Legislative Assembly of Alberta

Title: **Wednesday, November 28, 2001 8:00 p.m.**
Date: 01/11/28
[Mr. Shariff in the chair]

THE ACTING SPEAKER: Please be seated. Before I recognize the hon. minister, may we briefly revert to Introduction of Guests?

[Unanimous consent granted]

head: Introduction of Guests

THE ACTING SPEAKER: The hon. Member for Clover Bar-Fort Saskatchewan.

MR. LOUGHEED: Thank you, Mr. Speaker. I'm pleased to introduce to you and to the members of the Assembly present the 153rd Ardrossan Scouts, who are accompanied by their leaders Garth Petryk, Harold Petryk, Andrew Otway, and Steve Otway as well as Ken Ferguson. The 153rd are mostly residents of the Ardrossan area. We also have some tie this evening. The son of our Sergeant-at-Arms was a member of the 153rd at one time. Would you please rise and receive the welcome of the Assembly?

Thank you.

head: Government Motions

Freedom of Information and Protection of Privacy Act Review Committee

22. Mr. Coutts moved:
Be it resolved that
(1) A Select Special Freedom of Information and Protection of Privacy Act Review Committee of the Legislative Assembly of Alberta be appointed to review the Freedom of Information and Protection of Privacy Act as provided in section 91 of that act, consisting of the following members, namely Mr. Rathgeber, chairman; Mrs. Jablonski, deputy chairman; Ms Carlson; Ms DeLong; Mr. Jacobs; Mr. Lukaszuk; Mr. MacDonald; Mr. Mason; and Mr. Masyk.
(2) The chair and members of the committee shall be paid in accordance with the schedule of category A committees provided in the most recent Members' Services Committee allowances order.
(3) Reasonable disbursements by the committee for advertising, staff assistance, equipment and supplies, rent, travel, and other expenditures necessary for the effective conduct of its responsibilities shall be paid subject to the approval of the chair.
(4) In carrying out its duties, the committee may undertake limited travel within Alberta to consult with interested Albertans.
(5) In carrying out its responsibilities, the committee may with the concurrence of the head of the department utilize the services of the public service employed in that department or the staff employed by the Assembly or the office of the Information and Privacy Commissioner.
(6) The committee may without leave of the Assembly sit during a period when the Assembly is adjourned.
(7) The committee must submit its report, including any proposed amendments to the act, within one year after commencing its review.
(8) When its work has been completed, the committee must report to the Assembly if it is then sitting. During a period when the Assembly is adjourned, the committee may release its report by depositing a copy with the Clerk and forwarding a copy to each member of the Assembly.

THE ACTING SPEAKER: Seeing nobody else wishing to speak, the hon. Minister of Government Services to close debate.

MR. COUTTS: I close debate, Mr. Speaker.

[Government Motion 22 carried]

THE ACTING SPEAKER: Hon. members, may we briefly revert to Introduction of Guests?

[Unanimous consent granted]

head: Introduction of Guests
(reversion)

THE ACTING SPEAKER: The hon. Member for Edmonton-Glenora.

MR. HUTTON: Thank you, Mr. Speaker. I have two wonderful constituents sitting in the public gallery this evening, and I'm not the only one in the room that thinks they're wonderful. Parliamentary Counsel's wife and son are here this evening. They are residents of Glenora, and I would ask them to please stand and be recognized by the Assembly. They're Ritu Khullar and Rob's son, Samir Reynolds. I'd like you to rise and receive the warm welcome of the House.

Thank you, Mr. Speaker.

head: Government Bills and Orders
head: Third Reading

Bill 24
Regulated Forestry Profession Amendment Act, 2001

THE ACTING SPEAKER: The hon. Member for West Yellowhead.

MR. STRANG: Thank you, Mr. Speaker. I'd like to move third reading of Bill 24, the Regulated Forestry Profession Amendment Act, 2001.

The new Regulated Forestry Profession Amendment Act will replace the Forestry Profession Act and consolidate the regulations of Alberta's two professional forestry associations under one statute. The new act was developed to improve the quality of forest service throughout the province by enhancing the professional requirements of foresters and forest technologists. By continuing to ensure high-quality standards within the forestry profession, the act serves to protect both the public interest and Alberta's sustainable forest resource.

I wish to acknowledge the efforts of both forestry associations, the Alberta Registered Professional Foresters Association and the Alberta Forest Technologists Association, together with Human Resources and Employment and the Alberta sustainable resource department in developing these amendments. Mr. Speaker, I think this is a great example of two organizations getting together and looking at the public good and working to make sure our forests are there for our grandchildren as well as our great-grandchildren.

Thank you very much, Mr. Speaker.

THE ACTING SPEAKER: The hon. Member for Edmonton-Ellerslie.

MS CARLSON: Thank you, Mr. Speaker. We support this bill in third reading.

THE ACTING SPEAKER: The hon. Member for West Yellowhead to close debate.

MR. STRANG: Thank you very much, Mr. Speaker. First of all, I'd like to certainly thank all members in the House for this aspect of going over this Regulated Forestry Profession Amendment Act. I think our forests will be well protected by this.

Thank you very much.

[Motion carried; Bill 24 read a third time]

Bill 25
Victims Restitution and Compensation Payment Act

THE ACTING SPEAKER: The hon. Deputy Government House Leader on behalf of the hon. Minister of Justice and Attorney General.

MR. ZWOZDESKY: Thank you very much, Mr. Speaker. On behalf of the hon. Minister of Justice I'm pleased to move third reading of Bill 25, which is the Victims Restitution and Compensation Payment Act.

THE ACTING SPEAKER: The hon. Member for Edmonton-Strathcona.

DR. PANNU: Thank you, Mr. Speaker. I'd like to spend some time putting on the record some concerns that I have about the bill. I did express some of those concerns when I spoke earlier on the bill. I continue to harbour those concerns and also have had, of course, the advantage of having had some time to reflect further on those concerns, so I would like to spend some time sharing those concerns with the House and putting them on record.

It's a very important bill. It's a bill that will certainly do two things: assure victims of crime that they are compensated for the loss, personal or financial, that they may have incurred as a result of the crime committed against them, and this bill also will ensure that the proceeds of crime are not left with the people who are guilty of committing those crimes and are taken away from them and used, in fact, to compensate the victims of those very crimes. So I am fully supportive and the New Democrat caucus is fully supportive of those principles and intentions behind the bill. But because this bill deals with the powers of police, powers of the state, and powers of the courts when dealing with the matters that are covered under this act, I want to make some observations on the nature of the concerns that I think the House should take note of. At this late stage in the debate on this bill the only thing I can hope for is that in developing the regulations for this bill, some of these concerns, if not all of these concerns, will be addressed by the minister and the department.

8:10

Mr. Speaker, I'll make my observations relative to two or three different parts of the bill. First of all, dealing with part 1 of the bill, part 1 of this legislation is extremely broad and in my view invades the federal law powers related to criminal law. It's a matter that I raised before in my earlier observations, and I want to reiterate this. The province obviously cannot assume such authority, particularly when it is so directly related to "illegal acts," which includes a contravention of the Criminal Code and other federal legislation. It was a point I made on that day; I'm making it more explicit now.

My further study of this act leads me to also observe that this part of the act may be unconstitutional as it does invade federal criminal law jurisdiction and in any event is overly broad in its scope. I had the benefit of consulting with some defence lawyers, and one of them observed – and I want to share that observation with the House – that it was reminiscent of Cicero's days, when a successful prosecutor was able to take an individual's property as part of his or her award. Several individuals might want to allege illegal acts simply to obtain another person's property, and that remains a concern of mine here. There's nowhere a clear definition or process described or defined in this act which would help the courts determine who the real victim is. Who is the victim? I think that still remains a question.

This part also makes the unfortunate assumption that individuals are victims – and this is a point that I just made – without a court having found that to be the case. That's what I mean when I say that there's an absence in this act of any procedure that would allow the courts to determine who the victim in fact is. We are well aware of the numerous cases where people claim to be victims and after trial were found in fact to be perpetrators and not victims.

Section 4(2) permits an ex parte application, which in my view is again rather dangerous and out of step with present criminal and civil practices in providing notice to other parties. There is no reason why, if such application is to be brought, the possessor of the property does not receive notice. These portions of the act may be struck down as being in violation of the natural rules of justice.

Section 5, again in my view sets too low a standard, permitting the court to be satisfied only on "reasonable grounds," which in the judgment of people that I have consulted is lower than even the civil standard of balance of probabilities. It appears to me, therefore, that if property is going to be seized as a result of illegal acts, the test ought to be proved beyond a reasonable doubt.

Section 5(3) also raises some difficult questions; for example, where there is no necessity to charge or convict anyone of an illegal act. This leave open the possibility that where it appears to be an illegal act, property can be seized. Imagine the bank manager who fears that a loan is in jeopardy, who perceives the act of his customer to be illegal. Pursuant to this legislation, with the help of the state the individual's bank account could be seized without notice in order to secure the outstanding indebtedness. I suspect that writing a cheque when there are not sufficient funds to cover the cheque but when the customer believes there are sufficient funds might be considered an illegal act, and reasonable grounds could be made. This is the kind of potential mischief that the legislation can create.

I think that I'm concerned about the provisions of section 6, which would allow a police officer, for example, in essence to provide a restraint order based upon reasonable grounds only. This means that the police officer could seize the item or restrain it in some fashion without the concordance of a judge. It appears to me that section 6 is in direct violation of section 8 of the Charter of Rights and Freedoms, which protects all of us from unreasonable search and seizure. The Supreme Court of Canada in the case of Hunter versus Southam held that any search and seizure without judicial authorization is presumed to be unreasonable and unlawful. This legislation is totally inconsistent with that cornerstone decision. At a minimum the police officer should have to obtain a warrant from a judicial officer, which in these days can be obtained by a tally warrant system. That at least would protect the individual from an unlawful seizure. Section 6 in my view in that sense is seriously flawed and may in fact be unconstitutional.

Section 6 is not saved by subsection (3) or any of the judicial

reviews that occur later, as provided for in this piece of legislation. What has been found in the past is that the police drag their feet on these sorts of things, and the courts subsequently condone that practice by issuing retroactive orders, therefore protecting the police and its actions.

It's of interest that section 6(6) provides for a penalty for anyone who fails to comply with the direction but does not provide for a penalty against the seizing individual where the seizure may subsequently be proven to have been unlawful, unreasonable, or unconstitutional. I did make that point when I spoke a few days ago on this bill. This matter has not really been addressed at all in the bill at this stage in third reading.

So in relation to my observations relating to part 1, one must bear in mind that the Criminal Code now has a specific section that deals with restitution and the use of Criminal Code judgments, which can be enforced without the necessity of a trial. One wonders in light of that why the government feels that this particular provision of the legislation is necessary.

In addition, this type of legislation waylays the longstanding tradition of civil disputes being settled between the parties involved. This now allows a plaintiff to pursue another person's property using the state and the state's resources. One can see quickly how this legislation can be abused and undoubtedly will be if this flaw is not removed and this bill becomes law.

Now to part 2 of the bill, Mr. Speaker. I'm concerned that once the minister is to be a party against the respondent – that is, the accused person – this means that the state will carry the expense of the restitution application and the respondent will have to bear that cost himself or herself. This is an attempt by the state to avoid a plaintiff bringing a civil action and in my view ought not to be permitted.

Section 25(1) is extremely problematic, Mr. Speaker, in that it requires the offender to provide documentary evidence as to his or her assets. As you can appreciate, in a civil case this might not be mandatory, but in this instance the individual would be subject to contempt of court or further punishment by the court for failing to provide this kind of information.

Section 25(2) does not appear to contemplate the alleged victim testifying; rather, the restitution assistance hearing will proceed based upon representations only. Despite the fact that the Criminal Code does not provide the power to have someone denied their liberty in this instance, the courts are permitted to bind the offender over to appear for the hearing where one has failed to attend. This suggests that somehow the province has the right to deny the individual bail. In my view, this is likely to be unconstitutional again, Mr. Speaker.

8:20

So these are some of the concerns that I have. They're based on sound advice from lawyers who have long experience in defence. I hope that in the drawing of the regulations some of these matters will be addressed or at least will be considered and that before this piece of legislation is proclaimed, those concerns will be explicitly addressed. I think it's in the interest of all of us and in the interest of justice and in the interest of maintaining the integrity of the justice system that we address those issues.

Thank you, Mr. Speaker.

THE ACTING SPEAKER: The hon. Deputy Government House Leader on behalf of the Minister of Justice and Attorney General to close debate.

MR. ZWOZDESKY: Thank you, Mr. Speaker. I did listen very intently to the hon. member opposite, and I assure him that his comments will be brought to the attention of the mover of the bill, the hon. Minister of Justice. With that, I would close off debate.

[Motion carried; Bill 25 read a third time]

Bill 26
Trustee Amendment Act, 2001

THE ACTING SPEAKER: The hon. Deputy Government House Leader on behalf of the Minister of Justice and Attorney General.

MR. ZWOZDESKY: Thank you, Mr. Speaker. It's my pleasure to rise again on behalf of the hon. Minister of Justice to move at third reading Bill 26, the Trustee Amendment Act, 2001.

THE ACTING SPEAKER: The hon. Member for Edmonton-Ellerslie.

MS CARLSON: Thank you, Mr. Speaker. We've had some concerns about this bill but in general support it, so we'll support it at third reading.

THE ACTING SPEAKER: The hon. Deputy Government House Leader on behalf of the Minister of Justice and Attorney General to close debate.

MR. ZWOZDESKY: Thank you, Mr. Speaker. On behalf of the Minister of Justice I want to thank all members of the House, including those opposite, for their support. With that, I will close debate.

[Motion carried; Bill 26 read a third time]

Bill 27
Provincial Court Amendment Act, 2001

THE ACTING SPEAKER: The hon. Deputy Government House Leader on behalf of the Minister of Justice and Attorney General.

MR. ZWOZDESKY: Thank you, Mr. Speaker. Once again on behalf of the hon. Minister of Justice I'm pleased to move at third reading Bill 27, that being the Provincial Court Amendment Act, 2001.

MS CARLSON: Mr. Speaker, this is a bill that we have been pleased to support at all readings, and we will continue to do so.

THE ACTING SPEAKER: The hon. Deputy Government House Leader on behalf of the Minister of Justice and Attorney General to close debate.

MR. ZWOZDESKY: Thank you, Mr. Speaker. Once again on behalf of the hon. Minister of Justice, thank you to all members in the House for their support. With that, we'll close debate.

[Motion carried; Bill 27 read a third time]

Bill 29
Alberta Municipal Financing Corporation Amendment Act, 2001

THE ACTING SPEAKER: The hon. Minister of Finance on behalf of the Member for Calgary-North Hill.

MRS. NELSON: Thank you, Mr. Speaker. On behalf of the Member for Calgary-North Hill I move third reading of the Alberta Municipal Financing Corporation Amendment Act, 2001.

THE ACTING SPEAKER: The hon. Member for Edmonton-Ellerslie.

MS CARLSON: Mr. Speaker, once again this is a bill that we have been happy to support at all readings, and we will do so again.

THE ACTING SPEAKER: The hon. Minister of Finance on behalf of the Member for Calgary-North Hill to close debate.

MRS. NELSON: Thank you, Mr. Speaker. I'm pleased with the support from the House on this bill.

[Motion carried; Bill 29 read a third time]

Bill 30
Appropriation (Supplementary Supply) Act, 2001 (No. 2)

THE ACTING SPEAKER: The hon. Minister of Finance.

MRS. NELSON: Thank you, Mr. Speaker. I'm very pleased to move third reading of Bill 30, Appropriation (Supplementary Supply) Act, 2001 (No. 2).

MS CARLSON: Mr. Speaker, this is a bill that we have a lot of problems with in terms of the process by which the government decides what it will and will not fund, but I think that we have had adequate debate about that at other levels in this Legislature, so we will call for the question.

THE ACTING SPEAKER: The hon. Minister of Finance to close debate.

MRS. NELSON: Thank you, Mr. Speaker. I appreciate the debate that has occurred through the process of this bill and have noted the comments from the opposition and thank them for their support in third reading.

[Motion carried; Bill 30 read a third time]

head: Government Bills and Orders
head: Second Reading

Bill 31
Miscellaneous Statutes Amendment Act, 2001 (No. 2)

THE ACTING SPEAKER: The hon. Deputy Government House Leader.

MR. ZWOZDESKY: Thank you, Mr. Speaker. On behalf of the hon. Justice minister it's my pleasure to move for second reading consideration Bill 31, the Miscellaneous Statutes Amendment Act, 2001 (No. 2).

Miscellaneous Statutes typically is not a debated bill in the Assembly because it comes to the House under an all-party agreement, as everyone knows. However, another informal all-party agreement has been reached whereby the Electoral Boundaries Commission change outlined in Bill 31 will be discussed this evening and tomorrow afternoon under the following understanding: first, this evening in Committee of the Whole the Opposition House Leader and the leader of the third party New Democrats will speak; secondly, tomorrow afternoon interested members will have an opportunity to speak at third reading, the only proviso being that all do understand that Bill 31 will pass third reading prior to 5:15 p.m., when Her Honour is expected to attend upon the Assembly to grant royal assent to bills awaiting royal assent, including Miscellaneous Statutes.

Thank you, Mr. Speaker.

8:30

THE ACTING SPEAKER: The hon. Deputy Government House Leader on behalf of the Minister of Justice and Attorney General to close debate.

MR. ZWOZDESKY: Thank you, Mr. Speaker. With those comments I would ask for debate to be closed.

[Motion carried; Bill 31 read a second time]

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

[Mr. Shariff in the chair]

THE DEPUTY CHAIRMAN: We shall call the committee to order.

Bill 31
Miscellaneous Statutes Amendment Act, 2001 (No. 2)

THE DEPUTY CHAIRMAN: Are there any comments, questions, or amendments to be offered with respect to this bill? The hon. Deputy Government House Leader.

MR. ZWOZDESKY: Thank you, Mr. Chairman. We do have one amendment that we'd like to place on the floor at this time. I believe there are copies available for distribution. As it's going around, I think I should just point out that the nature of this amendment is simply to correct a small typographical error which unfortunately occurred. So this particular amendment to Bill 31, which of course is the Miscellaneous Statutes Amendment Act, 2001 (No. 2), deals with that typographical error.

Specifically, while it's being circulated, with your permission, Mr. Chairman, I would just read what that amendment is all about in order that we might proceed more expeditiously in dealing with it. The suggestion is to amend the bill as follows. In part A section 7(8) is amended by striking out "(4)" and substituting "(6)." That is the entire amendment. As I indicated, it is purely a clerical error, and we would certainly ask for the support of everyone and their understanding to see this amendment dealt with in order that we can get on with the rest of the debate during the committee stage.

THE DEPUTY CHAIRMAN: We shall refer to this amendment as amendment A1.

MS CARLSON: Mr. Chairman, we support the request for this particular amendment and call for the question on the amendment.

[Motion on amendment A1 carried]

THE DEPUTY CHAIRMAN: The hon. Member for Edmonton-Ellerslie.

MS CARLSON: Thanks, Mr. Chairman. Happy to take this opportunity to start the debate on the Electoral Boundaries Commis-

sion Act, part of the miscellaneous statutes amendments as we see them before us. We are happy to support this particular amendment, which requests that a commission be appointed on or before June 30, 2002, which actually states a specific date, which is only laid out in terms of years in the original commission act. We say that this couldn't happen too soon. Because of the nature of the agreement for our debate tomorrow afternoon, I will take some time this evening to go over the history of what's happened with the boundaries distribution in this province for the past couple of decades to indicate why it is that this is required and that it's very important for us to have an opportunity to debate boundaries and the way boundaries are drawn in this province given the kind of past history we've seen in this province.

Mr. Chairman, as every citizen of Alberta knows or should know, the Charter of Rights and Freedoms gives Canadians the right to vote in an election of members of the House of Commons and here in the Legislative Assembly. This right to vote is guaranteed, but it doesn't mean that every Albertan actually gets a vote of equal value. In this province traditionally since 1951 we've seen that rural ballots have a great deal more weight than those in the city. This is an unpopular statement to make in this province, because everybody always wants to capture the rural population in an election. Traditionally, for the last 30 years or so, that capture of votes has gone to the Conservatives, and nobody really wants to rock the boat on this issue, but it is really important to stand up and be counted on this particular issue in terms of what's right and what's wrong. If the Charter of Rights and Freedoms gives Canadians a vote, it is not a bonus. It is a right that we are given under our Charter. That vote is guaranteed and, we believe, should be of equal value.

Now, what does equal value mean in terms of the kind of legislation we see before us? It may not be a one-for-one vote, Mr. Chairman – I'm not saying that – but at least it has to be reasonable. As people who work in this building have said to me, their vote here in Edmonton or in Calgary or any other urban center should be equal to every other riding in this province. So that is what comes up for debate when we take a look at the amendment that's being brought in to establish electoral boundaries.

There's been a significant imbalance in urban versus rural representation in Alberta since certainly the late '60s. Back in the early '50s Alberta rural residents outnumbered urban dwellers, Mr. Chairman, but by 1957, which is the year I was born, the balance had shifted with more people living in cities than in the country. At that time 150,000 to 200,000 more lived in the cities than in the country. According to the Canada West Foundation, in 1996 the provincial census put the ratio at 4 to 1, or almost 80 percent urban population and 20 percent rural.

We know that as time continues, the rural and farm populations are dropping in absolute terms and as a population percentage. Urbanization has affected almost every jurisdiction in this province and certainly throughout Canada. Since representation by population is a fundamental democratic principle, electoral boundaries have to be revised from time to time to reflect where people actually live, and increasingly in Alberta that means Edmonton and Calgary. Particularly it's an issue in Calgary at this time with their rapidly increasing population.

Of course, there's the argument we hear from rural Alberta that there's little reason to alter the status quo from their perspective. We hear the arguments that the constituencies are very large – they are very large – that it's harder for the MLAs to get around in them, and that therefore their constituents should have a greater weighted vote than ours do, but in fact those are relatively solvable problems, Mr. Chairman. If the Legislature were to compensate those MLAs who have wide-ranging boundaries with access to travel and access to placing constituency offices with support services in strategically placed locations, it would counterbalance some of those issues in terms of access to their MLA and the length of time it takes an MLA to cross.

It is a privilege for those people to be overrepresented in terms of population. It is a privilege denied to those people in the larger centres. Not a popular concept in this province but in fact a reality. It's a lifestyle choice for people to live where they are, and they should not be hampered by that choice in terms of their ability to weight their vote in elections.

8:40

Alberta for a long time had 83 constituencies, and we find that the overrepresentation and underrepresentation are quite extensive. If we take a look at 1991, Athabasca-Wabasca had a population of 16,621 at that time, or 46 percent fewer people than the average constituency, while Calgary-Fish Creek had a population of 35,666, or almost 16 per cent more than the average. This means that the people who live in Athabasca have more than twice the representation and voting power that people in Calgary-Fish Creek have, and it takes so few of them to elect an MLA. So these are the kinds of inconsistencies that boundary redistribution is supposed to correct. Not actually the case, Mr. Chairman, as we will find out as I proceed through this debate.

There was a pivotal case laid out in 1989, Dixon versus British Columbia, where B.C. Supreme Court Judge Beverley McLachlin interpreted the right to vote in section 3 of the Charter as requiring relative equality of voting power. By this she meant that electoral divisions must be relatively equal in population. The importance of this ruling for Alberta cannot be overstated, because it opens the door for a possible Charter challenge. The grounds for this kind of action would be that the right of a citizen to representation shouldn't be unduly compromised by the voter's place of residence. Judgments of the Supreme Court of Canada have suggested maximum permissible deviations from the provincial average of plus or minus 25 percent. In Alberta this would mean a constituency could have a population as small as 23,085 or as large as 38,475, based on those 1991 numbers.

I would strongly suggest, Mr. Chairman, that when the committee is struck to take a look at electoral boundaries, they are strongly held by this decision in 1989 and the criteria laid out. Those have not been the exact parameters that have been used in the past. It's resulted in a great many problems in this province. We would not like to see that happen again, because we are bound by this decision by the Electoral Boundaries Commission, as it states in the act, for at least eight years, not longer than 10 but at least eight years. So the decisions they make after this commission is appointed on or before June 30 of 2002 are binding for a very long time and binding at a time when we see seriously increased representation in the cities.

At the time of the Dixon case half the constituencies in Alberta deviated from the provincial average by more than plus or minus 25 percent, Mr. Chairman, so that was significant. In August of '89 the Alberta Legislature formed an all-party Select Special Committee on Electoral Boundaries to analyze the Charter's implications for electoral boundaries and the distribution of constituencies. Then in November of 1990 the provincial government passed a revised Electoral Boundaries Commission Act, which included some provisions to Charter-proof electoral boundaries. Then in January of 1991 the government appointed an Electoral Boundaries Commission based on the new act. However, by May '92 the commission found itself deadlocked over the issue of the creation of hybrid or what we call 'rurban' constituencies, which helped to reduce some of those tensions between urban and rural populations. In fact, I

myself have a 'rurban' constituency. Two-thirds of the area is rural in nature, only holds 237 of the people in my constituency. The other 35,000 or so live in one-third of the constituency, which is very much an urban area.

In July of 1992 the final report of the commission was thrown out, and a special select committee of the Legislature comprised of seven MLAs – four Tories, two New Democrats, and one Liberal – was established. Opposition parties refused to participate in the select committee, objecting in principle to the process of politicians drawing their own boundaries. That was, I think, a very good move on behalf of who was the Official Opposition at the time, the New Democratic Party, and the other opposition party, which at that time was the Liberal Party. So what happened at that point, then, was that the people left on the committee were Tory MLAs. They were Bob Bogle from Taber-Warner as the chair, Stockwell Day from Red Deer-North as the vice-chair, Pat Nelson from Calgary-Foothills, and Mike Cardinal from what was then Athabasca-Lac La Biche.

The committee held no public hearings but listened to nine invited consultants and 18 other groups. The committee's recommendations for constituency boundaries were presented in November of 1992 and were based on the average populations drawn from the 1991 federal census figures for Alberta. Some problems with that, Mr. Chairman, as you can see: no public input; a little in-party decision-making was made. What happened as a result of those decisions: the elimination of Calgary's only New Democrat-held constituency and the creation of four special consideration districts with an average deviation of 42 percent below the provincial quotient, two of which happened to be the seats of the chairman and the vice-chairman of the committee at the time. It also raised Calgary's and Edmonton's seat numbers by one each to 20 and 18 respectively. The provincial quotient there was then 15.4 and 11.3 percent respectively. With the additions Calgary and Edmonton were, on average, over the provincial quotient, and 33 primarily rural constituencies fell below the quotient by an average of 11 percent.

Charges at that time were made by the opposition parties of gerrymandering, and they began in earnest in late 1992 . . . [interjection] No. I'm going to speak for this 20 and probably another 20. So get a coffee, sit back, and relax, because it's very important to put this information on the record.

It's interesting that that particular member would be raising a white flag when I'm talking about gerrymandering, which is what the all-Tory committee actually did with the decisions they came out with in 1992. If you would like me to continue talking about Tory gerrymandering, I could do that, or you could stop interrupting me. I'll give you the choice.

There's a little bit to be said about gerrymandering. Let's talk about where that name comes from and the kind of precedents that are around it. Gerrymandering is the political legacy of Massachusetts Governor Elbridge Gerry, who in 1812 redrew the boundaries of his electoral area in such a way as to ensure his re-election. [interjection] You see, it gets worse. You should have given up a long time ago.

The resulting shape resembled a salamander, Mr. Chairman, and pundits coined the word by combining the names of the man and the reptile, so Elbridge Gerry and salamander: gerrymandering.

If we think it's a joke to talk about gerrymandering in this province, Mr. Chairman, I would refer people to look at a map of the boundaries of the Premier's own constituency.

There was a constitutional challenge from the town of Lac La Biche, that was subsequently withdrawn as a result of those decisions in 1992, and the Electoral Divisions Statutes Amendment Act, 1993, was proclaimed in force on May 18, 1993. For urban people it resulted in some small boundary changes; for rural people, more significant changes. To attest to its constitutionality, they referred the act to the Court of Appeal of Alberta, and while the court was deliberating, a general election based on the new boundaries was held on June 15. That was the first election that I was elected in.

The Conservatives formed a majority government, taking 51 seats and about 45 percent of the popular vote. The Liberals and NDs won 55 percent of the popular vote but only 24 seats. So a Legislature with rural overrepresentation decided the question of whether or not rural overrepresentation should continue. In other words, the government said: we've got the control, and you can't have it. Forty-five percent of the popular vote and the government won 51 seats; 55 percent of the popular vote and both oppositions won 24 seats. That brings to question the idea of proportional representation or some other form. If you're not going to give people an equal vote, then we should take a look at some of the other options.

I know that some of these comments are going to be quite unpopular tonight, and I expect to see them pop up in some rural papers throughout the province. I'm quite happy to defend the position that votes should be equal for people in this province and that the government should be bound and the committee should be bound by how the Supreme Court defined "equal" in this context, and that's with deviations allowed. If that's the decision that's made with this committee, then certainly, Mr. Chairman, we need to talk about how rural ridings get representation and what kind of resources the MLAs representing those ridings get in order to adequately be able to represent the people in their ridings.

8:50

The judgment was ultimately delivered on October 24, 1994, and the court was very critical of the electoral divisions that had been established, claiming that the very brief report of the select committee had offered no detailed explanation for the specific boundaries. While it acknowledged that effective representation sometimes requires the formation of a constituency of a below-average population, it reafirmed that "there is no permissible variation if there is no justification [and that] the onus to establish justification lies with those who suggest the variation." That was a direct quote. There was "little justification in the materials supplied by the Legislature," they stated. They stated:

> The Legislature offered no reasons, but essentially adopted the recommendation of the Select Committee. Before us, Alberta equated the Committee's reasons with those of the Legislature. We did not know with any certainty or detail what those reasons are.

So they made all these decisions and couldn't back it up with anything substantive.

No transcripts of committee meetings were provided to the court. While it was the primary task of the court to pronounce upon the constitutionality of the approved boundaries, the court had no option but to conclude: "It is impossible for us to say that the effort here meets a Charter challenge when we do not know with any precision the reasons for the boundaries under review." So when you make decisions in a vacuum and provide no back up, this is the kind of decision that the courts are bound by. So very interesting and very reminiscent of how this government has continued to operate in other areas after this decision was made.

So the court claimed, and I quote one more time, that

> the practical necessities raised by the principle of effective representation did not, alone, guide the hand of the legislators. On the contrary, what seems to have motivated this scheme at least in part was the acknowledgment that, whether or not some disparities were warranted, change would be made slowly so as not to offend unduly the political sensibilities of some electors. The boundaries before us, at least in part, seem to be a response to widespread protest from those Albertans who live in farming communities.

The court then took Mr. Bogle to task for advocating the retention of one of the smallest divisions in the province, which by happenstance was that for which he was the sitting member at that time. While Bogle had argued that the sudden reduction in the level of representation would greatly displease his constituents, the court ruled that the comfort zone of a vocal portion of the electorate was not a valid Charter consideration. The court went on to conclude that the fact that a significant number of Albertans did not like the results of an equal distribution of electoral divisions was no reason to flinch from insisting that they take the burden as well as the benefit of democracy as we know it.

On that note, Mr. Chairman, I will conclude for this time. I will finish my remarks after the Member for Edmonton-Strathcona speaks. Thank you.

THE DEPUTY CHAIRMAN: The hon. Member for Edmonton-Strathcona.

DR. PANNU: Thank you, Mr. Chairman. I would like to speak to one particular part of Bill 31. All of us agreed that that particular section is one on which we will have some debate. This deals with the Electoral Boundaries Commission Act. This is the act that is revised only every 10 years, so it is important that we pay some attention to the kind of revisions we want to make to it. Otherwise, we will have missed the chance for another 10 years and won't be able to return to it until the year 2011 or so. The reason for having to wait 10 years is that the Electoral Boundaries Commission changes are tied to the decennial census, which takes place every 10 years across Canada, and only the population changes that are indicated by that census serve as the basis for redrawing the boundaries by the commission.

In any case, I am pleased to address this bill, Bill 31, in its debate in the committee. As usual, there was prior consultation on the contents of this bill. I will therefore restrict my comments to only the one legislative change, contained on page 6 of the bill, which really calls for a repeal of the existing section 5(1) and the substitution of a very short sentence which reads, "A Commission is to be appointed on or before June 30, 2002," which is next year, roughly seven months from now.

This change, this amendment, certainly results from a request I made last June when I first wrote the Premier asking that the date for the appointment of an Electoral Boundaries Commission be moved up. In that letter I also asked that an opportunity be provided for a full debate on electoral boundaries including such important considerations as the appropriate number of seats in this Assembly as well as the population variances that were to be allowed between constituencies.

To my letter I received a reply from the Justice minister. The Justice minister indicated that the government would be prepared to move up the date on which an Electoral Boundaries Commission would be appointed. He suggested that it be done by way of a miscellaneous statutes amendment in the fall sitting. Earlier this fall I again wrote the Justice minister. I told the minister that while I appreciated his willingness to move up the date for the appointment of the commission, the position of the New Democrat caucus was that it should be done by way of a stand-alone bill. A stand-alone bill would provide an opportunity for a much more wide-ranging and open-ended debate on this important matter than a miscellaneous statutes amendment would.

Since then, more discussion took place between the Justice minister, the Leader of the Official Opposition, and myself. What resulted from this was a decision to move up the date for appointing a commission while allowing a more wide-ranging debate than is normally allowed when debating a miscellaneous statutes act.

So I'm appreciative of this opportunity to engage in this debate this evening. I encourage other members to engage in this debate as it continues tomorrow afternoon. While the actual amendment is a very simple one, it will begin a very important process. Let's face it: changes in the boundaries commission affect all of us. As elected members we have a direct interest in the outcome of the electoral boundaries process that will be initiated by this amendment. Because of our direct interest in the outcome, it is all the more important that the commission making decisions be at arm's length from the current members of this Assembly. In this respect Alberta's current law does pass the test of fairness. That wasn't always the case in the past, but now it does.

Sitting MLAs are not allowed to serve on the commission. Two members are appointed on the recommendation of the Premier. Two members are appointed on the recommendation of the opposition leader in consultation with the third party. The commission is chaired by an impartial person such as a retired judge. All of this to me seems quite fair.

In discussing the matter of electoral boundaries, I want to touch briefly on three issues. First, the number of seats in this Legislative Assembly. By approving this amendment, we will be saying that 83 is the appropriate number of seats as we go forward into the next two elections. I'm not at all convinced that we need that many seats in this Assembly. Let me suggest why. If we compare Alberta to Canada's other large provinces, we have significantly more members per capita, per 10,000 or per 20,000. For example, the province of Ontario only has 103 members in its Legislature despite having a population four times as large as ours. B.C. has 1 million more people than Alberta and has four fewer seats in its Legislative Assembly. I am disappointed that the government did not consider reducing the number of seats in this Assembly in this particular redistribution. At least we should have considered opening up the issue and debating it. The number of seats we presently have could be reduced to 75 or even to 70 without compromising effective representation.

9:00

I know some members will say that their existing constituencies are already sufficiently large or much too large. However, modern communication technologies provide us with so many more options for interacting with our constituents than was the case in the past. Moreover, constituency size is an irrelevant matter. Recently I spoke to the leader of the Ontario New Democrats. He represents a northern constituency that comprises 35 percent of the landmass of the province of Ontario. Translated to Alberta, that single constituency would be half the size of Alberta.

This brings me to my next concern, the population variances allowed within constituencies in this province. Alberta's rules are at the very outside of what the Canadian Charter of Rights and Freedoms allows in terms of population variances. Alberta's rules allow population variances 25 percent above and 25 percent below the average of all constituencies. Moreover, there is a provision for up to four constituencies to be up to 50 percent below average in population. This is a considerably greater variance than that allowed in other provinces. For example, the province of Saskatchewan only allows a variance of plus or minus 10 percent for all but two northern constituencies. The province of Manitoba allows for variances of plus or minus 15 percent except for a few northern constituencies. While the provinces of B.C. and Ontario do allow variances of up to 25 percent, they do so without the exceptions Alberta allows. So relative equality of voting power is an important principle in a democratic society.

I am disappointed again that the government has not chosen to reduce the population variances allowed under Alberta's law. I believe that a variance of plus or minus 15 percent, with perhaps an exception for ridings located above 55 degrees north, would be more fair than what exists now. There are better ways of addressing the challenges of effectively representing geographically large rural ridings than diluting the voting power of urban residents. For example, this could be accomplished by providing extra money for travel for rural MLAs or extra funding to allow them to operate more than one constituency office in their areas.

I believe the government lacks boldness in not addressing the above issues, for once the boundaries commission completes its work, constituency boundaries will be set in stone for the next 10 years. That is why I want to conclude my remarks by making a bold proposal to consider even more fundamental changes to how members of the Assembly are elected. I believe that the time has come to seriously consider reform of the voting system itself. Under the existing system of first past the post, citizens do not get what they voted for in terms of the composition of this Assembly. Political parties that are elected with a minority of votes routinely receive a majority of seats in this Legislative Assembly. How many Albertans are aware that in two of the past four provincial elections the Progressive Conservatives did not secure even 45 percent of the provincial vote? Yet in those 1989 and '93 elections the Conservatives ended up with large majorities in this Assembly.

Even in the recent elections this past March, the Conservatives received just over 60 percent of the provincewide vote, yet ended up with 90 percent of the seats in this Assembly. If seats in this Assembly were based on each party's share of the provincewide vote, then there would be 31 opposition seats in the Assembly rather than the existing nine seats. Instead of 75 Conservatives there would be only 52. Instead of only seven Liberals there would be 24. Instead of only two New Democrats there would be seven. Because they have 90 percent of the seats in the House, the Tories and the government act as if that percentage of the electorate supported them, but that's false. Even in this most recent election over 38 percent of Albertans voted for parties other than the governing Conservative Party, yet in most cases those votes did not translate into seats for those opposition parties in this Assembly.

Proportional representation is an idea whose time has come. More and more democratic societies are using some form of proportional representation to elect their parliaments and legislatures. Canada and the United States are the only two remaining holdouts. New Zealand now uses a proportional representation voting system. Britain uses proportional representation for its regional assemblies in Scotland and Wales. Australia uses proportional representation for its Senate elections. Every single country in western Europe uses some form of proportional representation, as does the European Parliament.

It is time that Albertans got what they voted for at election time in terms of representation in this Assembly. That is why I'll conclude by giving members a bit of a heads up. Next spring I plan to introduce in this Assembly a private member's bill that proposes to develop a made-in-Alberta proportional representation voting system. I welcome the opportunity to debate such a voting system in this Assembly.

Thank you, Mr. Chairman.

THE DEPUTY CHAIRMAN: Thank you.

The hon. Member for Edmonton-Ellerslie.

MS CARLSON: Thank you, Mr. Chairman. I wish to continue the remarks that I previously started. I was talking about the judgment of the Alberta Court of Appeal that was delivered on October 24, 1994. If we remember, the election in that time period was June 15, 1993, so the decision came some time after the election. What they concluded was that they recognized that they had the power to cause major disruption in the electoral process, and the court then decided to withhold any Charter condemnation and restrained itself from insisting upon a correction of electoral boundaries. Faced with the possibility of invalidating the 1993 election results, the court said, and I quote: We do not see the democratic value in creating a political crisis. End of quote.

So they were dissatisfied with the unjustified boundaries used in 1993 and called for a new and proper review before the next general election. Clearly hinting at the political make-up of the all-Conservative special committee that had established the 1993 electoral boundaries, the court called for a review that would be "insulated from partisan influence" – that part's a quote – and would be free of "traditional political games, like gerrymandering or log-rolling."

So we come to the Electoral Boundaries Commission as it was amended extensively in 1995. The act provided a more balanced appointment procedure involving opposition parties and equal representation from cities and country, and that is the proposal we are looking at for this time. It specifies the factors to be considered in drawing boundaries and sets the population of proposed electoral constituencies at a maximum of plus or minus 25 percent variance from the average. As we will see as this game unfolds before us next spring, once again those very interpretations and definitions of what plus or minus 25 percent variance from the average means will be debated, and the government will have a position that I think will not be supported by many people in this province.

9:10

The new commission held two rounds of extensive and well-attended public hearings in 1995, and the final report was presented to the Speaker of the Legislative Assembly in June of '96. The commission attempted to measure the difficulty of representing a constituency. Recognizing the need to protect rural interests, they concluded that the scale of difficulty should be the prime indicator of the allowable deviations in population in the interest of effective representation. Of course, because there are only 83 constituencies – or perhaps many people would argue, as the Member for Edmonton-Strathcona just did, that 83 is too many – our caucus would support that. We had a bill in '93 or '94 that asked for a reduction in constituencies, so we would also be happy to look at fewer rather than greater, but because of the way the boundaries are decided and the large increases in population in Calgary and Edmonton, it's hard to resolve the issue by adding more urban constituencies.

What happened, then, in '95 is that the commission proposed adding two, one each for Calgary and Edmonton, and was forced to eliminate two of the four special constituencies, Cardston-Chief Mountain and Chinook. That was an interesting time in this Legislature, Mr. Chairman, as ministers – ministers – were lobbying for position. By adding the extra constituencies in the urban centres, the commission believed that it adequately resolved the imbalance in the representation. The commission said that it was satisfied that urban city populations were not currently underrepresented to any significant degree, but it was interesting that they went on to say that they believed the interests of approximately 68 per cent of Albertans who live in urban centres were well served by the 68 per cent of Alberta's MLAs who represented those cities in the Legislature. But once again this is completely open to interpretation, Mr. Chairman, because the commission counted the constituency of Vermilion-Lloydminster as urban since Lloydminster is identified as an urban

center. So the MLA for Vermilion-Lloydminster is regarded by the commission as part of the 68 per cent representing urban interests within the province, which I think is open to challenge at any level, but that's what happened there.

To give them credit, though, the government re-examined the act that set the rules, and at that time the MLA for Calgary-Buffalo, who was Liberal Gary Dickson, worked extensively on this and said that the government had no intentions of further amending the current Electoral Boundaries Commission Act. He stated that he thought "the government's sense is that they've tinkered sufficiently with the boundaries to buy some time to at least avoid a further court challenge." He found "the government's use of the 25 per cent variation particularly preposterous and the combined effect of rural and urban differences significant." He stated: "They've taken an element of flexibility that the Supreme Court, in the Dixon case, attempted to afford legislators and they've shamelessly exploited it until it has become the norm." He stated that "with section 17 of the boundaries commission act, they've tried to entrench it, without qualification." He stated that "it's a question of where all city constituencies are up to 25 per cent above and all rural districts are below 25 per cent to pass muster." He was in support of a plus or minus 10 percent level and made an interesting observation. He stated that he gets "very angry when people say that an urban MLA's job is easier," that at the school south of his constituency office, "there are 24 languages spoken." When he publishes anything, "it has to be in five different languages."

So, Mr. Chairman, I think urban representation is underrepresented in terms of the kinds of challenges that we face here. Certainly I know the caseload for files for social assistance and WCB cases in my offices are significantly – significantly – higher than they are in rural centres. While they have problems of travel logistics and access logistics, we have problems of huge caseloads.

So at that time many of the Conservative members put forward their positions on why they should have fewer people to represent. What the Alberta Court of Appeal stated was that each year the problem worsens, it impacts significantly on the right to vote of urban Albertans, and that this cannot be permitted to continue if Alberta wishes to call itself a democracy.

So we would say that the degree of difficulty of representation is really a bogus issue, because there are points of view on each side that are solvable if the Legislature had the will to put their minds to it. Once again we are appealing to the committee to take into account in its truest sense the words of the Alberta Court of Appeal. The problems with these nonurban and urban population increases and decreases significantly impact the right to vote for urban Albertans, and we can't state too strongly that this cannot be permitted to continue if Alberta wishes to call itself a democracy.

Mr. Chairman, we will be appointing one urban and one rural member to the committee. They are charged with the very heavy weight of ensuring to the best of their ability that every Albertan has a similar weighting of their vote and taking on issues that are controversial and hard to solve but finding an answer that will meet the needs of Alberta not just today and tomorrow but for the next ten years until we see the revisions happening again.

So with that, Mr. Chairman, I will take my seat and look forward to the comments from all members tomorrow afternoon, most particularly those comments from government members, private members, and cabinet ministers. Thank you.

[The clauses of Bill 31 as amended agreed to]

[Title and preamble agreed to]

THE DEPUTY CHAIRMAN: Shall the bill be reported? Are you agreed?

HON. MEMBERS: Agreed.

THE DEPUTY CHAIRMAN: Opposed? Carried.
The hon. Deputy Government House Leader.

MR. ZWOZDESKY: Thank you, Mr. Chairman. I would move that we now rise and report.

[Motion carried]

[Mr. Shariff in the chair]

MR. MASKELL: Mr. Speaker, the Committee of the Whole has had under consideration and reports Bill 31 with some amendments. I wish to table copies of all amendments considered by the Committee of the Whole on this date for the official records of the Assembly.

THE ACTING SPEAKER: Does the Assembly concur in the report?

HON. MEMBERS: Agreed.

THE ACTING SPEAKER: Opposed? So ordered.
The hon. Deputy Government House Leader.

MR. ZWOZDESKY: Thank you, Mr. Speaker. We are indeed making very good progress, and on that note I would move that the Assembly now stand adjourned until 1:30 tomorrow, Thursday, November 29.

[Motion carried; at 9:20 p.m. the Assembly adjourned to Thursday at 1:30 p.m.]