Legislative Assembly of Alberta

Title: **Tuesday, April 12, 2005** **8:00 p.m.**
Date: 2005/04/12
[Mr. Shariff in the chair]

The Acting Speaker: Please be seated.

head:
Government Bills and Orders
Second Reading

Bill 25
Provincial Court Amendment Act, 2005

[Debate adjourned March 21: Mr. Stevens]

The Acting Speaker: The hon. Member for Edmonton-Glenora.

Dr. B. Miller: Thank you, Mr. Speaker. I rise to speak in response to the mover of Bill 25, Provincial Court Amendment Act, 2005. This bill proposes to amend the Provincial Court Act to add the provision that provincial court judges can retire and sit on a part-time basis. This amendment is the result of the 2000 Judicial Compensation Commission, which recommended that there be adequate compensation for retired judges, enabling them to continue working as part-time judges. This amendment allows a judge who has reached 60 with at least 10 years of experience to exercise the option of retiring and continuing on on a part-time basis. Also, a judge who is approaching 70 can retire as a full-time judge and then ask to be appointed as a part-time judge, and he can continue part-time until 75. So this bill simply outlines the process for appointments and the terms of appointments and the rules for compensation.

For example, in terms of compensation it outlines that part-time judges can be paid an annual salary of up to 50 per cent of the annual salary of a full-time judge, but the total salary and benefits payable to a part-time judge cannot exceed the annual salary of a full-time judge. So this amendment to the Provincial Court Act obviously meets the need of providing our courts with more judges, especially given the fact that with so many impending retirements there will unquestionably be a shortage.

I have never been a fan of compulsory retirement, especially at 65, although I'm approaching that age. Thankfully, instead of facing compulsory retirement at 65, I was elected to the Legislature, so I have a new career.

An Hon. Member: But a short one.

Dr. B. Miller: No. It's going to be a long career, moving from one kind of ministry to another kind of ministry.

It seems to me that a society benefits from the wisdom of having professionals who have rich experience and can continue in their later years to apply that experience to the life of our province.

So this bill enables judges who wish to work only part-time to do so until the age of 75. Our courts and the public can only benefit from this step. All around the world, of course, retirement is being looked at more closely, and compulsory age levels are being removed as being something that's quite arbitrary and discriminatory, and we are increasingly unsatisfied with discriminating against people on the basis of age.

I think that the idea of compulsory retirement has always been based on the false stereotype that older people hold outmoded views and can't cope with change or acquire new skills, but they bring so much more to work: the experience of a lifetime. It has been said that ageism is the next and biggest battleground for equal employment rights because it affects us all. I remember that at the University of Alberta Olive Dickinson fought against having to retire at the age 65. She made a valiant attempt and didn't succeed, but I applauded her at that time in her effort.

I can only approve this bill making it possible for judges who have experience to continue on the bench and provide leadership in our province for years to come. So, Mr. Speaker, I recommend the approval of this Bill 25. Thank you.

The Acting Speaker: Hon. members, before I recognize the next speaker, may we briefly revert to Introduction of Guests?

[Unanimous consent granted]

head:
Introduction of Guests

The Acting Speaker: The hon. Member for Edmonton-Strathcona.

Dr. Pannu: Thank you very much, Mr. Speaker. I am delighted to introduce to you and through you to all members of this Assembly Mr. Thomas Howe. Thomas works in the oil industry in northern Alberta and has come all the way from High Level to observe the Assembly's proceedings this evening. I notice that Thomas is already standing in the public gallery, so I would ask all hon. members to give Thomas a very warm welcome, especially if you come from a cold part of the province.

head:
Government Bills and Orders
Second Reading

Bill 25
Provincial Court Amendment Act, 2005
(continued)

The Acting Speaker: The hon. Member for St. Albert.

Mr. Flaherty: Thank you, Mr. Speaker. I hope that I'm allowed to ask this question. I was phoning a psychologist that helps me a lot . . .

The Acting Speaker: Hon. member, were you trying to rise on Standing Order 29(2)(a) to ask a question, or do you want to speak?

Mr. Flaherty: I was asking a question.

The Acting Speaker: Okay. What happens is the first two speakers don't have the rule apply to them. It's the third speaker onwards. The hon. Member for Edmonton-Glenora happens to be the second speaker, but you may participate in the debate.

Any other speakers?

Are you ready for the question?

Some Hon. Members: Question.

The Acting Speaker: The hon. Minister for Justice and Attorney General to close the debate?

[Motion carried; Bill 25 read a second time]

head:
Government Bills and Orders
Committee of the Whole

[Mr. Shariff in the chair]

The Deputy Chair: Hon. members, we will call the committee to order.

Bill 12
Victims of Crime Amendment Act, 2005

The Deputy Chair: Are there any comments, questions, or amendments to be offered with respect to this bill? The hon. Member for Edmonton-Glenora.

Dr. B. Miller: No, I don't have any amendments, and I don't want to repeat all the points that I made in second reading. It's not the way we would like it – that's what I said in second reading comment – but the elements are here. The principles of justice, I think, are outlined here, especially the new one, so it's better than it was before under section 2(1)(c) and (g), and (h) and (j) and (k) are new.

I'm not going to go through each one because that's kind of redundant. The only point that I really want to make and what I regret not finding here is more on restorative justice. Under (h) there is just the one phrase "requesting restitution" that refers to the whole area of restorative justice. I think that we're not going to make much headway in dealing with the plight of victims and what the victims really want unless we have more on restorative justice among the principles of justice.

I'm not going to repeat all of those points that I made. I think I'll take my seat.

8:10

Dr. Pannu: Mr. Chairman, I'm also tempted to just say a few words. I spoke at some length to this bill in second reading, Bill 12, the Victims of Crime Amendment Act, 2005. I spoke in support of the bill in general, its principles. The victims of crime need our support. They need their dignity restored. They need violation of their person to be taken into account and compensated for. In general, the bill certainly elaborates on the notion of compensation and the manner in which it should be done.

Mr. Chairman, I just want to observe that while we all seem to agree that in a democratic and highly educated society such as ours, we need to move away from retribution toward a restorative model of justice and compensation to victims of crime. Their protection and restoring their respect is certainly one of the key commitments that we need to make. But restorative justice as an idea, as an alternative model to retributive justice also looks at the perpetrator of a crime, a perpetrator, perhaps, of violence against other persons or property.

I just want to submit that restoration of the person who breaks the law, who perpetrates violence is also important because, after all, it's in our interest as a society that wants everyone to respect our laws and to promote lawful activities. People who make mistakes, people who commit crimes, people who engage in violence and violate others also need in an ultimate sense to have our compassion and care. They need to change themselves. In order for them to change themselves, to rehabilitate themselves, to become normal members of a society whose rules and laws they may have broken, and in some cases may have broken them violently, they should nevertheless be in a position to hope that one day they will return to a normal pattern of behaviour having paid what society considers their due punishment for the crime that they have committed, and they should expect to be treated as if they have now paid their debt and can feel that we extend them the same dignity that every human being in a civilized society expects to have.

So, then, while the primary commitment that they make by way of this bill is to address the concerns of the victims – their protection, their dignity, their ability to function again properly in society – and do what we can to secure those conditions for them, we should not ignore and speak perhaps on the record of the need for rehabilitation of those who commit those crimes. Ultimately, these are human beings, our fellow human beings, who have erred and have paid for their erring if they have been brought to justice. It's in our broad interest to make sure that they have the support that they need in order for them to be able to rehabilitate themselves, restore themselves to the position of normal citizens who enjoy our respect and have dignity.

Thank you, Mr. Chairman.

[The clauses of Bill 12 agreed to]

[Title and preamble agreed to]

The Deputy Chair: Shall the bill be reported? Are you agreed?

Hon. Members: Agreed.

The Deputy Chair: Opposed? Carried.

Bill 23
Administrative Procedures Amendment Act, 2005

The Deputy Chair: Are there any comments, questions, or amendments to be offered with respect to this bill? The hon. Member for Edmonton-Glenora.

Dr. B. Miller: Thank you, Mr. Chairman. Now, the House will be happy to know that I don't have any amendments on this one either. This is a very difficult bill to understand, and I think my speech in second reading should suffice, although it disappoints me that so many of the questions that we raise about these particular bills don't receive any kind of response from the minister, and some of these issues could be serious. I mean, in this particular bill we're dealing with giving powers to boards and tribunals to deal with constitutional issues and, more importantly, depriving certain boards and tribunals of being able to deal with constitutional issues. It's that negative part that really concerns me because it may impede the process of justice and not make things faster.

I think the purpose of the bill is that if the boards and tribunals so named in section 16 of this bill can deal with constitutional issues, then that saves time because people will not have to appeal to the courts to deal with constitutional issues. But my view is the opposite, that it may actually impede justice because people who disagree with the decisions of boards and tribunals on constitutional issues will have to take quite a circuitous route to try to oppose the decisions. They'll have to take on the very empowering legislation that established these boards, and that might be an appeal through the court system all the way perhaps to the Supreme Court of Canada. So I am concerned about that.

This kind of bill comes out of the experience of the courts, and lots of thought has gone into it, although I'm not really sure whether it was absolutely necessary. If this is the only kind of bill we're going to get from the Justice department – it seems like we're only getting household kinds of bills, to make things more efficient and so on, nothing really earthshaking. I don't see any way in which bringing in an amendment would help because in most cases it wouldn't succeed.

I think I will take my seat, and I recommend that we just go ahead and accept this in Committee of the Whole.

8:20

The Deputy Chair: The hon. Member for Edmonton-Strathcona.

Dr. Pannu: Thank you, Mr. Chairman. This is my first opportunity to speak to this bill, Bill 23, Administrative Procedures Amendment Act, 2005. The bill has been inspired by, if you wish, the decision of the Supreme Court some years ago. I believe that it might have happened in 2003 sometime.

There's been some debate among judicial circles and legal circles over the years with respect to whether or not the Charter of Rights issues can only be addressed by duly constituted judicial courts or whether we need to democratize, as it were, the chances for Canadian citizens and individuals living in Canada to seek action on Charter of Rights issues from quasi-judicial bodies such as boards in this province, of which there are dozens and dozens and dozens. Many of these have quasi-judicial powers, but the boards are so constituted that we know that they may not necessarily have in their membership the legal sophistication or expertise that we expect our judicial courts to have available to them.

The issue of interpreting whether or not there is a bona fide issue related to the Charter of Rights may at times be somewhat difficult for these boards to determine on their own, but the bill does have, I think, some provision in it which allows the Minister of Justice to decide if a tribunal is sophisticated enough to handle a case involving the Charter of Rights and that the board or tribunal cannot proceed with such a matter unless an individual who has gone before this tribunal or board so requests explicitly and does so in writing.

So there are some elements to the process through which a board can address an issue at a person's request related to the Charter of Rights. It is addressed, I guess, by way of certain procedures. At this stage, although somewhat uncomfortable about seeing boards and tribunals addressing those issues, I'm willing to take a chance and go along with the provisions of this bill in light of the decision that the Supreme Court made in which it said that Canadians can fight for their constitutional rights at administrative boards and tribunals, such as workers' compensation boards, instead of being forced to go to a court.

The unanimous ruling win for two injured workers from Nova Scotia clarifies a long-standing legal question over whether boards and tribunals should have the same power as judges to interpret the Charter of Rights. We know that perhaps hundreds of administrative bodies across Canada which settle disputes involving issues such as rent, job-related complaints, workers' compensation, immigration and refugee claims, et cetera, are often composed of nonlawyers. There may be some former lawmakers on them, but certainly lawyers are not always present on the membership of these tribunals. The court, however, did not give such tribunals and boards constitutional carte blanche but ruled that there should be a strong presumption in favour of allowing them to hear and settle Charter claims.

Justice Charles Gonthier said the following: "Canadians should be entitled to assert the rights and freedoms that the Constitution guarantees them in the most accessible forum available, without the need for parallel proceedings before the courts." Those are his words. This decision, then, that the Supreme Court brought down dealt with the Workers' Compensation Board of Nova Scotia, but Steve Barrett, a lawyer with the Canadian Labour Congress, predicted that it will have sweeping implications. We are seeing now those sweeping implications, I suppose, with reference to the provincial laws being amended to allow for such Charter of Rights issues to be heard by the boards and tribunals under certain defined conditions.

Mr. Barrett said that it will make a difference for Canadians who don't have the money to go to court. I quote Mr. Barrett here. He said, "It will have significant implications for individuals being able to raise constitutional claims in a way that is more expeditious and less expensive and more accessible to them."

For the last two decades the Charter of Rights has given judges the power to decide whether laws are in keeping with an established list of rights. These include freedom of religion, expression, and association; the legal right to life, liberty, and security of the person; the right against unreasonable search and seizure; and freedom from discrimination based on age, sex, race, or disability. Judge Gonthier said that it would not undermine courts to let tribunals in on Charter cases, particularly since judges would still be the final arbiters by deciding appeals. There is, then, some recourse to individuals if they find that the boards and tribunals for whatever reasons have made a decision that should be appealed, and that appeal will ultimately be heard by a judicial court in Canada.

I want to conclude quickly, Mr. Chairman, but I just want to draw the attention of the House to the fact that this Supreme Court decision in 2003 overruled its own judgment from 1996, when it said that human rights commissions did not have the authority to consider Charter claims. My hon. colleagues in the House will be interested to hear what Justice Beverley McLachlin, while she was still not the Chief Justice, had to say about it. In that ruling the then Justice Beverley McLachlin said that "the Charter is not some holy grail" that only courts can touch. She continues: "Many more citizens have their rights determined by these tribunals than by the courts. If the Charter is to be meaningful to ordinary people, then it must find its expression in the decisions of these tribunals." That's the end of the quote from her decision.

So I hope that the bill encapsulates in it the spirit of the observations made by Judge McLachlin when speaking to the issue of whether or not tribunals and boards should have the ability to hear Charter of Rights cases.

With that said, Mr. Chairman, I would like to conclude by saying that I am in support of the bill and hope that it does broaden access by Canadian citizens to Charter of Rights issues. Thank you.

[The clauses of Bill 23 agreed to]

[Title and preamble agreed to]

The Deputy Chair: Shall the bill be reported? Are you agreed?

Hon. Members: Agreed.

The Deputy Chair: Opposed? Carried.

8:30

Bill 24
Fatality Inquiries Amendment Act, 2005

The Deputy Chair: Are there any comments, questions, or amendments to be offered with respect to this bill? The hon. Minister of Justice and Attorney General.

Mr. Stevens: Thank you very much, Mr. Chairman. There were some questions that were raised during debate in second that I would like to address at this time. I'd like to begin with the issue of transparency and access as it relates to the interested party status. I want to stress that fatality inquiries will continue to be fully public hearings aimed at learning and bringing out the recommendations that may prevent future deaths from occurring. The public and the media have a right to attend.

The purpose of the proposed amendment is to specify that an interested party to a fatality inquiry is a person who has a connection to the deceased or to the circumstances of the death, someone whose arguments and submissions will help the presiding judge reach

conclusions regarding the circumstances of the death. The amendment ensures that the participants to an inquiry have a meaningful connection to that death. This may be by way of their relationship to the deceased or because they will be scrutinized during the inquiry.

I want to make certain that it is clear that this amendment does not prevent media from attending fatality inquiries. Fatality inquiries will continue to be open, particularly open to the media and to any other person who wishes to attend. Media reports are important to ensure that the circumstances of the death are known, and the amendments do not close the door on the fatality inquiry judge granting interested-party status to a media organization in proper circumstances.

It has never been automatic for media organizations to be granted interested-party status. They've always had to apply for it, as would any individual wishing to be an interested person. This amendment simply gives additional guidance to the judge in making that ruling.

To give some perspective, there are only a few instances in the past 20 years where the media was granted this status. If the media organization has sufficient ties to the deceased or to the circumstances of death and if the media organization should properly be given the opportunity to cross-examine witnesses and make submissions to the fatality inquiry judge, the judge may grant them status. I'd like to make that point again. This amendment is not intended to deny the media access.

There are other considerations that go along with being an interested party. Anyone with interested-party status has the authority to cross-examine witnesses and present evidence to the judge. None of the media outlets who have expressed their opposition to this amendment have championed their need to present evidence or cross-examine witnesses. I think the media themselves recognize that cross-examining and giving evidence without any relationship to the deceased or the ability to present unique testimony would not be advancing the purpose of a fatality inquiry in any meaningful way.

The hon. member spoke yesterday of restricting the media's participation at a fatality inquiry, and I want to make this clear: having the right or ability to attend an inquiry is very different from having the right to participate at an inquiry. This bill does not restrict the media's ability to report on the inquiry.

I believe that the media play a crucial role in attending and reporting on fatality inquiries. I find it more difficult to believe that there will be too many scenarios where the media testimony and cross-examination will be needed to help a judge make recommendations to prevent future deaths. The amendments do nothing to alter the existing provisions of the act that state that anything heard in camera, or in private, if you will, cannot be published. In camera hearings are very rare. They are done to protect sensitive personal information such as family health records or to protect the public interest. In some cases the judge may decide that it's in the public interest to not have certain evidence heard in open court. In these cases the evidence is held in camera.

Certain law enforcement agencies have begun to claim privilege over some of their internal documents for fear of their sensitive policies becoming widely known. This makes them unavailable to the inquiry and prevents the judge from having all the information when making recommendations to prevent future deaths. This amendment will provide more confidence that the internal safety procedures will remain confidential if, in fact, that is important.

Having interested-party status will allow the media to hear the evidence presented in camera but has never allowed it to be published. This is not new. Further, this amendment will not prevent people or organizations, including media organizations, from being called as witnesses to the inquiry if they have facts and information that could help expose the circumstances of death or other relevant information.

The hon. members expressed some concern with respect to section 38, the power of the judge, and that is a situation where we want the fatality inquiry process to be efficient. If they would prefer, I could use the terms "focused" and "effective" instead. The amendments are aimed at ensuring that fatality inquiries are not confused or delayed by the introduction of issues that do not help to achieve the goals of fatality inquiries.

A fatality inquiry is not intended to be an open forum to bring forward grievances or concerns about any subject at all. It is intended to be focused on the death in question, what caused the death, what changes can be made to ensure that such deaths do not happen again, what the public needs to know to ensure that unsafe practices are avoided. These are the things that we must learn and that the judge must comment on, which brings me to the question of restricting the scope of an inquiry.

The hon. Member for Edmonton-Glenora referred to giving unprecedented powers to a single judge, but Provincial Court judges have always had the authority to determine the scope of an inquiry. It is the judge's right and responsibility to determine the best avenues to explore and to ensure that the inquiry meets its goals of preventing similar deaths. The amendment aims to ensure that the scope is defined before the inquiry begins so that all parties are aware of what the issues will be and to afford them the opportunity to challenge the judge's decision before the inquiry begins if they disagree with it. In his comments yesterday the hon. member indicated that the fatality inquiry shouldn't focus on being efficient, but we do wish to be considerate to the affected parties as defining the scope prevents delays and adjournments later on in the process.

The hon. member also commented yesterday regarding the elimination of the jury provisions in the act; that is, the repeal of section 37. He pointed out that it is a fundamental principle of justice in Canada that a person has a right to have a hearing before a jury. The right he speaks of is the right of an accused to be judged by a jury of his peers, and that argument simply isn't applicable in the case of a fatality inquiry.

The amendments to section 38 let the judge engage services of clerks, reporters, and assistants. By removing the reference to counsel, the goal was to make it clear that counsel appointed by the minister is counsel to the inquiry. Counsel appointed by the minister does not represent the minister or the government but is there to act as counsel to the inquiry as a whole. Practically speaking, if the judge wants an expert report, inquiry counsel would give the expert report.

I would also like to discuss the amendment that relates to mandatory inquiries for people who die in the care, custody, or guardianship of the government. That is section 33(3)(a) and (b). For example, a person may die while a ward of the government or as a result of an interaction with a peace officer. Normally, in these circumstances the Fatality Review Board would be required to call a fatality inquiry in the interests of finding out how and why the death happened, how to prevent similar deaths from happening in the future, and to reassure the public that the government is doing its best to preserve and protect human life.

The amendment is aimed at a very narrow set of circumstances where holding an inquiry simply is not necessary. The example provided in second reading was of a 16 year old under government care driving a car and, unfortunately, dying in a motor vehicle accident. At present, because the 16 year old is under government care, there would be a mandatory fatality inquiry. The amendment would allow the board, after reviewing the circumstances of the

death, to decide not to recommend an inquiry. Each case would have to be decided on its own facts.

8:40

If, for example, the driver were impaired or if the driver should not have been unaccompanied or if there were any other questions at all that are appropriate for further investigation, the board can still recommend that an inquiry be held. Further, even if the board thinks that a fatality inquiry is not necessary, the Minister of Justice can still call an inquiry. This new amendment will only be applicable in a narrow set of circumstances and is aimed at eliminating unnecessary proceedings in the clearest of cases.

One of the primary goals of a fatality inquiry is to inspire confidence that public authorities are taking appropriate measures to protect human life. If death occurs for reasons that are entirely unrelated to the issue of government care, the Fatality Review Board should not be required to recommend an inquiry. The board has been doing an admirable job working to protect Albertans for many years. There's no reason to believe that this would change as a result of these amendments.

I trust that these have gone some way to answering the questions of the members, and I thank you, Mr. Chairman.

The Deputy Chair: The hon. Member for Edmonton-Centre.

Ms Blakeman: Thank you very much, and thank you to the minister for being in attendance and making an attempt to answer the questions that have been raised. I was asking a specific question around participation of not-for-profit advocacy groups. I understand the distinction that is made in the legislation between being in the room and observing the proceedings and participating in the proceedings. My question was around participating in the proceedings, and the minister did not address that in his remarks. I'm asking if he could please address that now.

Thank you.

Mr. Stevens: Mr. Chairman, the definition is there, and if a group can bring themselves within that definition, indicating that they have a direct interest in the matter, then the judge will be able to address whether or not they're an interested person. Once again, the circumstances of the case are going to determine that particular situation.

I can tell the hon. member that what we have done here is taken a look at the definition and have specifically addressed it principally to the question of whether or not the media should as a matter of right have a position before the fatality inquiry as an interested person. I'm not in a position to advise the hon. member one way or the other as to whether there are no circumstances which would be available for not-for-profit advocacy groups to be heard before a fatality inquiry.

Ms Blakeman: But the minister, then, is leaving it to the nonprofit to be able to fit itself into the definition of direct and substantial personal, legal, or business interest. So if I'm going on a known quantity, then, the fatality inquiry on the unfortunate senior who was scalded and died as a direct result of that, the Elder Advocates of Alberta, for example, and the FAIRE group were very involved with that. They were supporters of the family. They had additional information about what was happening that set a context for what was going on. My concern is that there would be an undue onus upon them to have to try and prove this linkage that might well be beyond their legal or financial ability to argue in front of the judge, and therefore we would lose a voice that should be able to participate in such an inquiry.

Would the minister consider an amendment that would clarify or reduce the burden on the organizations to have to argue before the judge that they were showing a direct and substantial personal, legal, or business interest, or is he confident that the scenario I've described would be adequately and rightly captured under the legislation as proposed?

Mr. Stevens: Mr. Chairman, what I contemplate is that every party that comes before the judge in a fatality inquiry will be required notionally to bring itself within this particular definition. There are some parties that, clearly, are going to be able to do that. So, for example, the family of the deceased will not be an issue. In a case such as that, if, in fact, a party is so closely aligned with the family of the deceased, they can align themselves with the family of the deceased, from my perspective, and support the family of the deceased and thereby get their issues before the court.

But I'm not in a position to confirm that advocacy groups per se are going to be able to bring themselves within this particular definition. It's going to be dependent on the facts of the particular case, and it's going to be dependent upon how the judge who's hearing these applications for interested party status considers it. From my perspective it's appropriate to have what I would call a substantial connection to the particular case in order that people bring themselves within a fairly defined and proximate relationship with the issues before the court.

I don't know how you go about dealing with the matter that the hon. member has raised, which is that there are not-for-profit advocacy groups which have interest in matters, and they should as a matter of course be recognized. I think I have an issue with the concept that because I'm a not-for-profit advocacy group, I should be recognized.

I think that we have approached it on the basis of establishing a close connection with the matter, and then you can deal with it. In the case that was used by the hon. member of having a close relationship with one of the parties, the family of the deceased, in the example, I think it's fair to say that if, in fact, such a close relationship exists, counsel for the advocacy group may in fact be counsel for the family, or they can work together to ensure that the interests of the advocacy group are represented if, in fact, the advocacy group doesn't get its separate representation.

Ms Blakeman: All right. I hear what the minister is saying, and I understand it. I guess what I was seeking was a recognition of what, for Charter cases, for example, we would recognize as intervenor status, in which an organization has to meet the tests that are set out, that they have a substantial interest in the proceedings of what's going on and wish to be regarded as an intervenor so that they're involved in the proceedings and can speak. As you have pointed out, once you're in that arena, once you're granted that direct and substantial personal, legal, or business interest, you now qualify to cross-examine witnesses, et cetera, and you are a player in what's being contemplated here.

I was seeking a determination that if a group can meet the test, it could be granted similar to an intervenor status, and that's not set out in the legislation now. What I hear the minister saying is that the test they would have to meet is to somehow align themselves with showing a direct and substantial personal, legal, or business interest. Well, it's not going to be a legal interest, and it's not going to be a business interest, so they're going to have to somehow chum up to the family in order to be able to gain some status.

I would have preferred to have seen some ability to recognize intervenor status, but maybe I'll look at developing amendments for this, or the other possibility is to let it go and see how well this runs

and come back to it at some point in the future to see if, in fact, we had well-meaning groups. I mean, as an example for the minister, I'm thinking of the contributions that LEAF has made to a great body of work that has come out of the Charter challenges. I would argue that they have contributed substantially to what has happened with those Charter challenges. They were recognized and should be recognized. I don't want to set something up in Alberta where we would not be allowed to have that kind of participation from those groups.

Thank you very much to the minister for that clarification. I will do my best to send the *Hansard* out to the groups that I think would be interested in that, and then we will watch what happens with this and look at it in a year or two.

8:50

The Deputy Chair: The hon. Member for Edmonton-Strathcona.

Dr. Pannu: Thank you, Mr. Chairman. I have been listening to the debate carefully, and I want to thank the minister for the observations he made and the explanations that he offered for the changes that he's seeking to make in the Fatality Inquiries Amendment Act, 2005. I remain concerned about two of the proposed amendments, the minister's explanations notwithstanding. I don't by any means want to discount the seriousness with which the minister has taken the questions that were raised in the debate and tried to address them, but my concerns remain.

I have, Mr. Chairman, two separate amendments. I seek your advice now.

The Deputy Chair: Hon. member, are you indicating to me that you have two amendments?

Dr. Pannu: Yes.

The Deputy Chair: Did you want to deal with them together as one amendment or two separate amendments?

Dr. Pannu: That's what I was going to ask you. I think they could be dealt with, perhaps, as one amendment, although they are on two separate pieces of paper.

The Deputy Chair: Okay. Well, pass them on to the pages. Let me have a look at it first, please. We'll just give the pages a few moments to distribute them.

Dr. Pannu: Yes, indeed.

The Deputy Chair: Hon. members, as indicated by the hon. Member for Edmonton-Strathcona, he has distributed two amendments but chooses to deal with them as one amendment, so we will have one vote on both amendments that are before you. We shall refer to these amendments collectively as amendment A1.

Hon. member for Edmonton-Strathcona, you may proceed.

Dr. Pannu: Thank you, Mr. Chairman. I now speak, then, to amendment A1. Amendment A1 has two parts to it. The first part of amendment A1 deals with the concerns that I have with amendment 4(b). That's on page 2, I think, of the legislation. The amendment that I'm proposing in 4(b) to the proposed section 33(3) is as follows: strike out "or" at the end of clause (a), the second last paragraph on page 2, and strike out clause (b) on the bottom of page 2. It will have the effect of keeping the act as it presently is.

I think the addition of this part 33(3)(b) is to make the whole procedure much too restrictive, in my view. I like the provisions of the previous legislation as it stands, which are stated on the opposite side, page 2. I think that by striking (b) from 33(3), it will allow all parties and the board of fatality inquiries to continue to do the job they've been doing, by and large, to the satisfaction of Albertans in general.

The minister's concern was with the efficiency. I think in matters of justice, in matters where human life may have been lost and there may be questions about why it has happened, in order for us to learn from that, the goals of efficiency must take second place to concerns about human safety and well-being.

So that's the purpose of the first part of amendment A1; that is, to maintain the current status of law, which has served Albertans well when they have sought redress and answers to questions which were related to a family member losing life or dying on a hospital floor or in a seniors' home or somewhere where they were supposed to be receiving care from third parties with some sort of public status. So that's the first part of the amendment.

The second part of the amendment, Mr. Chairman, deals with amendment 17 in proposed section 49, and there the amendment that I'm proposing calls for striking out clause (b). Clause (b) in the draft legislation that we are debating repeals subsection 2(d) and substitutes it with "any person who the judge, on application, determines has a direct and substantial interest in the subject-matter of the inquiry."

Mr. Chairman, clearly, the media has expressed concern about how their status will be changed with this amendment that the minister has proposed. I take the role of the media in inquiries such as this quite seriously. I think Albertans like to be informed, and perhaps their best means of being informed is through the media when they can't be present there personally, and most of us can't be present in person at these places.

The change in the law as proposed by the minister would take the ability of the media to seek interested-person status away from them and leave that matter entirely to the discretion of the judge. I think this will be a step backwards. We need information to be made public. We need this information to be made public through the presence of media, and I don't think this will in any way interfere with the proceedings that are conducted by boards of fatality inquiries. I don't think it will in any way reduce the efficiency of it, but certainly it will help increase the confidence of the public in the process that fatality inquiries follow. So I think it will be both to enhance the respect for and credibility of the fatality inquiries process and to make sure that the media's role in informing the public remains fully protected.

The second part of amendment A1, then, simply proposes to strike out clause (b) from section 17 in the proposed section 49. Thank you.

9:00

The Deputy Chair: Hon. members, the noise level in the Assembly is starting to rise. It's becoming difficult for anyone to listen to what is being debated before us.

The hon. minister.

Mr. Stevens: Thanks, Mr. Chairman. I'll be brief in my comments. I will be urging the members not to support the amendments put forward by the hon. Member for Edmonton-Strathcona. I have commented on both of these matters both in second reading and in my introduction here in committee.

Briefly, relative to the interested-party issue and the media I will acknowledge that there are circumstances where the media is an interested party. Where perhaps the deceased person is in fact

employed by the media, for example, they will be able to be an interested party. The circumstances are that the media will have in any event an opportunity to attend and report upon the fatality inquiries and matters that are there to be seen and heard, that in the ordinary course of things the role of the media is to report the news, not make the news. There will be opportunity for them to participate if, in fact, they have a substantial connection to the event, and I think that the amendment that is put forward in the bill per se clearly puts the relationship of the media to fatality inquiries into proper perspective.

With respect to the other proposed amendment by the hon. member, once again this evening I talked about the example of a 16 year old under government care driving a car and, unfortunately, dying in a motor vehicle accident. Assume further that that is a situation where the 16 year old entered into the intersection and a third party failed to stop at a red light, blew into the intersection. It was clearly the third party's fault.

Under the current circumstances it would be necessary to have a fatality inquiry into that particular event simply because of the relationship of that child to the custodial party. We do not have fatality inquiries with respect to motor vehicle accidents where somebody goes through a red light or a stop sign and causes the death of another individual. That is not what typically occurs in fatality inquiries as a general proposition. If there's a police chase or something of that nature, yes, but in the ordinary course of things, no. So what we are saying here is simply that that is a situation where there is "no meaningful connection between the death and the nature or quality of care or supervision being provided."

Now, on the other hand, if that youth were impaired, different circumstances. But in the amendment that the hon. member is attempting to delete, the words are that there is "no meaningful connection between the death and the nature or quality of care or supervision." We think that it is important to allow for the review of this matter initially to take that into account.

So, once again, in the circumstances that I alluded to of the 16 year old driving a vehicle, being in an unfortunate intersection collision, the fault of the third party, where the 16 year old is under care, it would automatically give rise to a fatality inquiry today. There is no causal connection between the care and the circumstances of that particular death. There may be in other situations; for example, if the child is impaired. Sixteen year olds ought not to be impaired driving vehicles, and I can understand that somebody would want to inquire into that if the child was in care, but those circumstances can be taken into account in the amendments that we have proposed in this particular bill.

So once again I am asking the members not to support the amendments put forward by Edmonton-Strathcona. Thank you.

The Deputy Chair: The hon. Member for Edmonton-Centre.

Ms Blakeman: Thank you very much, Mr. Speaker. I find it unfortunate that the choice of the third-party sponsoring members was to combine the two amendments into one because what's happened is that I would be very willing to support one of them; that is, the amendment of section 17, which, in fact, the minister and I had a number of exchanges on. I accept the minister's explanation of what is included in section 4, so I'm not in favour of amending section 4. So you have presented me with a dilemma, and I'm wondering if the member is willing to sever. Not likely, seeing as they just put them together, but I thought I'd ask. If they are not willing to have this voted separately, then I'm afraid I can't support it, but I sure wish I could.

Thank you.

Dr. Pannu: Mr. Chairman, I am open to your guidance on this. Certainly, on the point that's been made by the hon. Member for Edmonton-Centre, I'm willing to go back and have the amendment severed in order to allow the Member for Edmonton-Centre to be able to vote, at least on one of them, with me. But the ball is in your court. It's your advice that I need.

Chair's Ruling
Separating Amendments

The Deputy Chair: Hon. member, I think it's a little too late in the process to change that decision. However, remember that we are at committee stage, and there is nothing precluding the hon. Member for Edmonton-Centre from bringing forward an amendment that would address the issues that she has indicated.

Hon. Member for Lethbridge-East, did you want to participate?

Ms Pastoor: I wanted to speak on the amendment that was stuck together, but if it's going to be severed, then I'll wait.

The Deputy Chair: At this stage we are proceeding with it as one amendment.

Debate Continued

Ms Pastoor: Okay. Thank you, Mr. Chairman. I wanted to speak on the amendment. Actually, both of them I could support. I just really feel that this allows too much power to be given to one person's hands. Right at this moment in time it's probably okay. We all know the minister. We are all very comfortable with the process. But I sometimes look into the future, and a misguided minister could hide and bury many, many mistakes by having that power to not allow fatality hearings. I wonder if I might ask for a clarification from the minister as to who would actually own the file if this went beyond a fatality into a court.

The other comment I wanted to make is about the minister having the power to actually – no, I'm sorry; that's actually to the bill, not to the amendment.

Perhaps the minister would like to answer my question when he's digested it. Thank you.

9:10

The Deputy Chair: Hon. members, the chair is being approached by the Government House Leader with a suggestion that the committee be given consent to have two votes, separately, on these two amendments. Now, the chair had made a ruling. The chair is a servant of this Assembly, and if we have unanimous consent that we split these two amendments again, into A1 and A2, and have separate votes, the chair will follow the direction of the committee.

Hon. Member for Edmonton-Strathcona, I'll ask you. Would you like this to revert to two separate amendments?

Dr. Pannu: Yes, Mr. Chairman. I would like to go back to the original intent that I had to have two separate amendments.

The Deputy Chair: Will the committee give unanimous consent that we proceed with this as two separate votes?

Some Hon. Members: Agreed.

The Deputy Chair: Does anybody oppose?

An Hon. Member: Opposed.

The Deputy Chair: Okay. Hon. members, unfortunately, we were not able to get this unanimous consent, so we shall vote on them collectively as one amendment.

Dr. Pannu: Mr. Chairman, I'm disappointed but, nevertheless, must proceed.

Amendment A1, the first part of it, proposes to change 33(3) by striking out ", or" at the end of clause (a) and striking out clause (b). I'm trying to explain why I think the amendment is necessary. The minister has given an interesting hypothetical scenario in which he thinks that the absence of a "meaningful connection between the death and the nature or quality of care or supervision being provided to the deceased person" is apparent. I think that in that hypothetical case that may be so.

I want to ask the minister if he would have any information on whether the existing legislation, which is under amendment now, has presented any problems where, in fact, fatality inquiries have had to deal with cases where they proceeded in spite of the fact that there was no meaningful connection between the death and the nature or quality of care provided. I haven't come across any such instance. It would seem to me that if there is no demonstrated need to change the act, then why do it? Doing this would seem to me to be restricting the scope of circumstances under which a fatality inquiry can be called. I think it's redundant, unnecessary unless a case can be made based on some past experience which has demonstrated that there's a need for this change in direction. I am not aware of that.

The whole idea of meaningful connection is itself something that's subject to debate. Parties often are in disagreement on whether or not there is a meaningful connection between the death and the nature or quality of care. That's precisely why fatality inquiries are often called for and needed. In the case that I referred to last night, in Calgary Foothills hospital in the emergency room, where a patient was flown in and then flown back without getting the appropriate attention and died on the way, whether or not there is a meaningful connection between the quality of care provided or the quality of care that the institution failed to provide is the issue, and there the fatality inquiry, in fact, was very helpful in sorting out the difficulties in the procedures which led to this particular fatality.

So I am kind of puzzled why the minister assumes that the meaningful connection is so obvious as not to be debatable, as not to be questioned, as not to be challenged by one party or the other. One of the reasons that we have fatality inquiries is to see whether or not we can establish a meaningful connection between the provision of care or failure to provide that care and the fatality. So that's the first part of the amendment. I would hope that members will reconsider and vote on it in light of what I've just said.

On the second part of the amendment, which deals with section 17, where I call for striking out clause (b), I think that's fairly obvious. I think the media as a present status is the one that needs to be maintained, and the intent of the amendment is to maintain that status.

Thank you.

[Motion on amendment A1 lost]

The Deputy Chair: Debate can continue on the bill. Does anybody else wish to participate on the bill? The hon. Member for Lethbridge-East.

Ms Pastoor: Thank you, Mr. Chairman. I might perhaps reiterate a couple of my remarks to the minister. [interjection] Then I'll just ask the questions and have them recorded. I realize that you were very busy and perhaps didn't exactly hear what I had said. It's just a quick remark, and I wanted a couple of clarifications. One of the things that actually troubled me was the power that is being given to the minister – and perhaps I need a clarification on this – to actually appoint the judge. I thought that at very least the Law Society should select a judge that would be based on his or her experience in the area of question for that fatality.

Then a further question that I would have that came to mind sort of based on the amendment would be – we would be okay in the present, but the future might scare me in terms of perhaps a misguided minister that would have the power to hide and bury mistakes. Again, this would be, I think, probably a lawyer question, but the information that comes out of these fatalities that this minister would have the power to release or not release based on how he decided he would release it, would it be then allowed to be used in a court of law? It's an awful lot of power for one man.

The Deputy Chair: The hon. minister.

Mr. Stevens: Thank you very much, Mr. Chairman. To the hon. member, the judge that would be assigned to a fatality inquiry is assigned by the chief of the provincial court, not by the Minister of Justice. So there was never any intention to make any appointment of the judge. There is an appointment of counsel to conduct the inquiry but, certainly, not of the judge. That is done by the Chief Judge of the provincial court.

The amendments that we have brought in here clearly provide that the Justice minister has an obligation to make public the report when it is made available to him. Now, that's different than the circumstances at present. The legislation currently is silent on that particular matter, so there will now be an affirmative duty on the Justice minister to make that report public. I don't know if that wholly answers the question that the hon. member had with respect to the report, but it's out there in the public. These reports do not have a finding of liability. The purpose of the report is to talk about the circumstances of the death and to make recommendations, if any, as to how to make whatever we're talking about better so as to avoid these kinds of losses in the future.

9:20

The Deputy Chair: The hon. Member for Lethbridge-East.

Ms Pastoor: Thank you, Mr. Chair. Thank you very much for that. Further to that, when that report is made public, I understand that it just comes with recommendations in that particular case, but is that information available to be used in a court of law that would then decide perhaps responsibility?

Mr. Stevens: I don't believe, hon. member, that that report would be of any evidentiary value in a case dealing, say, with liability. If there was a liability issue or if there were disciplinary hearings, those would be tried separately with fresh evidence, unless the parties to the particular case agreed between themselves that aspects of the findings of the fatality inquiry judge would bind them, but that would only be as a matter of agreement. There would be no operation of law which would see the findings of a fatality inquiry be binding on parties to some collateral, parallel proceeding.

One of the things I pointed out in second reading that is advantageous about the process that will be available upon these amendments becoming law is that a fatality inquiry will be able to in appropriate circumstances take advantage of adversarial proceedings that give rise to certain findings of fact or give rise to certain evidence to streamline a fatality inquiry. So a fatality inquiry in appropriate circumstances may be able to take advantage of other

adversarial proceedings that are related to but independent of and parallel to the fatality inquiry.

The Deputy Chair: Are you ready for the question?
The hon. Member for Edmonton-Glenora.

Dr. B. Miller: I would just like to close debate on our side, and I would like to thank the hon. minister for answering all the questions we have raised in second reading and tonight. I found his remarks very, very helpful. I think my own tirade at times about the media being excluded from the proposed amendment fatality inquiry probably was more of a reaction to the hon. minister's explanation of the bill because he said that one of the groups affected by this bill would be the media, and I reacted to that.

If you just concentrate on the bill itself, then maybe it's not such a big issue except that, you know, it just makes it confusing when 49(2) says, "The following persons may appear at a public fatality inquiry . . . and may cross-examine witnesses." So I understand that the media wouldn't be in that kind of role, but if they cannot prove a direct and substantial interest, would they be excluded? I think your explanation indicates that they would in fact be able to be present to report on what is happening to the public, so it still is a public fatality inquiry. That was my main concern.

So as far as our support or nonsupport, I will take the whip off, and we'll see how we vote.

[The clauses of Bill 24 agreed to]

[Title and preamble agreed to]

The Deputy Chair: Shall the bill be reported? Are you agreed?

Hon. Members: Agreed.

The Deputy Chair: Opposed? Carried.

Bill 19
Securities Amendment Act, 2005

The Deputy Chair: Are there any comments, questions, or amendments to be offered with respect to this bill? The hon. Member for Edmonton-Rutherford.

Mr. R. Miller: Thank you, Mr. Chairman. I think I indicated when I spoke to this Bill 19, the Securities Amendment Act, 2005, in second reading that in consultation with the stakeholders it does again appear to be primarily of a housekeeping nature. The efforts to move us towards a passport system as opposed to having one, single, overriding commission, although they may not be exactly what I would have liked to have seen in a perfect world, I recognize that it certainly does bring us in line with what other jurisdictions are doing and at the same time recognizes the autonomy that is requested by some of these junior companies in Alberta, so I can live with that.

I do however have a few questions that I'm hoping could be answered tonight. I alluded to them when I spoke to the bill in second reading. In particular they are: in part 6 in the bill section 13 is amended. It says:

> (c) may designate one of the members of the Commission as the lead independent member, with the powers, duties and functions prescribed by the Lieutenant Governor in Council.

My question, that I referred to in second reading, was just exactly what that range of powers might be, if the mover or the minister might be able to describe for us what they envision as the duties and functions that would be given to that lead independent member.

I would comment: in part 7 section 14 is amending the remuneration for the chair, vice-chair, and members of the commission. It currently reads that that remuneration shall be set by the commission, and the amendment in the bill says that that would be "subject to the approval of the Minister." I would like to suggest that that's a good thing. We've seen in the past a number of commissions that are entitled to set their own remuneration without any oversight by the minister. I'm particularly thinking of the WCB a few years ago, that was in the news a lot in that regard. So I think this is a good thing that the minister would have final say.

In part 8 it refers to adding a clause after section 14:

> 14.1(1) If a member of the Commission resigns or a member's appointment expires, the Chair may authorize that individual to continue to exercise powers as a member of the Commission in any proceeding over which that member had jurisdiction immediately before the end of that member's term.
>
> (2) An authorization under subsection (1) continues until a final decision in that proceeding is made.

I referred, when I spoke to this in second reading, to a concern that I have given the situation that is currently in the news with the Alberta Securities Commission: if, in fact, this might allow the extension of an appointment by a new chairperson of an existing chairperson that may in fact leave his or her position under a cloud, as it were. There is no provision here for the minister to review that decision. I'm wondering if there might be some consideration to that, given the current situation, that we might wish to allow the minister to have some oversight in that regard.

9:30

Then finally, Mr. Chair, the same old, same old that I go through all the time is my concern about moving things from legislation into regulations. Perhaps there's good reason for this, but I'm certainly interested in hearing the explanation. In this particular bill there are exactly 11 pages – 11 pages – of legislation that are being removed entirely and put into regulation. I understand the argument for the expediency required at times to change rules and regulations in reaction to things that might be taking place out there in the real world, if I can call it that.

I think I had indicated in second reading that in Ontario the Ontario Securities Commission has decided to leave all of this in their legislation because they're comfortable that they can have the appropriate changes in legislation made if and when they need to. In fact, what they told us is that it's because the Ontario Legislature sits more often. Now, whether or not that's accurate, whether or not there's really an impediment in Alberta I'm probably not the person to say, but I did find it interesting that that was the comment we had from the people in Ontario.

But, again, I do have a concern any time we're moving 11 pages of legislation into regulation and then allowing those rules to be made by Executive Council without the benefit of public debate and public scrutiny. That causes me a great deal of concern.

So those would be the questions that I would hope I might be able to hear an answer for tonight, Mr. Chairman. Thank you.

The Deputy Chair: The hon. Member for Grande Prairie-Smoky.

Mr. Knight: Well, thank you, Mr. Chairman. I certainly want to thank the member opposite for his interest in the questions, and I hope that I'll be able to answer most of them satisfactorily.

Both members that commented in second reading, Mr. Chairman, asked why Alberta had decided not to pursue a single securities regulator to cover all of Canada. The reason for this is that the

memorandum of understanding we signed with other provinces focuses on a passport system that's highly harmonized and streamlines security laws across the country. It increases the communications between the provinces and other jurisdictions and also increases co-operation on securities regulatory issues. They're all consistent with steps that would be needed and would be taken in any event in the future if it is determined that a single regulator should be pursued. However, the provinces and territories with the exception of Ontario at this point are not prepared to commit to a single regulator. The focus for us in the short and medium term will be to continue the implementation and the commitments that we made in the memorandum of understanding.

Mr. Chairman, with respect to the lead independent member that's proposed in the legislation, this position is similar to that of a lead independent director in a public company. Private-sector best governance practices provide for the appointment of a lead independent director where the role in a corporation of a CEO and a chairman of the board are combined in one individual as is the case with the Alberta Securities Commission. This amendment is intended to ensure that the commission is subject to and provides the same level of corporate governance and transparency and effectiveness expected of the reporting issuers that it regulates.

Also, the member has brought up the situation with respect to allowing members whose term has expired to continue to sit and participate in an enforcement hearing with an expired appointment. Enforcement hearings are often conducted over a very extended period of time, and the loss of a panel member when they resign or their term expires may result in the loss of a prescribed quorum of members. That would require the appointment of a new hearing panel and the commencement of a complete new hearing in the worst-case scenario, or it could deprive the panel of one of the persons who has heard evidence from providing input and expertise to the final decision.

This provision should permit the member to continue to participate as a member of the hearing panel until the hearing is concluded and a decision and the reasons for the decision are handed down. The provision is limited to enforcement hearings and would not permit the individual to carry out other prescribed duties as a member.

The matter of enforcement, Mr. Chairman, has been raised by all three members who spoke. Much was said about allegations surrounding the Alberta Securities Commission. This legislation is completely unrelated to the allegations. However, I'd like to point out that one of the goals of the bill is to increase the enforcement and compliance powers of the Alberta Securities Commission. The enhanced enforcement powers in Bill 19 will allow the ASC to address a greater range of inappropriate market activities as well as providing a greater range of tools at the disposal of ASC when they're fashioning an appropriate sanction. This will be accomplished through a variety of means in the bill.

Mr. Chairman, there will be a replacement of the existing prohibition against misrepresentation, expansion of the prohibition against fraud and market manipulation, addition of a new prohibition against front-running to protect investors, and assurance that registrants and their representatives who provide trading and advisory service to Albertans put the interests of their clients ahead of their own and ahead of the firm when trading.

There's a new obstruction of justice prohibition that captures activities intended to hinder or interfere with reviews, investigations, and hearings such as withholding, concealing, or destroying documents. It will expand the current insider trading prohibition to include prohibition against encouraging a person or a company to engage in illegal insider trading in addition to the existing prohibitions against trading, tipping, and procuring in the provision.

Mr. Chairman, there's a matter of remuneration that had been brought up. I think really what's intended here in the legislation is to allow for just another level of transparency with respect to the remuneration. It still would be set initially and discussed in the commission and would be then vetted with an OC at the ministerial level.*

The final issue that I think was a concern to the members was the idea of moving sections of the Securities Act into regulation, and there were concerns with respect to transparency in that case. But, Mr. Chairman, what I'd like to note here is that many jurisdictions are moving to platform-style legislation in which the fundamental requirements that rarely change are set out in the statute, and the more detailed requirements that continually evolve to meet the changing market conditions are set out in rules.

9:40

So what we're doing here, Mr. Chairman, is nothing that's really unusual in the area of securities commissions in other jurisdictions in the country. The MOU commits the provincial and territorial ministers to developing and implementing highly harmonized and simplified securities legislation. However, the advantage of moving some provisions into rules is that it enables timely response to issues in the marketplace and changing market conditions.

Mr. Chairman, I believe that those questions would have been mainly addressed by my comments, and I would look forward to further debate if required. Thank you.

[Two members rose]

The Deputy Chair: The hon. Member for Edmonton-Calder.

Mr. Eggen: It's okay. You can be the honorary hon. Member for Edmonton-Calder.

Mr. Chairman, I am rising just to speak on a number of specific issues in regard to Bill 19. While I think that it's an honourable pursuit to look to harmonize Alberta's security regulations with other Canadian jurisdictions and develop some sort of homogeneity through what amounts to a passport system, I guess my only question, but it's a large question, is if this government and the hon. minister specifically is looking to this as a platform or a step forward to creating a national regulatory system. Now, the reason that I ask that – and it is specific to provisions that are built into this stage along the way – is because, in fact, if this is a step down the path towards a national regulatory system, then certainly I think that we could consider supporting Bill 19. However, if it's not, then I think that there are some specific things that are flaws in Bill 19, and we would like to address them.

I think that, for example, quite a number of investor groups that we had spoken to had very strongly in no uncertain terms suggested that only a single security system could strengthen the public faith and the investor faith in the security systems here in Canada. The patchwork system that we have currently is inadequate, and really the most logical way to solve that is to have not a federal regulatory system by any means but a national one bringing together each of the provinces and territories to create a cohesive whole.

I think that with a passport system, you know, you can still find the weak links in the system in regard to individual security commissions. This is a moving target, Mr. Chairman, in the sense that the individual security commissions and their administration can be either weak or strong over time depending on what happens to be going on. Currently, other provinces and jurisdictions are looking at Alberta's current commission as being weak, so this encourages the potential for abuse of the system and discourages investment in

*See p. 941, left col., para. 4

each different area, in this case Alberta. So, as I said before, if we could sort of get an assurance or a sense that these provisions are in fact moving toward a national system, then I think that we would consider supporting this particular bill.

What a number of different groups are bringing forward – say, for example, the Canadian Council of Chief Executives, the CCCE. In a publication they had last fall, they were suggesting that the national system is exactly what they're looking for. A gentleman by the name of Gwyn Morgan, vice-chairman of the CCCE and president of the Alberta-based EnCana Corporation suggested that "it is critical for provincial governments to recognize this passport agreement as a beginning and not an end," towards a national system. Other individuals have echoed Mr. Morgan's statement.

Someone else that we have had contact with is Diane Urquhart from Ontario, and she is suggesting that, you know, some of the weaknesses in the ASC could be cleared up by not only moving towards a passport system but, in fact, pushing towards a system with national standards for the enforcement and the adjudication of securities offences. Again, I think that considering our present difficulty, our pickle, so to speak, with our Alberta Securities Commission, with a national set of standards it might be easier to fix that problem.

So these are the specific comments that our caucus has in regard to Bill 19, and I would welcome any comments and answer to really that one main question. Thanks.

The Deputy Chair: The hon. Member for Grande Prairie-Smoky.

Mr. Knight: Thank you, Mr. Chairman. The two questions, I think, that I got from the comments from the hon. member were, number one: is this a step down the path towards a national regulator? I have to answer that by saying: categorically, no. All I said and what remains to be the case is that in the event that in the future we did end up with a decision, with other provinces and territories involved, that a national regulator was in everybody's best interests, these changes and amendments in Bill 19 would be necessary at that point in any event. So what this does is move us ahead, whether we are involved in the passport system with other provinces and territories or move to a national regulator. With the exception of Ontario I would suggest that all the other provinces and territories are onside with the passport system, and I believe that we will all move in that direction.

The other – and I'm not sure if it was actually a question – that outside of Alberta and across the country and perhaps even wider than that, there's an indication of weakness with respect to the Alberta Securities Commission. Again, I just have to reiterate and enforce: the case with Bill 19 has nothing to do with current allegations with respect to a situation that may or may not exist in the Alberta Securities Commission.

Mr. Chairman, I hope that that has answered the member's questions. Thank you.

The Deputy Chair: The hon. Member for Edmonton-Calder.

Mr. Eggen: Yes, Mr. Chairman, that does, in fact, make it clear, I suppose, in regard to the intentions of this bill.

I would like to just comment briefly, though, in regard to the ASC. I think that, you know, if we had a wider jurisdiction or if it was available through us to have a national adjudication of securities and, say, infractions in regard to securities, then it just makes it easier for us to move the problem and to dissipate it. You know, stock markets are volatile places, and there are many of them and lots of places to put your money. If there was a national system in place, this current thing that we have in front of us – it would be easier to, let's say, let the air out of the difficulty because a national body would have a national set of guidelines, and they could move in and clear the air, and people could have a restoration of some degree of confidence.

Thank you.

9:50

The Deputy Chair: The hon. Member for Edmonton-Rutherford.

Mr. R. Miller: Thank you, Mr. Chairman. I appreciate the comments by the Member for Grande Prairie-Smoky in terms of attempting to clarify the situation with the passport system as opposed to a national regulator, but I now find myself a little confused because the current chair of the commission is on record publicly as saying that a national overriding commission would be the best for investors in Alberta, but the political will just isn't there, he says. So my confusion, I guess, stems from – because you said emphatically no, that we have no intention of moving towards a national regulator, I'm wondering now: are you directly contradicting the current chair of the commission or simply confirming that this government doesn't have the political will to move towards a national regulator?

[The clauses of Bill 19 agreed to]

[Title and preamble agreed to]

The Deputy Chair: Shall the bill be reported?

Hon. Members: Agreed.

The Deputy Chair: Opposed? Carried.

Bill 25
Provincial Court Amendment Act, 2005

The Deputy Chair: Are there any comments, questions, or amendments to be offered with respect to this bill? The hon. Minister of Justice and Attorney General.

Mr. Stevens: Thank you, Mr. Chairman. I have some very brief comments to make. We've worked very hard with the Provincial Court to develop a made-in-Alberta solution that improves our judicial system by meeting the needs of Albertans and the judiciary. Judges who want to provide a guaranteed amount of judicial service after retirement will be attracted to this option. As a result, highly experienced and competent judges will continue serving Albertans on a part-time basis after retirement.

Thank you.

The Deputy Chair: The hon. Member for Edmonton-Glenora.

Dr. B. Miller: Yes. Mr. Chairman, in second reading, which we had already this evening, I presented my ode to retirement and part-time work, so I fully support this bill. We're not bringing any changes or amendments, and I commend the minister for making it possible to draw on the cumulative experience of our judges and enabling them to provide service in Alberta.

Thank you, Mr. Chairman.

Dr. Pannu: Mr. Chairman, I'll be brief in speaking to Bill 25, Provincial Court Amendment Act. The bill provides for the appointment of retired judges as part-timers. If they're 60 years or older and want to work as part-time judges, the bill does provide

that. It, of course, outlines the minimum requirements in terms of experience of 10 years, be 60 years old. On the other hand, they do retire at 70. So that's fine.

I think the fact is that justice delayed is justice denied, and the availability of judges is certainly a key factor in delivering justice on time. If this bill expedites the dispensation of justice, I think it's certainly worthy of support. I think it does, so we certainly would be happy to support the bill.

Of course, it will need more than just the provision to have part-time judges. We'll need more resources for the courts and for the judges, to pay their salaries and pay other staff that are needed around the courts. So I would urge the minister to work at the other end as well to provide the resources that will be required. If this commitment that's being made in this bill – that is, to expedite the judicial proceedings, make settlements available to people in a shorter time period, time cycle – is to happen, the government and the minister will need to certainly go through the budget so that resources are available for the court system to hire these part-time judges and have more court hours, through which, then, cases can be decided on and adjudicated in a shorter time cycle than presently is the case.

With that, Mr. Chairman, I simply say again that we support the bill and hope that matching resources are available to implement it as quickly as possible. Thank you.

[The clauses of Bill 25 agreed to]

[Title and preamble agreed to]

The Deputy Chair: Shall the bill be reported? Are you agreed?

Hon. Members: Agreed.

The Deputy Chair: Opposed? Carried.

Bill 1
Access to the Future Act

The Deputy Chair: Hon. members, we still have on the floor with us amendment A1, as moved by the hon. Member for Calgary-Currie. Are there any comments, questions, amendments to be offered with respect to this bill? The hon. Government House Leader.

Mr. Hancock: Thank you, Mr. Chairman. I do want to rise and speak to the amendment very briefly. The amendment is with respect to section 4 of the bill and proposes to strike out section 4(5), which indicates that "the maximum amount that may be allocated under subsection (4) is $3,000,000,000." Now, as I understand, some of the critique that's been provided both in the discussion of second reading and again when this amendment was moved was that the endowment fund should be allowed to grow to a number a lot larger than $3 billion. I agree.

The endowment fund should grow to a much, much larger number. In fact, members of the House in speaking have alluded to endowments for some of the private institutions in the States that have large endowment funds. They might have mentioned that those endowment funds have grown from contributions by alumni and in other manners over the course of in excess of a hundred years to get to that amount. Hopefully, we would aspire in Alberta to have an endowment fund of such significant proportions created by, perhaps, an opportunity for private contributions or other ways of doing it, but this is a way to get the process started.

I'm particularly proud of the fact that Bill 1 provides for $4.5 billion of endowment in the future, and if you add the $500 million which the Premier announced in January with respect to the Alberta heritage medical research fund, that's $5 billion of endowment in the future, and most of that, I would argue, is endowment in some way connected with the postsecondary system because the heritage medical research fund and the ingenuity fund, both research monies – most of those monies attract the best and the brightest to Alberta for research projects.

10:00

Then, of course, a billion dollars for the heritage scholarship fund and $3 billion to the access to the future fund. So while we ought to aspire for endowing the future to grow and for those endowment funds to grow, $3 billion is not a bad start.

Mr. Chairman, I would suggest to the House that we leave section 4(5) in the bill, not because it ought to be a cap for all times, but it ought to hold our feet to the fire, to say that we've committed to put $3 billion into this fund, and we ought to be held accountable to put $3 billion into this fund. Quite frankly, I would hope that the opposition, rather than suggesting that that limit be taken out, point to that limit every day that we don't have $3 billion in the fund and ask why we haven't got $3 billion in the fund. Then when we get to the $3 billion, I will be with them to suggest that we should be amending that to raise the limit so that we can put more money into that fund.

I believe that endowing the future is the right way to go. I believe that Bill 1 really starts that process off with a good thrust, but it's the wrong way to go to take the $3 billion reference in the bill out. Rather, we should be aspiring to grow the fund, but let's have a target that we can be held, as a government, accountable to reaching as soon as we possibly can. For that reason, I would ask that the House not pass this amendment but instead celebrate the fact that we have a bill before the House which is calling for $4.5 billion to go into endowing the future.

If you add the $500 million that's been announced for the heritage medical research fund, that's $5 billion that this government is committing out of nonrenewable resource revenues, whether budgeted or unbudgeted, to be applied to the future of research and development, innovation, and leading and learning in this province, and I think that's a great place to start. It is a place to start. It's not the finish. It's not the end line. It's the beginning. But it's very important to have those targets in there so that the public can hold us accountable for that commitment.

The Deputy Chair: The hon. Member for Edmonton-Centre.

Ms Blakeman: Thank you very much, Mr. Chairman. I'm very pleased to be able to rise and speak in Committee of the Whole to the amendment currently on the floor for Bill 1. I really appreciate the minister's enthusiasm, but, you know, only the government could have a limit as a target. Only this government could say that a cap is a goal. And you know what? They've got experience at it because it's happened before. This is why, although I appreciate the minister's enthusiasm, I think he's wrong.

We had the government bring forward a so-called cap on tuition fees for postsecondary education institutions. I think it was 20 per cent for universities and 30 per cent for colleges. At the time, you know, this was touted as being a cap, and no way would the government ever allow the universities to charge more than 30 per cent in the tuitions, and this was a wonderful thing, and it was going to benefit all students absolutely. Get out the parade; strike up the band; get out the bunting. This was the bee's knees. Mixing my metaphors there a bit, but you'll bear with me, Mr. Chairman.

What really happened from that is that the colleges and universities looked around and went: oh, you know, we're not at that amount, so that's not really a limit; it's a goal. And they started increasing tuition fees as fast as they possibly could to try and reach the cap because it had become a goal.

This is the kind of process that this government likes to put in place. Given the funding situation with postsecondary education institutions, I cannot fault the boards of governors and the leadership at our postsecondary education institutions for taking advantage and following the lead that the government dangled so enticingly in front of them. Of course they were going to follow that change. That's why the government put it in the legislation, I'm assuming. But the end result is we had ever-increasing tuition fees rapidly. You know, it really is a special talent, Mr. Chairman, to be able to say that your target is a set limit and that a cap is a goal.

So I'm speaking in favour of our amendment put forward by the Member for Calgary-Currie because I have to say: why would you be in this rush to stop yourself already? The Minister of Advanced Education says: well, it's not a limit; it's a goal because it's going to entice us and inspire us to reach that minimum maximum amount. I say: why? I mean, we haven't even started down this road, and you're already starting to put this limitation on yourself because, let's face it, it is a limitation. Just given the track record here, I cannot expect that the government will not find something else that it's going to want to start diverting the money to, and in fact this goal will become a limit very quickly.

The funds that we're talking about here are surplus funds, so why do we need to put any kind of a cap on it? You know, we don't know what the surplus is going to be, but we do expect that there will be a surplus, especially with the voodoo, black magic budgeting that this government likes to get involved with, especially around forecasting surpluses and the price of oil and gas. I don't think we need to rush to put a limit on this. Let's deal with the surpluses as they come. Let's start to build it over the years. I don't think we need that enticement.

I think the Alberta public understands very well the need for that investment. They spoke very clearly to me during the election and were very happy to support what I was saying at the doors, which was, of course, the Liberal policy on the surplus, and that included 35 per cent into the heritage fund, 35 per cent into a special postsecondary education fund, 25 per cent into infrastructure, and the final 5 per cent special for the universities enhancing an endowment fund for the arts and humanities. They certainly returned me to this Assembly with a fairly good margin, and I think it's policies like that that really helped. So there is no need to put a limit on this even if the government sees a limit as a goal. I just gotta love that.

The minister referenced the points that we'd been making about the size of the endowments that are really needed to adequately fund the money that's needed in postsecondary educational institutions right now, and I agree. We need a lot more money in there. I mean, honestly, Mr. Chairman, a $3.5 billion endowment fund is going to give us about $135 million a year. For the amount of money that we need in the universities of Lethbridge, Calgary, Edmonton, our colleges, our apprenticeship programs, and our institutes of technology, 135 million bucks is a drop in the bucket. Considering all of the things that we need or want right now, I mean, good heavens, we're dealing with some amazing amount of infrastructure deficit – yeah, deferred maintenance for the two largest universities alone of approximately a billion dollars, and that's coming from the Alberta public interest fact sheet. So $135 million isn't getting us very far.

You know, today in the session I tabled correspondence from a constituent of mine who, in fact, is a student and is, I'm assuming, attending the University of Alberta. He was responding to some comments of the Premier, saying that there's a notion that postsecondary education in Alberta is underfunded, and he was taking issue with the concept of it being a notion. He points out that funding from the government per student dropped 24 per cent between '93-94 and 2003-2004 in constant dollars – dropped 24 per cent, funding from the government per full-time student. In 1982 for every dollar of tuition a student paid, the government gave $10 to the institutions. In '02-03 the government contributed $2.20 for every dollar of tuition put in by students. So this is starting to give you a feel for how much money we really need invested in those postsecondary institutions. Provincial expenditure on postsecondary education as a share of gross domestic product in '92-93 was 1.52 per cent. In '03-04 it was .91 per cent. Same problem. These statistics are all supporting the same thing. We are not investing enough money in our postsecondary institutions. Tuition at the U of A in '92-93 was $1,610.40 – you can tell this is a university student; it's exact – for a full course load. In '04-05 tuition was $4,537.20 for a first course load.

10:10

Mr. Hancock: On the amendment?

Ms Blakeman: I am on the amendment. The minister is concerned that I am not speaking to the amendment, which is to remove the cap. The point of removing the cap is to get more money in there because the cap, as the government has it, is $3.5 billion, which is only going to generate $135 million a year. My argument in looking at these statistics is that more than $135 million is needed.

In 1983 tuition consisted of only 10 per cent of university operating revenue in Alberta. In 2003 tuition accounted for over 25 per cent. Remember where I started, Mr. Chairman, talking about the race to the cap, the universities going: oh, my goodness, we can increase our tuition fees in order to achieve that cap. There we have it going from 10 per cent to 25 per cent in a fairly short period of time.

I'm happy to support my colleague's amendment on this bill. I think it is the most important amendment that he needed to bring forward. I think that's signalled by him bringing it forward as the first on the bill. It's listed here and forevermore as amendment A1. It is deserving of support, and I appreciate what the minister's saying, that, you know, he's not going to view it that way. I appreciate his ability to reframe the way this gets looked at, but the fact of the matter is it's still a limit. We need more money available to go into postsecondary, and this is putting a cap on it. This is putting a limit on it, and I don't want to see that limit.

The recommendation of the amendment is to move the cap, remove it completely, and I think that is the right thing to do. I'm happy to speak of favour of it, and I will be voting in favour of it. So thanks for the opportunity to speak in favour of that amendment, Mr. Chairman.

The Deputy Chair: The hon. Member for Edmonton-Rutherford.

Mr. R. Miller: Well, thank you, Mr. Chairman. I as well will certainly be supporting my colleague from Calgary-Currie in his efforts to have this amendment approved by the Legislature.

I thought the minister was on a roll there when he jumped up and waved his hands and indicated how much he supported this amendment. If he had just stopped after the first sentence, we could probably have moved on quite quickly. He spoke in favour of the $3 billion, and in fact maybe the amendment based on the minister's comments should be simply to change the word "maximum" to

"minimum." I see his head nodding, so perhaps that's what we should be doing, establishing that the government would automatically make that fund a minimum $3 billion and allow it to grow. That would perhaps be a friendly amendment that would accomplish what it is that we're trying to do here and at the same time help the government move a little quicker to the cap that the minister so desperately wants his government to move to. Really, I think that's perhaps what we should be looking at.

Mr. Chairman, there are so many facts and figures that could be quoted here. I'm just going to name a few of them. In March this year there was a newspaper report that indicated that four Alberta universities, just four of them, the four big ones, project 160 million new operating dollars just to catch up to their peers. Now, I'm not sure exactly about the math that my colleague from Edmonton-Centre was quoting, but she was saying that on an investment of $3 billion it would return somewhere in that range. So just one year alone with this fund, assuming that it was at the $3 billion, would be used simply to help those four universities catch up to their peers in terms of where they feel they should be. I think that illustrates quite clearly that the $3 billion is not nearly enough. Of course, one of the things that I'm quite sure we have already discussed in second reading of this bill is the fact that there's no clear mandate in the bill as to when we would reach that cap, and the minister himself said that it is to be treated as a goal.

I know we're all anxious to see the budget tomorrow, Mr. Chairman, and I'm particularly anxious to see the fourth-quarter results and find out just how big the budget surplus has ballooned. The numbers we're hearing are somewhere between $6 billion and $8 billion. I honestly wouldn't be surprised if it was a little bit more. At a time when this province is experiencing unprecedented wealth due to the unexpectedly high world prices of oil and natural gas, I think we're shortchanging ourselves. I think we're shortchanging our students and our future by putting what I see to be an artificially low cap on what is, admittedly, a very good idea, the idea of a postsecondary endowment fund.

I won't spend a lot of time talking about whose idea it was – we've bounced that one back and forth a few times already in this Assembly – but it certainly is an idea that has captivated the imagination of all parties and certainly garnered an awful lot of acceptance out there in the real world, again from students and parents alike. So it's a very good idea. The only real question is: why are we holding it back? Why are we putting this artificial cap in place when, in fact, as I suggest, if anything, we should be viewing the $3 billion as a starting-off point and allowing it to grow from there?

I was also intrigued by the minister's comments when he correlated this fund to what takes place at some of the larger postsecondary institutions in the United States and some of the endowment funds that they have, privately funded, that are many times more than the $3 billion. I'm not sure whether there's been any effort made to explore the possibilities of having private funds contributing to this fund, but there may be something there that we should be looking at as well that might allow us to race to this cap, as my colleague from Edmonton-Centre described, and get there a little sooner if, in fact, the amendment that we're debating is not successful.

Certainly, Mr. Chairman, as I said, I just believe that by setting it at $3 billion, by suggesting that it's a goal and by not defining the parameters under which we will try to achieve that goal, given the fact that we're experiencing this incredible wealth and given the fact that we're probably in a better position than any other jurisdiction in North America to make that $3 billion a minimum as opposed to a maximum, I certainly have to voice my very strongest support for the amendment. If, in fact, we can't do that, then, as I suggest, maybe with the minister's consent we might be able to look at changing the word "maximum" to "minimum" and accomplishing something that perhaps both sides of this House could be happy with.

Thank you, Mr. Chairman.

The Deputy Chair: Are you ready for the question?

The hon. Member for Calgary-Currie.

Mr. Taylor: Thank you, Mr. Chairman. I just want to add a few more words around this debate about why the $3 billion cap is in the bill in the first place. I think I understand what it is the minister would like to accomplish, and I find myself hard-pressed to disagree with the minister philosophically. I think the minister gets it that this fund really does need to grow far beyond the $3 billion mark, and I think the minister is taking at least a medium-term view.

I don't know if I can say that he's taking a long-term view. We haven't had discussions that would allow me to peer that deeply into the minister's psyche, but I do believe that he is taking at least a medium-term view and looking ahead to the day when the cap is reached or very nearly reached and perhaps coming back into this House with a new piece of legislation. Perhaps it will be called the Access to the Future Amendment Act – I don't know – in, we should be so lucky, a year, maybe two, maybe three, maybe five years. I don't know how long it'll take to then raise that cap.

10:20

Philosophically I believe that's where the minister is coming from. I can't quibble with the philosophy. I can't quibble, I suppose, with the principle. The process, the practical application of this, though, I think has the cart decidedly before the horse. If the notion here is that a performance target of some sort needs to be established in order to achieve the desired goals, I have no quarrel with setting performance targets, by any stretch of the imagination. My colleague from Edmonton-Rutherford has certainly defined one way that we could go about this, changing the word "maximum" to "minimum" so that the minimum amount that would be allocated under subsection (5) would be $3 billion, not the maximum. That's one way of doing it.

Another way of doing it would have been to perhaps look at section 4(4). If you'll bear with me, Mr. Chair, because I know I'm now off the specific amendment into a different section, that subsection says:

> An account from within the Alberta Heritage Savings Trust Fund is deemed to be established to which is allocated, as considered appropriate by the Minister of Finance, money that is transferred to the Alberta Heritage Savings Trust Fund after April 1, 2005.

You see, Mr. Chairman, there was an opportunity right there – and, no, I didn't propose an amendment on this, and perhaps I should have – to lock in a performance target, a performance requirement. If the desire here is to start this fund growing and to grow it rapidly in this race to the target, this race to the limit, if you will, then commit the Minister of Finance to putting in a certain specified amount of money on a regular basis.

Our plan, the Liberal opposition's plan, during the election campaign, of course, was to put in 35 per cent of every annual budget surplus. We've talked about this. We've debated this. We've discussed it in the House. It's in the record. I'm not going to spend a lot of time on that. I think it is a matter of public record that that is the way we would have gone about it, and if there's any need to go further in getting that onto the public record, our Bill 203, Report on Alberta's Legacy Act, will I'm sure make that abundantly clear as we come up to discussing that.

But the thing is that I don't know whether we should commit this government or commit the Minister of Finance to putting in a minimum $3 billion to kick-start this endowment fund. I don't know whether it's fiscally prudent to demand an immediate infusion of $3 billion. I imagine that's a bit on the high side. The way this province's economy is working, the way it's humming along, I think it's pretty clear that, God willing and the creek don't rise, we can achieve that $3 billion figure – let me not call it a target now, Mr. Chairman, but a figure – in fairly short order.

Whether we could commit the Minister of Finance to dumping $3 billion, writing a cheque for $3 billion to transfer the money, supposedly new money, immediately into this account within the heritage savings trust fund – you know, I think there may be some real questions about the fiscal prudence of doing that. However, I think the minister could have been required and the government could have committed the minister to putting in a percentage or dollar amount that would have been reasonable and fiscally prudent. By taking that tack, the desire to achieve an endowment fund that ultimately is much bigger than $3 billion could have been fast-tracked.

The minister alluded to discussions that have happened in this House, and I've certainly been part of those discussions myself, as have some of my colleagues. We're not going to get to the point where we have so much money in an endowment fund that we literally have, as in the case of I believe it's Princeton University – I don't have my notes right in front of me, but I believe it's Princeton – $1.3 million per student. Yes, it is Princeton that has the endowment of $1.3 million per student, which is the biggest in North America. We're not going to get there overnight. We're not going to get there in a couple of years. We're not going to get there in a decade. You know, maybe a 100-year time frame or a 50-year time frame for that level of endowment is realistic, but let's aim for it, Mr. Chairman.

That is the point of amendment A1 in striking out section 4(5), which sets a maximum amount, a cap – you can call it a target, but what it really is is a cap, an upper limit – removing that from the legislation, from the bill. It says, "The maximum amount that may be allocated under subsection (4) is $3,000,000,000." So the language there, Mr. Chairman, is very clear. Yes, it's subject to revision, subject to amendment down the road by another piece of legislation, but unless and until that subsequent piece of legislation is brought forward, we are stuck with a postsecondary endowment fund that is capped in this province at $3 billion. The minister's good intentions notwithstanding, there is absolutely nothing in this bill that would commit this or any subsequent government to reopening the legislation and changing the cap.

Now, as we all know, our mothers have all told us that we should be careful what we wish for. Perhaps the minister should be careful what he wishes for in suggesting that members on this side of the House should ask regular questions in question period until that $3 billion target is reached. It might get monotonous. Yes, in question period we do have the opportunity, to a degree at least, to hold the government accountable for promises made, but really what we would be doing is asking: "Well, have you reached the limit yet? Have you grown this thing as far as you ever said that it was going to grow?"

We do not have the power to compel. The voters, I guess, in a subsequent election have the power to compel this thing to grow by changing the government, but we on the opposition side of the House do not have the power to compel this government to bring in a subsequent piece of legislation that reopens this issue and establishes a higher cap or removes the cap altogether.

So why wait, Mr. Chairman? Why wait to see whether the government will do this? Even if we can assume that the government will, for the sake of argument, why wait until they do? Why not remove the cap now? Why not let this endowment fund start out from a point at which it can grow in perpetuity until it is worth $300 billion or more? That's the right way to go about this, we believe. That's why I brought forward this amendment. I certainly intend to vote for the amendment, and I hope this House will too.

Thank you, Mr. Chairman.

[Motion on amendment A1 lost]

The Deputy Chair: Are you ready for the question?

The hon. Member for Calgary-Currie.

Mr. Taylor: Oh, I'm not done yet, Mr. Chairman, not by a long shot.

Mr. Chairman, I'd like to move a further amendment to the bill, if I might.

The Deputy Chair: We need to have it circulated.

Mr. Taylor: Yes. I will circulate it first of all. My next amendment will be coming around to you all very shortly here.

10:30

The Deputy Chair: Hon. members, the amendment that is being distributed to you will be referred to as amendment A2.

Hon. Member for Calgary-Currie, you may proceed.

Mr. Taylor: Thank you, Mr. Chairman. This is, as the chairman noted, my amendment A2 to the Access to the Future Act, and I would move that Bill 1, the Access to the Future Act be amended in section 5.

Mr. Chairman, a little guidance from you, if I may, please. Do I need to read this amendment into the record?

The Deputy Chair: Not necessarily. You have circulated it.

Mr. Taylor: It will take a while. There are quite a few changes. Well, I'll zip through it.

(a) By adding the following after subsection (1):

(1.1) The Council shall consist of not more than 17 members comprised of the following:

(a) the chair of the Council appointed by the Lieutenant Governor in Council;

(b) the following members appointed by the Minister:

(i) 2 members representing universities, each nominated by a university board of governors;

(ii) 2 members representing public colleges and technical institutes, each nominated by a board of governors;

(iii) one member representing non-profit private colleges, nominated by a college's governing authority;

(iv) 2 members representing the academic staff of public post-secondary institutions, one nominated by a general faculties council or an academic council, and the other nominated by an academic staff association;

(v) one member representing the non-academic staff of public post-secondary institutions, nominated by a non-academic staff association;

(vi) one member representing undergraduate students of public post-secondary institutions, nominated by a students association;

(vii) one member representing graduate students, nominated by a graduate students association;
(viii) not more than 7 members of the general public who may be representative of parents, alumni, business organizations or organized labour.

(b) by striking out subsection (2)(a);
(c) by striking out subsection (3) and substituting the following:
(3) The members of the Council may elect one member to act as chair in the absence of the chair or in the event of the chair's inability to act.
(4) The Minister may designate an employee under the Minister's administration to attend meetings of the Council.
(5) Words defined in the Post-secondary Learning Act have the same meaning in this section.

Mr. Chairman, I know that there are other of my colleagues who wish to speak to this as well, and so I will be reasonably brief in speaking to this amendment myself. The point of this amendment – and I take you back to what I said at the beginning of committee study of this bill, that we really had three major areas of concern where this bill was concerned. Number one is the cap on the fund, and we spoke to that just a moment ago; number two, the composition of the advisory council; and number three, a need for some specified accountability on the part of the Ministry of Advanced Education, and we will get to that later.

This deals with the composition of the access advisory council, which is established under section 5(1). Section 5(2) goes on to talk about it to some degree, and of course we would strike out the part of that that in broad, general terms how the council might be established.

We think the terms in the bill are too broad and too general, to be blunt. We think that in order for this access advisory council to function as I'm sure the minister intended it to function, it needs to be specifically comprised of representatives of all sorts of different parts of the system, stakeholders in the system. I hesitate to use the word "stakeholder" because for some strange reason whenever I hear the word "stakeholder" I always think of the guy standing there with the platter next to the barbecue ready to put the steak on it, but I digress.

It needs to have specific representation across the system so that all sectors of the system that should be represented are represented and have a seat at the table. Not only that, Mr. Chairman. We believe that it needs to be seen by the public to have that kind of representation. Thus it is that we spell it out: two members from universities; two members from public colleges and technical institutes; one member representing the nonprofit private colleges; two members representing academic staff of public postsecondary institutions; one member representing support staff; one member representing the students, and we think they should have a place at the table; one member representing the graduate students, and we think that they should have a place at the table because they're still part of the system; and seven members of the general public.

Here we give some guidance to the minister as to who we think should be worthy of consideration for membership on the council. We think there should be some parent representation there. Parents, after all, do pay some of the bills for their adult children's postsecondary education, possibly not as large a percentage as the government believes the parents should, but they do pay some. Alumni, of course, have been through the system and in some cases fairly recently. Not to put them necessarily first among equals here, but who better to ask for input, for advice on an advisory council as to where the money in the access to the future fund should go than people who have been recently through the system?

Business organizations: of course business organizations have a stake in this. Organized labour: of course organized labour has a stake in this, you know, if for no other reason than that we include our fine apprenticeship training programs in any discussion that we have in this province on advanced education. That's part of it. So of course they should be on there.

Does that mean that the minister has absolutely no ability, no wiggle room if you will, to add somebody else who in his considered opinion deserves a seat at the table? No, not necessarily. We say, "7 members of the general public." The reason why we say not more than seven is because we just don't want this advisory council to get so unwieldy as to not be able to accomplish anything. But of the seven members of the general public we've only specified here four organizations that we think should be represented. We do not require that they be represented. We merely say that those members of the general public "may be representative of parents, alumni, business organizations or organized labour."

So there is room for others here, and even at that, although this admittedly would not be a voting member of the council, we've suggested that the minister have the ability and the authority to designate an employee under his administration to attend meetings of the council so that he's got a direct pipeline to what the council is proposing.

The chair of the council would be appointed by the Lieutenant Governor in Council. That's the one requirement that we suggest, to have someone other than the minister himself or herself appoint advisory council members. We are a fairly new bunch on this side of the House, but as we understand it, that brings a little more transparency and accountability to the process.

10:40

Of the people that the minister appoints, he has a great deal of discretion in there in choosing from among nominees put forward by, you know, their respective organizations, be it a board of governors of a university or a general faculties council or a students' association or whomever. So we think that this amendment – I would urge this House to consider it carefully, debate it, and I hope at the end of that debate approve it – not only ensures that there is fair and comprehensive representation on a very important council that will advise the minister on how to disperse this money but will be seen to do that as well. And that's key. That's key in a democracy.

Thank you, Mr. Chairman. I'll allow others to debate now.

The Deputy Chair: The hon. Government House Leader.

Mr. Hancock: Thank you, Mr. Chairman. I just want to briefly respond to the amendment put forward by the hon. member and, in doing so, indicate that I believe the intention of the amendment is, in fact, quite appropriate in terms of trying to put some parameters around how the access council might work. However, I would encourage members not to support this particular amendment because I think it is not useful at the start of this process to prescribe in too much detail how this might work.

While it may in fact evolve to this, and I would anticipate that on the council there might be a significant number of these organizations and institutions and students, et cetera, represented or their perspectives represented on the council, what it envisions with the access council is something very similar to something that we set up when I was in the Department of Justice. We called it the Justice Policy Advisory Committee, and in fact it was established based on the steering committee that came out of the justice summit. We found it very useful to have on that Justice Policy Advisory Commit-

tee not representatives of various groups but people who brought the perspective of various stakeholders and organizations within the justice system to the table. There is a distinction between a representative of a group and someone who brings the perspective of a group to the table.

When you're setting up this type of an organization, I think it's important to have the kind of flexibility to be able to work with it, to make sure that you can build it. Yes, it has to be open and accountable. Yes, the public has to know what's going on. Yes, there have to be ways of ensuring that that happens. We had the option, when we set this up, of prescribing it in this kind of detail in the act and chose not to go that route because there does need to be flexibility.

I'll just use the example that when we set up the Justice Policy Advisory Committee, we had a meeting. We were talking about mandate, we were talking about how it would proceed, and someone at the table indicated that it would be useful to have the perspective of a person from the community of persons with disabilities, for example. So we said, yes, that would be a great perspective to have at the table, and we went out and found an appropriate person from that perspective to come to the table. By the same token, we talked about bringing someone from the education sector into the process.

So sometimes when you look at what you're doing and you sit down and you say, "Well, these are the people who ought to be at the table," you prescribe it in this kind of detail, and you build a council of 17 members. Then you're saying: well, that's a lot of people to have around the table to be involved in these sorts of discussions. Then you say: but this is an endowment fund; wouldn't it be great to have somebody who has endowment experience on here? Or maybe we want somebody from the perspective of how we might transition this fund to grow in another way.

Maybe we want to look at the question of how endowment funds across North America have been able to obtain funds from their alumni, for example, and how we might engage in that sort of thing. So there may be talents that you want to have at the table. Yes, you could invite those talents on an ad hoc basis to participate. You could set subcommittees, as the bill suggests. You could bring in those talents in a number of different ways.

The point that I'm making, Mr. Chairman, is that in the bill as we have it, we have the context to the concept of the access council and the need to deal with the access council. So the public knows that it's there. It's not hidden. The public knows it's there. It doesn't have to be in the act. Many other councils and things are put together without them being prescribed by the act. It doesn't have to be in the act, but we wanted it to be in the act so it was very clear that there was going to be an advisory council, that decisions that were being made with respect to the fund weren't going to be made in secret, without anybody seeing them, without there being any input. We wanted to have the flexibility to design this properly and to be able to adjust it in its early stages so that it has the appropriate perspectives brought to the table. Certainly we're open in doing so to having suggestions – and these ones are some good suggestions – about the types of people that ought to be involved in that discussion.

With respect to the hon. member: unduly prescriptive, unduly limiting, and I think would not in the early stages of the access council be the appropriate way to go. So I would ask members to not accept this amendment, in fact, to vote against this amendment.

I'm sure that there will be others that will want to speak to the amendment before we vote, so, Mr. Chairman, I would ask that we now adjourn debate.

[Motion to adjourn debate carried]

The Deputy Chair: The hon. Deputy Government House Leader.

Mr. Stevens: Yes. Mr. Chairman, I'd move that we rise and report.

The Deputy Chair: Hon. Deputy Government House Leader, I presume that you are moving that we rise and report bills 12, 23, 24, 19, 25, and progress on Bill 1.

Mr. Stevens: That's exactly what I meant by those few words.

[Motion carried]

[Mr. Shariff in the chair]

The Acting Speaker: The hon. Member for Peace River.

Mr. Oberle: Thank you, Mr. Speaker. The Committee of the Whole has had under consideration certain bills. The committee reports the following bills: Bill 12, Bill 23, Bill 24, Bill 19, and Bill 25. The committee reports progress on the following bill: Bill 1. 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. Government House Leader.

Mr. Hancock: Thank you, Mr. Speaker. I'd move that we adjourn until 1:30 p.m. tomorrow.

[Motion carried; at 10:49 p.m. the Assembly adjourned to Wednesday at 1:30 p.m.]