(1) In accordance with the Public Service Act, there may be appointed a Deputy Minister . . . and any other employees required to conduct the business of the Department.

(2) The Minister may appoint persons to advise him or inquire into and report on matters under the Minister's administration and a person so appointed [can] be paid the remuneration and expenses that the Minister prescribes.

It goes on and on and on, everything that we've heard them talking about all night long. This is the Act that we are currently operating under called the Department of Advanced Education Act. This Act is repealed and replaced by the Government Organization Act. All we're doing is consolidating a number of Acts, putting them into one Act. We are making the government accountable, transparent, and we're wanting to move on. This government is accountable to the people of Alberta, and if the people of Alberta don't think this government's doing a good job, they'll tell them that at election time.

Now, we've also heard from the opposition great hue and cry about delegation, about how terrible it is that the ministers are going to have the power to delegate. Well, let me read from the same Act,

Mr. Speaker. In this Act it says:

The Minister may in writing delegate any power or duty conferred or imposed on him by this Act or any other Act or regulation under his administration to an employee in the Department or an agent of, or a member, officer or employee of an agent of, the Government.

[Mr. Deputy Speaker in the Chair]

That's what they've been talking about all night long, how terrible this is. Well, this Act was passed in 1983. We've been operating this way for the past 11 years, and I don't think it's been the doom and gloom that they've been predicting.

**9:40**

Let's look at one more. We had one of the speakers opposite that was so concerned about the fact that the minister was going to have the ability to make donations and to acquire land. Well, let's read a little bit further in here, section 7(1).

The Minister may, where he is authorized to do so by regulation made under subsection (2), acquire real or personal property and donate or lend that property to a person or organization.

Well, Mr. Speaker, I'm sure that the wording that I read in this Bill, Bill 41, is almost identical to the wording that they have been crying about for the past two days, bringing in reasoned amendments. This is not a reasoned amendment. This is a filibuster. It's nothing more than a filibuster. If you're really concerned about the people of Alberta, let's get on with the business of the House. I think the opposition should think about what they're doing.

Mr. Speaker, I would like to move that we adjourn debate on this Bill. [interjections]

MR. DEPUTY SPEAKER: Order. [interjections] Order. I'm pleased that the hon. Member for Medicine Hat directed his motion through the Chair, because the Chair was about to stand up and request that the hon. member speak through the Chair. But anyway my congratulations for speaking through the Chair.

The hon. Member for Medicine Hat has moved that we adjourn debate on Bill 41. All those in favour, please say aye.

SOME HON. MEMBERS: Aye.

MR. DEPUTY SPEAKER: Opposed, please say no.

SOME HON. MEMBERS: No.

MR. DEPUTY SPEAKER: Carried.

#### **Bill 51 Liquor Control Amendment Act, 1994**

DR. WEST: Mr. Speaker, Bill 51, the Liquor Control Amendment Act, 1994, addresses about three concepts. One is consideration for the taxpayers of Alberta, fiscal management. The second is the rectifying of policies in the past that created unlevel playing fields, unfairness in the marketplace, and allowed for a policy that could be changed in regulations daily, that showed favouritism and privilege within a marketing system in the Alberta Liquor Control Board. The Act also defends the province of Alberta against a loophole that could be taken advantage of by certain companies outside, one namely Air Canada.

Before I start and before others get into the debate, I'll give a few comments. I'd like to just recognize a member who served well in this Assembly in opposition: Sheldon Chumir from Calgary-Buffalo. If I go back to 1991, one of the statements made by Sheldon was on the issuance of the wine boutique licences that allowed 33 and a half percent discounts and the allocation of those licences. Liberal Laurence Decore said: this smells of football locker room and backroom Tory fund-raisers. Then Chumir said: the move shows that the government doesn't know enough to get out and not play politics when you have the type of people that have applied for these licences. Now, to make those statements, there must have been a perception that there wasn't a level playing field and that there were policies that perhaps allowed discretion in handing out certain discounts and situations as it related to the sale of alcoholic beverages in the province. We'll come back to that in a minute, but I say that in respect to the opposition who have been raising certain innuendos in other areas as it relates to the defence of certain small businesspeople that were in the wine industry and how we may have taken away their rights.

If you look back to the opposition's statements and even to Sheldon's statements, at the time the opposition was crying foul with the exact policy that they're now crying foul here that we're going to bring forward in Bill 51. You can't have it both ways, folks. You're either for fairness and equity or you're against it.

You're either for a level playing field or you're against it. You can't have it both ways, but perhaps if you're a Liberal you can.

Now, let's go to the Bill itself. Section 23 changes the fiscal year-end of ALCB to conform with the fiscal year of other Alberta government agencies and departments. Previously the ALCB operated under a calendar, January to December, fiscal year. Under this amendment its fiscal year will run from April 1 to March 31. In addition, to conduct an audit of the ALCB from January 4, '94, to March 31, '94, we have to add that this would cost the taxpayers of Alberta in excess of \$50,000. So extending it on a one-time basis to a 15-month cycle will save \$50,000 to \$75,000. A 12-month audit analysis usually costs around \$75,000. So therefore running it 15 months and then going back to a yearly audit will save us this money. The Auditor General has accepted and agreed to this one-time arrangement. Again I point that out because we've been criticized unduly, I think, that we're not complying with the Auditor General. We're even consulting with him beforehand so that when we pass the legislation, he will in fact accept it before the investigation.

Bill 51, sections 37.1(1) and 37.1(2): the level playing field for all liquor retailers. The amendment to section 37 ensures that all liquor retailers, all class D licensees that are out there, some 500, compete on the basis of a level playing field in the new liquor retailing environment which has evolved since privatization in September 1993. The amendment will remove from ALCB or any other authority the ability to make any special arrangements with particular segments of the industry in order to provide an advantage over the competition. Under normal business practices all businesses competing in a particular segment of the retail market are subject to the dynamics of the marketplace free of government intervention. The same principle should apply to liquor retailing.

For historic information value here to this section, remember at one time we had a different price of products to hotels. We had a different price of products to licensees, some 6,000, in the restaurant and other trade business. We had a discount to some breweries. We had a discount to cold beer stores that was different than others: 10 percent to some on a volume discount; 8 percent to others. We had a different discount for wine boutiques: 33 percent. We had different discounts for special events. Way back when, we had corkage fees that varied between certain operations and others. Over the years these types of policies had created in the marketplace all these different levels of playing field. We constantly had lobbying, coming to us either for a different set of rules for that segment or asking us to change it. The Hotel Association used to come and say: please take that markup off us and give us a level playing field with other jurisdictions.

#### 9:50

The amendment would remove privilege and favouritism from the decision-making process where decisions impact on liquor administration and the fiscal management of the province, as privilege and favouritism normally means in the final analysis: conferring a financial benefit paid for by taxpayers.

The amendment also strengthens the existing legislation. That legislation, passed one year ago, requires all retailers of liquor products to receive wholesale prices only effective October 1, 1994. That regulation was already passed as an OC one year ago, and this codifies that. All retailers were made aware of this amendment when it was passed approximately one year ago. Those retailers include former cold beer stores, former wine boutiques, retail liquor stores, agency stores, hotel off-sale outlets, and both winery- and brewery-based retail outlets, of which none exists today.

The amendment also ensures that more than 500 existing retailers, who have invested more than \$100 million and employ upwards of 3,000 Albertans, are confident that the government stands behind its policy intent and objective as enunciated last fall; namely, that the principles of free enterprise and consequential market forces will prevail under the new model of liquor retailing that is evolving in this province.

Finally, in Bill 51 sections 29(1) and 40 refer to the Air Canada situation. It establishes that the ALCB can legally charge a markup on liquor products imported into Alberta, stored, and then removed from Air Canada's bonded warehouse in Calgary regardless of whether the liquor products are consumed on flights in Alberta or out of Alberta. This has been the practice for many years. With recent court challenges in other jurisdictions Air Canada is trying to abrogate its responsibility in paying fair tax in any jurisdiction by accessing liquor products stored in a warehouse in that province, then taking it into the air, and selling it without paying any tax.

This amendment specifically addresses the lawsuit filed by Air Canada but not yet heard in the courts due to an appeal of a similar case in Ontario, where Air Canada successfully sued the Ontario liquor board and presently the Ontario board is now in appeal of that. If the Air Canada lawsuit was to proceed beyond the filing stage and was eventually successful, it could result in the loss of revenue to the province of Alberta of 4 and a half million dollars immediately and then of course in perpetuity as we went forward.

It is desirable that all liquor products purchased by Air Canada outside of Alberta and imported into Alberta have the same markup as any other product purchased in or consumed in Alberta. Where the product is purchased or consumed is immaterial and should have no bearing on the ability of the ALCB to level the markup. They should be under the same rules as any other business in the province of Alberta or any citizen in the province of Alberta who must pay the tax that is levied in policy at the present time.

The amendment to section 40 will clarify that the ALCB is empowered to issue import permits. This clarification relates to, again, the Air Canada lawsuit. While the liquor administration regulation provides for the issuance of import permits, the Liquor Control Act only provides for permits for sale of liquor in Alberta at the time and event set out in the permits. It is imperative that the Liquor Control Act be consistent with the regulation. The meaning of this is, of course, that Air Canada then could go into another province and purchase, import it to a province that doesn't yet have these regulations or this legislation, and bring it in under the existing permits, again escaping paying the tax in the province of Alberta. Therefore, sections 40 and 29(1) effectively ensure that Air Canada as well as anyone else in the province of Alberta obeys the laws of Alberta and doesn't escape through some loophole that they may have found in paying the due taxes and supporting this province in the programs that it must through the collection of such taxes.

Well, I'll await the debate, but I'll keep in mind as I hear the debate – I have several other examples here from dates going back to July 22, 1991, and I'm going to keep these in abeyance, where the Liberals have been making comments. If I see that they come up periodically to make unreasonable debate, I'll just point out to them what they said in the past.

Mr. Speaker, Bill 51, the Liquor Control Amendment Act, I would like to move.

MR. DEPUTY SPEAKER: The hon. Member for St. Albert.

MRS. FORSYTH: No, you can't say anything about it. It's a good Bill.

MR. BRACKO: Especially for small business.

Thank you, Mr. Speaker. As I go through the Bill, it's a small Bill . . . [interjections] Well, we don't have a \$40 billion debt on this side, thank you.

The Bill is a small Bill, and it addresses several issues, as the minister has said. One: we look at a 15-month audit, an audit which will cut the costs. That's very important. Another one: a level playing field. You know, it's interesting to note that there wasn't a level playing field in the beginning. That's when you plan it, a level playing field for everyone, and no one would disagree with a level playing field. That should happen, and that's part of business. Anyone who understands business – as you see, for years, as the minister has said, they did not understand business because they had different rates for different things. It still doesn't provide for a level playing field. There are certain groups out there that still cannot have liquor in their stores, and that should have been addressed in the beginning. Now, this is a Bill to try and cover some of the mistakes they've made.

I've gone through the province visiting liquor stores and talking to the different owners from northern Alberta right down to Cypress Hills Provincial Park in Cadomin and discussed how the privatization has affected them, and you know, I've been told that they didn't know from one minute to the next what was happening: a state of flux. They were afraid. They were stressed out because one minute the Premier would say one thing, the next minute the Deputy Premier would say something else, the next day it would be changed, the next day the minister would say something else. They couldn't get their act together.

Mr. Speaker, when you spend \$250,000 to \$300,000 up to a million dollars on a store, you want to know what's happening. You want to know the rules, and the rules were not given clearly. They changed from day to day, from time to time. You know, the uncertainty is still there. They don't know what to expect. At least, hopefully if the government keeps their promise, they may be able to recoup their capital investment before other groups are allowed into the market.

You know, over time as we look at this Bill, we can see that there are still a lot of things that have happened in the past. Over the last year we were promised a market evaluation of all the properties. We still haven't received it from the minister. It was a commitment he made that we would receive it. Also, the revenue. They said it's going to be \$55 million profit; we see it's \$34 million. We're asking for the market evaluation of the warehouse so we can know exactly what the cost is and what it should be sold at. He promised information on stores that were sold at one time for \$500,000, the sale was canceled and sold for \$325,000, but that wasn't given and still hasn't been given. We want to know about the leases, individual leases, and so on. This information isn't forthcoming; it's not provided.

DR. WEST: It's all a matter of public record.

MR. BRACKO: We asked you for that. It's not public record.

AN HON. MEMBER: You guys haven't given it to us.

MR. BRACKO: Yes. You said you'd give it to us.

MR. DEPUTY SPEAKER: Hon. member, would you please speak through the Chair?

MR. BRACKO: You know, as we look at Bill 51, Mr. Speaker, it has sent shock waves through the hearts and souls of the creators of wealth in our province: the small business community. The province has become a destroyer of wealth creation through the legislation, through this Bill. The province talks about our Alberta advantage, but the government is involved in the Alberta disadvantage to small business. The message that is coming through from small business from all parts of this province is that this government doesn't understand business, and they use examples as I visit the stores, talk to chambers of commerce, businesspeople around the province. They point to Gainers, MagCan, NovAtel, Swan Hills, and the list goes on. The lack of confidence comes from the past and present action. The facts are before the people. The commitment from the business community is a fact that this government needs to understand and get in touch with small business so they can assist small business instead of being destructive.

**10:00**

We can see that again the province has destroyed the confidence by sections 37(2) and (3), which I'll read:

(2) Any policy of, and any agreement entered into, and representation made or purported to be made by, the Corporation, the Board or the Chairman before October 1, 1994, with or to a Class D licensee or a person who became a Class D licensee on or before October 1, 1994, respecting the price of liquor on or after October 1, 1994, are null and void and are not binding on the Corporation.

(3) Any right or benefit that may have arisen under an agreement, policy or representation described in subsection (2) is null and void from the date the agreement, policy or representation was made.

The government – the government – has made a contract with these small businesses, and all of a sudden retroactively they have canceled these contracts, and this again has allowed small business to realize that this government can come anytime and cancel a contract with them. It's unbelievable. Instead of supporting small business, they come in retroactively: if you don't do what we want, we will retroactively remove the contract. This happened to 23 wine shops. As I go around and get the information, this government has blackmailed or bullied these wine shops. They have ordered them to take the buyout or they will be destroyed. "We'll make sure you don't get your liquor supplies. We'll surely do other things to make sure that you will be out of business and very quickly." They use every possible means.

We look at it. We heard from the Member for Bow Valley: 1984, George Orwell, as he was relating to a smoking Bill we are proposing to help prevent smoking, and better health for our young people. He calls it 1984, Big Brother taking over. Well, if the government can break contracts with any small business or any citizen in this province retroactively – if that isn't Big Brother, you tell me what it is. I heard from the Member for Calgary-Montrose talking about a police state. If this isn't the beginning of a police state, when the government can control thoroughly and openly the actions of businesspeople in our community . . . Also, I heard the Member for Peace River giving the Heil Hitler salute three times when this smoking Bill was being debated. It was embarrassing to hear it happen. Heil, heil. Three times, Mr. Speaker, he went on.

#### **Speaker's Ruling Decorum**

MR. DEPUTY SPEAKER: Hon. member, it's a rather difficult thing for the Chair to call, but there are many people in this land who are most upset with what you're doing even though you claim you're imitating someone else. If it's bad for someone else to do it, it really ought not to be replicated, and it is not really germane

in a leadership kind of way to the Bill we have at hand. Could you please carry on with your talk in a more parliamentary fashion?

MR. BRACKO: Thank you, Mr. Speaker, for those words of wisdom, and I withdraw my gestures.

#### Debate Continued

MR. BRACKO: Mr. Speaker, I guess this government has learned from their mentor Peter Pocklington: if you don't pay your bills, sue me to get it. With the taxpayer's dollar it becomes a difficult problem. We'll prolong the lawsuit. We'll break you. You know that great Tory member. And now the government has taken the same approach with their wine stores. They terrorize them. If you don't settle, we'll bring in legislation to eliminate your ability to sue, and if you do, you will never win. This is related from the owners of the wine stores. What is the implication for the average Albertan who can't afford to sue the government? Then they use our tax dollars to fight any lawsuit.

We see that there were six out of the 23 shops who weren't bullied by this province, and they are The Wine Shop Ltd., International Wines Inc., Jasper Wine Merchants Ltd., Nose Creek Wine Merchants Ltd., The Wine Cask Inc., and 350119 Alberta Ltd. Mr. Speaker, their right to sue has been taken away. All they're asking is for the law courts to decide, not for the government to take their right to sue away from them. This is most embarrassing, and I'm sure the backbenchers should be standing up and protecting the small businesspeople to make sure the contracts are carried out. The legal profession has said that the minister has stated the information incorrectly. They have said:

If this Bill is passed in its present form, it will totally invalidate a legal action that is already before the courts. I cannot believe that this the kind of action could seriously be considered by any democratic government. If the government feels itself to be right, let the courts decide.

#### Point of Order Sub Judice Rule

DR. WEST: Point of order.

MR. DEPUTY SPEAKER: The hon. Minister of Municipal Affairs is rising on a point of Order. Would you cite?

DR. WEST: It's the sub judice ruling, Mr. Speaker. There is a case that's been filed and it's going before the courts. Many of the comments that are coming here tonight are very close to passing a judgment or passing an opinion about a case that I think comes close to a subject that we shouldn't be talking about in this Assembly under the sub judice rules. I point that out because I ask for your consideration on that point, knowing of course that there is a case before the courts. It works both ways too. You could jeopardize the system both ways.

MR. DEPUTY SPEAKER: Would you like to comment, St. Albert, on this point, and then the Chair will confer with the Table officers.

MR. BRACKO: Thank you, Mr. Speaker. I'll carry on. You know, it's interesting that they always find a way out. Looking at it, we even have the chamber of commerce . . .

MR. DEPUTY SPEAKER: I'm sorry, St. Albert. I was wanting you to comment on the point of order. If you don't choose to comment on the point of order, then once I've had a chance to

confer with the Table officers, I will make a ruling on the point of order that was raised by Municipal Affairs. If you wish to continue debate, then just give us a few moments.

MR. BRACKO: Okay. I'll be more careful as I make this statement.

MR. DEPUTY SPEAKER: No, no, no. First of all, the Chair was not aware that it was in fact before the courts in Alberta, and we thank the minister for apprising us of that. As long as we don't talk about the details of the specific case, then it won't be sub judice in the sense that if we talk about it in the general terms of the Bill as opposed to the specific applications and the cases, presumably the people that are involved. As long as you're not in that area, then you presumably will be on relatively safe ground. But once you start getting into their case, which it would appear you were venturing upon, then you would come into conflict with the sub judice rule under Standing Order 23.

With that in mind, St. Albert, we would invite you to continue on the general aspects of the Bill.

#### 10:10 Debate Continued

MR. BRACKO: Thank you, Mr. Speaker. This action taken by the government has caused great concern to chamber of commerce members, the businesspeople of our province. In fact, the chamber is looking at it as a priority item at their next provincial body meeting, because business communities are not sure where they stand and how they'd be affected by it. So it's important that we allow contracts to be carried out, that we allow the business community to know exactly where we are. It's important to know that this government supports big business and not take away their right to go out there and bid for government contracts and then be left in the dark. A level playing field is what's needed, but once a contract's been made, a contract should be kept, and that again is very important to safeguard the democratic rights in our society.

With that, I will conclude, noting that we will make amendments to eliminate the actions taken by the government in the next reading.

MR. DEPUTY SPEAKER: The hon. Member for Edmonton-Whitemud.

DR. PERCY: Thank you, Mr. Speaker. I'd like to raise one basic set of points with regards to Bill 51. In his introductory remarks the hon. minister dwelled on how the initial licences were allocated, and he dwelled on reports of the time that it was in fact not done fairly, that although there had been an accounting company hired and this accounting company was to go through and choose on the basis of business plans that had been submitted by hundreds of Albertans, they in fact not only chose on the basis of business plans but chose on the basis of the colour of a political card. That was an allegation that was made at the time, and it appears to be an allegation that is founded in reality, if we're to accept the comments of the minister.

Now, the issue is the following. There are 23 of these wine boutiques. Some were granted on the basis of favouritism. I don't think there's any doubt about that. Some were not. The real issue is that when we look at the six that are still outstanding, we do not know how those licences were granted. All we do know is that there are six individuals or partnerships out there who on the basis of a business plan were awarded a licence. They then went to the bank and borrowed money on that basis. They have their life savings tied up in it. Now the income stream

associated with that business plan has effectively been reduced significantly. So there is a potential loss here.

The real issue, I think, is not whether or not it is a Tory that's experiencing a loss or whether in fact it's somebody who got the licence as a result of a lottery. The issue is that there was a contract in place. Individuals' lifetime income streams are going to be associated badly. Normally what they can do, Mr. Speaker, is they can have recourse through the courts if they feel that their property rights have been violated. There's a property right here, and property rights ought to be sacred. I firmly believe that property rights ought to be entrenched in the Constitution. We're now dealing here with a property right that has been conferred by government, property rights, then, that have led people to undertake investments, property rights that have led people to undertake significant borrowings.

[Mr. Herard in the Chair]

Now, the minister justifies his resort to this legislation on the grounds that these property rights ought not to have been given out in the past because they had been given out unfairly. That's true, but I would draw the hon. members' attention to Swan Hills and the property rights that have been conveyed to Bovar. In fact, under the joint venture agreement as amended, Bovar is completely insulated from any market risk whatsoever. Both the Royal Bank and Bovar worked extensively to ensure that there was not an element of risk associated with that contract, so even if in fact Bovar loses the rights to operate the facility, they're still protected. They're not going to lose a cent. So I look at this and I say to myself that I see one class of individuals here who have gotten the property rights, some of whom may have been Conservatives, some of whom may not have been. We see that there are six licences still outstanding and that they are litigating.

Again, Mr. Speaker, when I read section (2) – if I may, let me just quote section (2). It says:

Any policy of, and any agreement entered into, and representation made or purported to be made by, the Corporation, the Board or the Chairman, before October 1, 1994, with or to a Class D licensee or a person who became a Class D licensee on or before October 1, 1994, respecting the price of liquor on or after October 1, 1994 are null and void and are not binding on the Corporation.

That's 37.1(2). And sub (3):

Any right or benefit that may have arisen under an agreement, policy or representation described in subsection (2) is null and void from the date the agreement, policy or representation was made.

I read that, Mr. Speaker, as retroactivity. In our society if you start moving down this path of retroactivity, it poses serious problems.

This is an issue that came up in the debate on pensions. For many of you that were here when that debate was discussed, one issue that came up was retroactivity. I think once you start moving down this road and you're saying that one set of rights that we've conferred we're going to retroactively remove, that really brings such an element of discretion into how our society operates and brings such an element of discretion in terms of the rules of the game. This is why you've heard many members on this side of the House say they prefer legislation as opposed to regulation, because at least if the rules of the game are set out in legislation, it's more difficult to amend or break.

Now we see that here we are in fact trying to legislatively remove those rules, and that gives us the forum here to debate whether or not this is consistent with natural justice. I think there are many elements of this Bill that are worthy of support; they're cost saving. I firmly believe in the notion of a level playing field, but my concern is the issue of natural justice as it relates to those

wine boutique owners who have not settled. Is what is being undertaken consistent with natural justice? I would think, Mr. Speaker, that that has to be an overriding consideration when we debate such legislation. I regret that I do not have the opportunity to hear exactly what the hon. minister has to say about the issue, first, of retroactivity, and second, how these sections are consistent with natural justice. I don't think they are, and that concerns me greatly.

There are some enduring principles that ought to be embodied in legislation. When you start moving down the path of retroactivity, the distributional consequences are severe, and all people then feel: what happens if a different party comes in? Let me give you an example that brings home the worst case scenario. It's in British Columbia, and it's with regards to forest tenures. This is relevant, Mr. Speaker, because what I'm trying to suggest is that once you start retroactively changing property rights, it introduces an element of economic insecurity into the market. The government of British Columbia introduced certain tenures, forest licences that were to be in perpetuity. The New Democrats came into power, and perpetuity had about a five-year life to it. They retroactively changed those rules of the game. We've had a sequence of different types of forest licences and forest agreements in the province of British Columbia, and it changed consistently as new governments have come in.

10:20

What has occurred, then, is that nobody is willing to invest in the forest industry because they're quite unsure about their access to fibre and the security of supply of that fibre. Each time the rules of the game were changed, the government that did it did so on grounds that they thought were very legitimate. The issue then is: at what point is it legitimate to in fact introduce legislation that is not consistent with natural justice? Regardless of how ill conceived the initial allocation of licences was, Mr. Speaker, regardless of whether or not it was granted under political favouritism, I think you have to bear in mind that it was a contract. At what point do we then start saying that that's not a contract we like?

Now, I must accept some responsibility, because I have said we should abrogate the contract with Swan Hills waste management, but I've done that knowing full well that they've got an ironclad contract and they're not going to lose a cent. It's the taxpayer that's going to. On the other hand, the loss by abrogating that contract and paying out what is legally set out there is far cheaper than maintaining the plant in operation, Mr. Speaker. And I'm not saying extinguish their rights. I'm saying allow the litigation process to occur if we do in fact abrogate the contract.

But what we see here, Mr. Speaker, is something quite different. We're abrogating the contract and extinguishing, as I read this, their right to litigate, and I think that is not consistent with natural justice. Although there are many elements of this Bill I can support, I think all hon. members should ask themselves: at what point do we draw the line? Is it not possible, then, just to hive off this subsection and deal with it differently? Can't we allow the process to go through the courts and bite the bullet? Because these wine boutique owners have not been given the same economic insulation that Bovar has, and I do not think it is fair. I don't think it's consistent with natural justice.

So while I can support many elements of the Bill, I do have very significant concerns about sections 37.1(2), (3), and (4). Again, I would just conclude my comments by saying that my concern arises because I think they're inconsistent with natural justice. And I think that even if these allocations were given out improperly, a contract was signed, the rules of the game were

there, and individuals have got their assets tied up in these investments, so let them use the court system.

Now, if I'm wrong, if in fact, as the minister says across the floor, this does not extinguish their rights, I would like the minister to go on record and say that so it's in *Hansard* and so the record clearly sets out how this does not extinguish their rights and how it is consistent with natural justice.

With those comments, Mr. Speaker, I would conclude my comments on Bill 51.

MR. DAY: Mr. Speaker, I wonder and I would hope that we could take the member opposite at his word. He said that there are a number of elements in that particular Bill that he has no problem with and in fact would like to see some changes. Obviously, the committee stage is the ideal opportunity at which to do that. At that point, then, and given that consideration and considering that we do hear arguments that are somewhat – it's somewhat of a generic speech. I'm not minimizing or diminishing the concerns the member opposite has raised, but in fact we hear it a lot: we like this Bill; we think it's really good except for the one way this little "t" is crossed here; we don't quite like that. Those can be addressed in committee.

I would ask the question now if the concerns have been exhausted at second reading, remembering that again it can come up at committee, in which the minister can say if he can delete the offending portions. I would like to call the question on second reading on this particular Bill.

MR. ACTING SPEAKER: Are we ready for the question?

HON. MEMBERS: Question.

[Motion carried; Bill 51 read a second time]

**Bill 54**  
**Alberta Corporate Tax Amendment Act, 1994**

MR. DINNING: Mr. Speaker, I rise to move second reading of the Alberta Corporate Tax Amendment Act. In pretty quick summary, what this Bill does is implement the change in policy outlined in the February 24 Budget Address where we amended the Alberta royalty tax credit to reduce the Crown royalty shelter, the maximum amount of royalties on which ARTC is paid, from 2 and a half million dollars to \$2 million. We eliminated the sunset provision for the program at 31 December, '94. We reduced the top credit rate from 85 percent to 75 percent, and this applies not only to corporate income tax but to personal income tax as well for those who benefit from the Alberta royalty tax credit.

I would so move second reading, Mr. Speaker.

MR. ACTING SPEAKER: The hon. member for Edmonton-Whitemud.

DR. PERCY: Thank you, Mr. Speaker. Certainly we support the intent of Bill 54, and as the hon. minister suggested, this is legislation that's consistent with initiatives in the budget. The industry itself has accepted the reduction.

Where we would have hoped to see something in addition is with regards to the issue of somehow measuring the effectiveness and accountability of the ARTC, because there are no specific goals, expected results, or performance measures of what we're getting with the ARTC program in any way discussed with this program. It's clear that some of the provisions of the Bill – in

fact, removing the expiry date, et cetera – will provide greater continuity, and that's good.

The reduction in the rate itself is consistent with the provincial government's fiscal stance. But at some point when legislation is being brought in in a Bill like this, we would actually like to see a direct link between what the Alberta royalty tax credit is supposed to achieve and the link in legislation. We've argued, for example, that appropriations Bills should have explicit links between the amount of money that's being allocated and the expected results. This is, in a sense, an ideal benchmark or test case by which it could have been introduced, because clearly the government by conferring this benefit on the energy industry expects a certain set of results.

**10:30**

They've done simulations as to what this program yields, and it would be nice to start to see legislation that walks us into expectations of performance so that there's a direct mechanism of accountability between a Bill such as this and the anticipated results. It would be nice to see that in the appropriations Bills, but this was in fact an opportunity for the government to have undertaken such a process.

[Mr. Deputy Speaker in the Chair]

On occasion the Auditor General has expressed concerns about the program and the distribution of benefits and what has been achieved. Again, in light of the Auditor General's reports in previous years, it would have been useful to see that embodied in the legislation itself.

With those comments, Mr. Speaker, I'll conclude on this.

HON. MEMBERS: Question.

[Motion carried; Bill 54 read a second time]

**Bill 55**  
**Loan and Trust Corporations Amendment Act, 1994**

MR. DINNING: Mr. Speaker, I move second reading of Bill 55, the Loan and Trust Corporations Amendment Act, 1994.

Mr. Speaker, there are a number of amendments in this. I never like to think of keeping my colleagues up late at night to talk about housekeeping matters, just as much, I suppose, as our Edmonton colleagues. I know we've had a long, weary day, but this is an important Bill in that not only does it look after a number of matters that are perhaps of a housekeeping nature, but it provides for the continuance in another jurisdiction of a provincially incorporated loan or trust company to be able to operate in another province or under federal jurisdiction. As the hon. members know, this is one further step necessary to allow for the amalgamation of North West Trust Company and Canadian Western Bank. An important step, Mr. Speaker, that I would ask all members to support at second reading.

MR. DEPUTY SPEAKER: The hon. Member for Edmonton-Manning.

MR. SEKULIC: Thank you, Mr. Speaker. I rise in support of Bill 55. I think the Bill is as the hon. Treasurer has described it: it is merely a housekeeping Bill. It is going in the right direction.

The highlights of Bill 55. It's designed to amend the Loan and Trust Corporations Act to allow an Alberta incorporated loan or trust corporation to continue as a loan or trust corporation in other

Canadian jurisdictions. The objective of the amendments is to provide the legislative authority for the amalgamation of North West Trust with the Canadian Western Bank. We've seen that to be not a forced or a shotgun marriage. It's an appropriate one, a suitable one, one that gets us off the hook at the best cost or least cost.

I support the intent of Bill 55 to provide for the amalgamation of North West Trust and the Canadian Western Bank. I feel that the Canadian Western Bank has shown a commitment to providing financial services to Albertans and western Canadians. The acquisition of North West Trust will allow the Canadian Western Bank to diversify its operations and give customers greater access to services.

So all round this is a positive Bill. I would simply state in my concluding remarks that I would encourage members of the Legislature to support this Bill.

[Motion carried; Bill 55 read a second time]

**Bill 56**  
**Nova Corporation of Alberta Act**  
**Repeal Amendment Act, 1994**

MR. DEPUTY SPEAKER: The hon. Member for Calgary-Mountain View.

MR. HLADY: Thank you, Mr. Speaker. I am pleased today to move second reading of Bill 56, the Nova Corporation of Alberta Act Repeal Amendment Act, 1994.

This Bill provides for temporary rates . . .

AN HON. MEMBER: Question.

MR. HLADY: Can I just finish these two sentences? I'll be quick.

This Bill provides for temporary rates to be put in place for Nova Gas Transmission Ltd. effective January 1, 1995, until such

time as the Public Utilities Board can confirm or vary those rates following public hearings.

In addition, Mr. Speaker, this Bill confirms that existing complaints lodged under the Nova Corporation Act or under part 2 transitional of the Nova Corporation of Alberta Act Repeal Act will be continued and dealt with by the regulatory authorities under the provisions of the repeal Act.

MR. DEPUTY SPEAKER: The hon. Member for Edmonton-Whitemud.

DR. PERCY: Thank you, Mr. Speaker. Well, we certainly support the intent of this legislation. It reflects and responds to the desires of producers that Nova Gas Transmission operate as a freestanding entity and fall under the jurisdiction of the Gas Utilities Act and be subject to the regulation of the PUB in order to eliminate the perception that rates charged by Nova Gas Transmission actually subsidize Nova's nonregulated businesses. This was an issue that in fact had been dealt with in part we had thought in Bill 29, but when you legislate in haste, you have often to come back to the well another time, and this is what this Bill reflects.

So we certainly will support this Bill. We certainly do expect, though, that it actually could have been cleaned up in one fell swoop last session rather than coming back yet again. This is housekeeping that comes about from some sloppiness on the part of some members of the household.

With those comments, Mr. Speaker, I will conclude.

[Motion carried; Bill 56 read a second time]

MR. DAY: Well, Mr. Speaker, reflecting on the high degree of collegiality witnessed here tonight, I think we all deserve some time to reflect further on our deliberations, and with that I would move that we adjourn and reconvene tomorrow at 1:30 o'clock.

[At 10:38 p.m. the Assembly adjourned to Thursday at 1:30 p.m.]