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of BRITISH COLUMBIA

Fourth Session, 41st Parliament

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Thursday, February 14, 2019
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THE HONOURABLE DARRYL PLECAS, SPEAKER

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PROVINCE OF BRITISH COLUMBIA

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LIEUTENANT-GOVERNOR

Her Honour the Honourable Janet Austin, OBC

Fourth Session, 41st Parliament

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Honourable Darryl Plecas

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Party Standings: BC Liberal 42; NDP 41; BC Green Party 3; Independent 1

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Morning Sitting

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THURSDAY, FEBRUARY 14, 2019

The House met at 10:05 a.m.

[Mr. Speaker in the chair.]

Routine Business

Prayers.

Introductions by Members

M. Stilwell: Joining us in the House today are two dear friends of mine from my community of Parksville-Qualicum: Sharon Recalma and Michael Recalma, the Chief of the Qualicum First Nation. Whether the Chief dresses up as Santa at my Christmas parties or he rings the kettles at the Salvation Army at Christmastime, speaks at school programs or judges chili competitions with me, he always brings his kind heart and his sense of humour.

Parksville-Qualicum is located on the traditional territories of the Qualicum First Nation, and I am proud to work closely with Chief Recalma to create opportunity for our communities through collaboration and friendship. Would the House please make Sharon and Chief Recalma feel very welcome.

Hon. M. Mark: In the chamber, we have Chief Michael Wyse from the Snuneymuxw First Nation, who is joining us, along with Bill Yoachim and other constituents of Nanaimo.

I want to acknowledge your presence here in the chamber and, Chief Wyse, for your words at the swearing-in ceremony for the member for Nanaimo.

Will the House please join me in welcoming Chief Wyse and the members of the Snuneymuxw First Nation.

D. Routley: I, too, would like to welcome some guests from Nanaimo. They are here, of course, for the new member for Nanaimo. But there is a lot of overlap in Nanaimo. It's a tale of two cities and two ridings, and many of the people that we share as constituents are also dear friends.

[10:10 a.m.]

I'd like to introduce some of those today. From the Snuneymuxw First Nation: Chief Michael Wyse; his wife, Kora Wyse; Coun. Erralyn Thomas; Paul Wyse-Seward; Angie Wyse Seward. And Geraldine Manson is here. She's the elder-in-residence at Vancouver Island University and a wonderful asset to all communities in the Nanaimo area.

From Gabriola Island, we have Jenny Marcus; Jill Haras; Jay Friesen; John Capon; Tawny Capon; Laura-Jean Kelly; Cameron Murray; Howard Stiff; Brenda Gartner; and my dear friend and mentor, Jan Pullinger, former MLA from the area, the first women's minister in British Columbia, the first woman elected from Nanaimo and a hero to me.

Welcome to all of them, and thank you for being here.

Hon. J. Sims: As a teacher, it's always wonderful when I bump into some of my students. Today here at the House, I had the pleasure to meet up with two of my grade 10 students, who I taught social studies. I think I did some coaching with them too. They reminded me today.

It is my great pleasure, and it was wonderful to reconnect with them in Nanaimo and here again in the House: Paul Wyse-Seward, Bill Yoachim. Apparently, they were both in the same class. I can assure you that I did my very best to teach them.

S. Chandra Herbert: I just wanted to rise to wish a very, very happy birthday — belated birthday, I must say; it was yesterday — to my dear mother, Donna Spencer. I love her with all my heart. Another one who's very close to my heart and whose birthday is today: my son Dev, who is turning two. Happy birthday to them both, and happy Valentine's Day to the rest of you.

B. D'Eith: I wanted to welcome John and Susan Little to the House. I had the pleasure of meeting John during the by-election. I really appreciated all of the warmth from Nanaimo and all the wonderful support. Would the House please make them very, very welcome.

Speaker's Statement

DIVISION ON THRONE SPEECH DEBATE

Mr. Speaker: Before we move on, hon. Members, I wish to address the division that took place yesterday afternoon. There having been no other members who wished to speak on the debate before the House, that being on the Address in Reply to the Speech from the Throne, the Chair put the question, pursuant to established practice. When no other members rise to participate in debate, the question on the motion is put.

The Chair acknowledges that a speaking list may have been developed. However, the Chair is not bound by speaking lists and recognizes members as they may stand in their place, indicating that they may wish to participate in debate, in accordance with Standing Order 36. As no member rose, the Chair rightfully put the question on the motion. Pursuant to the request for a division, the division bells were rung at 5:14 p.m.

Prior to the proceeding, the Chair wanted to ensure that this unexpected division was in order. By the time the Chair received indication from the table that putting the question and the call for division were, in fact, in order, it was 5:24 p.m. Pursuant to Standing Order 16, the chamber doors should have properly been locked five minutes after the division call, which would have been at 5:19 p.m. I recognize that the timing of the division was irregular, with the doors remaining unlocked to 5:24 p.m. Therefore, this aspect of division did not conform to Standing Order 16.

The standing orders provide a maximum of sitting days

of debate on the Address in Reply to the Speech from the Throne. As yesterday marked the first debate opportunity on the Address in Reply, the notice window for amendments had not even elapsed. As a result, there was some confusion and uncertainty with respect to the question and the unexpected timing of the division.

[10:15 a.m.]

On the question before the House yesterday, the motion was adopted with 43 ayes and 40 nays. To my knowledge, the fact that the chamber doors remained open for an additional five minutes beyond the time permitted in Standing Order 16 did not result in any additional members entering the chamber. Therefore, I conclude that the result of the division would have been the same.

By-Election Results

MLA FOR NANAIMO

Acting Clerk of the Legislative Assembly: I've been called upon to read a letter of certification from the Chief Electoral Officer regarding the by-election in Nanaimo.

> February 12, 2019
>
> Hon. Darryl Plecas, MLA
> Speaker of the Legislative Assembly
> Room 207, Parliament Buildings
> Victoria, B.C. V8V 1X4
>
> Dear Mr. Speaker:
>
> On November 30, 2018, this office received your warrant advising of a vacancy in the Legislative Assembly resulting from the resignation of Leonard Krog, member for the electoral district of Nanaimo.
>
> On direction from the Lieutenant-Governor-in-Council, I issued a writ of election for the electoral district of Nanaimo on January 2, 2019, ordering a by-election to be held to fill the vacancy. The writ specified general voting day to be January 30, 2019.
>
> The by-election was held in accordance with the provisions of the Election Act, and the completed writ of election has been returned to me.
>
> In accordance with section 147(2) of the Election Act, I hereby certify the following individual to be elected to serve as a Member of the Legislative Assembly: Sheila Malcolmson of the B.C. NDP for the electoral district of Nanaimo.
>
> Sincerely,
>
> Anton Boegman
> Chief Electoral Officer
> British Columbia

Hon. D. Eby: I move that the certificate of the Chief Electoral Officer of the results of the election of the member be entered upon the *Journals* of the House.

Motion approved.

Hon. J. Horgan: First, I'd like to acknowledge that we are gathered on the unceded territory of the Lekwungen-speaking peoples, and I want to welcome everyone here to a bright, brisk Valentine's Day. I certainly had my Valentine's wish come true on January 30, when the good people of Nanaimo elected the new member, who I will introduce in a moment.

This new member I approached when it became apparent that Leonard was moving on to become the mayor of Nanaimo. The call of the community was so great that he left this place that he loved so much to go and serve people on the council there.

I started canvassing people in the area, and I came to the first person that was on my list, the most qualified person, I felt, to take up the seat in Nanaimo, one that has been fiercely represented for decades by outstanding members. I asked Sheila Malcolmson if she would join us here.

She was already occupied in Ottawa, as you know, as a Member of Parliament. She spoke with her family, with her husband, Howard, and they decided that Victoria would be a good place for her to continue her fight for the people of Nanaimo, whether it was becoming focused on protecting our coast, whether it was providing housing for the people in the region, whether it was making sure that Indigenous reconciliation was a high priority. All of the issues that are before us in this House are a passion of Sheila's.

So it is with great honour that I present to you Ms. Sheila Malcolmson, the member for the electoral district of Nanaimo, who has taken the oath, signed the parliamentary roll and now claims her right to take up her seat. [Applause.]

The hon. member for Nanaimo took her seat.

Mr. Speaker: I welcome the member for Nanaimo to this assembly.

Introduction and First Reading of Bills

BILL 4 — WITNESS SECURITY ACT

Hon. M. Farnworth presented a message from Her Honour the Lieutenant-Governor: a bill intituled Witness Security Act.

Hon. M. Farnworth: I move that the bill be introduced and read a first time now.

[10:20 a.m.]

I am pleased to introduce Bill 4, the Witness Security Act.

The proposed Witness Security Act will provide an important tool to police and Crown to address gang and gun violence, which resulted in B.C. having the highest proportion of gang-related homicides across Canada. This legislation will establish a provincial program that will protect and support key witnesses essential to successful criminal prosecutions in British Columbia.

Motion approved.

Hon. M. Farnworth: I move that the bill be placed on the

orders of the day for second reading at the next sitting of the House after today.

Bill 4, Witness Security Act, introduced, read a first time and ordered to be placed on orders of the day for second reading at the next sitting of the House after today.

BILL M201 — MISCELLANEOUS STATUTES (PASSENGER TRANSPORTATION SERVICES) AMENDMENT ACT, 2019

J. Sturdy presented a bill intituled Miscellaneous Statutes (Passenger Transportation Services) Amendment Act, 2019.

J. Sturdy: I move that a bill intituled Miscellaneous Statutes (Passenger Transportation Services) Amendment Act, 2019, of which notice has been given in my name on the order paper, be introduced and read for a first time this session.

Potentially, the introduction of this bill could have been avoided if the bill had been passed last session. In fact, we introduced this exact same bill last fall, which would have facilitated ride-sharing today. No other jurisdiction has attempted to regulate ride-sharing in the way that this government is now proposing. When companies have equal opportunity to compete with one another, the consumers will benefit from lower prices and more choice.

This bill will allow for a level playing field for existing and new operators, including vehicle licence and vehicle standards, insurance requirements and service and supply flexibility; standardized provincial licensing, safety enforcement, consumer protection requirements; removal of red tape and overlap within the system; removal of restrictions related to supply so that the number of providers on B.C. roads from both existing and new operators will be determined by consumer demand; removal of boundary restrictions so that the drivers have the same access to provide services wherever and whenever a passenger needs a ride; and removal of local government ability to require chauffeur permits, business licences and other restrictive requirements and provisions to ensure availability of accessible services.

This bill would also provide a framework for replacing class 4 driver's licence requirements with a class 5 requirement for drivers, both existing and new operators, and ensuring that a level playing field is in place that supports consumer and driver safety.

It's time to bring functional ride-sharing to this province. British Columbians have been waiting long enough.

[10:25 a.m.]

Mr. Speaker: Members, the question is first reading on the Miscellaneous Statutes (Passenger Transportation Services) Amendment Act, 2019.

Motion approved unanimously on a division. [See *Votes and Proceedings*.]

J. Sturdy: I move that the bill be placed on the orders of the day for second reading at the next sitting after today.

Bill M201, Miscellaneous Statutes (Passenger Transportation Services) Amendment Act, 2019, introduced, read a first time and ordered to be placed on orders of the day for second reading at the next sitting of the House after today.

Statements (Standing Order 25B)

RICHMOND CARES, RICHMOND GIVES PROGRAM AND CHRISTMAS FUND

J. Yap: The non-profit agency Richmond Cares, Richmond Gives, RCRG, had a very successful 2018 Christmas fund season and deserves hearty congratulations.

RCRG runs the Richmond Christmas fund program to help Richmond residents who do not have the financial means to celebrate Christmas. It's a program built on generosity to ensure everyone can share in the holiday spirit. Each year the program assists over 2,000 low-income residents and distributes grocery vouchers to individuals and families in need.

The achievement of this year's program is certainly one for the record books. Between November 24 and December 15, 2018, Richmond Christmas fund helped a total of 2,394 people — including 795 children, 210 teenagers and 342 seniors — which was up 11 percent from 2017. The fund gave out 2,140 grocery vouchers and distributed 8,000 toys, as well as many books and gift cards.

This would not have been possible without a series of fundraising events, including the Steveston Beer Fest, Richmond Auto Mall's Window of Hope, the Richmond RCMP annual toy drive and pancake breakfast and A Not So Silent Night, which raised nearly $65,000, making it the single most successful fundraiser in Christmas fund history.

I'd like to thank RCRG chair Pat Watson; executive director Ed Gavsie; their 142 volunteers, who contributed over 2,000 hours for the program; and more than 260 individuals, businesses and community groups that donated to the Christmas fund.

Thank you for bringing the Christmas spirit of giving to Richmond residents in need and adding value to our community.

MESSAGE OF APPRECIATION AND CITY OF NANAIMO

S. Malcolmson: With great thanks to the voters of Nanaimo, to the volunteers — hundreds of them — and to my family and friends, many of whom are here, I'm honoured to represent Nanaimo and to be the second woman to represent Nanaimo in this Legislature, following in the strong footsteps of Jan Pullinger, former cabinet minister, who's here today.

The environment I learned from my mother and my grandmother. Social justice I learned from my father and my grandfather. And from my community.… In my role as trustee, as Islands Trust council chair, as Member of Parliament, I've learned everything from my community — community front-line organizations, from the business groups, from coastal communities.

[10:30 a.m.]

Nanaimo is generating success stories that are reverberating across the country on sustainability and reconciliation, lessons that the province and the country can learn from. With Vancouver Island University at the heart of our city, with a strong Snuneymuxw First Nation council led by Chief Michael Wyse, with the new Nanaimo city council led by Mayor Leonard Krog, I am ready to hit the ground running to work with these community organizations, to work on this time of hope and optimism for our community.

We are in an exciting time, and we are ready to work together to build, to keep building, a better Nanaimo. I'm honoured to be part of this new chapter for my city and my community. And with great thanks to my family, friends, voters and community members, I'm honoured to be here working with you all.

FORWARD HOUSE COMMUNITY SOCIETY

M. Stilwell: One thing that makes me proud is the compassion and inclusion volunteers and organizations share and show every day in Parksville-Qualicum. Today on Valentine's Day, I want to show my love and appreciation for one such organization, the Forward House Community Society.

What started as a crisis line in 1982 has grown into Forward House, one of Vancouver Island's best psychosocial rehabilitation programs for people living with mental health challenges. It currently serves more than 80 clients, and in 2018, the society opened a satellite office in Qualicum Beach.

Coping with mental health issues and addiction recovery can be hard and isolating. At Forward House, people can find support and opportunities for meaningful social interaction and community inclusion. There are opportunities to join recreation activities, expressive therapy like yoga and music, education programs and to have a warm meal around a kitchen table. It truly is a place of warmth, support, hope and respect.

The society has also made its building more accessible, and it's currently working with another organization on different initiatives to help address harm reduction issues and support those experiencing mental health or addiction challenges in our region.

Executive director Sharon Welch has done an amazing job at the helm of Forward House and in partnering with other organizations to promote mental wellness in Oceanside. Lots of great work has been done by the board of directors, the staff and the countless volunteers, like Dawn Smith, who has lent her time to Forward House for 16 years.

Please join me in acknowledging the hard work that Forward House does and in thanking everyone who helps to make it a success.

RUSKIN DAM AND KWANTLEN FIRST NATION

B. D'Eith: In 1930, the Ruskin dam was built in the heart of Kwantlen territory with no consultation or communication with the nation, in an in area of huge spiritual and cultural significance to the Kwantlen. However, through the challenging, decade-long Ruskin dam and powerhouse upgrade project, B.C. Hydro and the Kwantlen First Nation worked together to support each other on what the Kwantlen representatives have described as a new journey.

When a 9,000-year-old archeological site was discovered in the middle of the project, B.C. Hydro worked with Kwantlen elders and leaders to preserve the site with the dignity and respect that the Kwantlen First Nation deserved.

During the upgrade process, the close relationship that developed led to an amazing project, the installation of six massive Indigenous art panels created by world-famous artist Brandon Gabriel on the new dam piers. I was honoured to be a witness of the unveiling of the art and to hear the stories behind this one-of-a-kind artistic expression.

Brandon Gabriel explained that the artwork tells an ancient story of the Kwantlen people. While his ancestors were making their way to a mountaintop after a great flood, they saw animals struggling for survival, so they brought them into their canoes for safety. These animals — the raven, the salmon, the frog and the mountain goat — appeared on each pier panel. The Kwantlen wolf clan crest appears as bookends on both ends of the pier to show the story of the Kwantlen history and identify Kwantlen territory.

[10:35 a.m.]

I want to say thanks to the Indigenous relations Lindsay Thompson and President Chris O'Riley of B.C. Hydro and Chief Marilyn Gabriel and Brandon Gabriel for their heartfelt presentations. And thanks to everyone from Kwantlen First Nation and B.C. Hydro, including my long-time friend, project manager Boyd Mason, for showing how true reconciliation works — listening, working together, being respectful and creating the space and time to build trust and lasting friendships.

It truly was a wonder to behold, and I invite all of you to come to visit it.

Huy chexw a.

PUBLIC TRUST IN GOVERNMENT AND LEGISLATIVE ASSEMBLY

A. Weaver: Each and every MLA in this room is proud and honoured to serve as the elected representative for their community. While each of us has a different story as to what brought us to politics, we're all here because we believe in working for the public good.

Yet I stand here today troubled — troubled that day by day, we're learning of new allegations of wrongdoing across government. This troubles me because the narrative that is building is that B.C. is a haven for unethical behaviour and that, whether deliberate or not, our government has been complicit.

To our collective shame, we learned this year of the Vancouver model, a term used by organized crime around the world because of how easy it was to launder money here. This Legislature also has been rocked to its core by allegations brought on by improper spending occurring right under our noses.

Trust is the foundation of our democratic authority. If the public loses trust in its government, that authority is lost. British Columbians are calling for answers, and it's up to us to ensure that answers are given and that those who are responsible are held accountable for their actions.

As we embark on this new session, let us collectively reflect upon the role that each and every one of us can play in rebuilding public trust in this institution. We have a lot of work to do, for trust is built up over the span of years, and it can be lost with the blink of an eye.

Now is the time for us to reform the way this Legislature operates, and that's precisely what British Columbians want and deserve. My colleagues and I in the B.C. Green caucus stand by ready to assist in any way we can.

STOLEN SISTERS MARCH FOR MISSING AND MURDERED INDIGENOUS WOMEN

M. Dean: Today, because of years of work led by Indigenous women, family and community members and the member for Vancouver–Mount Pleasant, thousands of people will gather on the territories of the Musqueam, Squamish and Tsleil-Waututh First Nations to commemorate the lives of the women and girls who have been murdered or gone missing in Vancouver's Downtown Eastside.

February 14 is a day of remembrance when community comes together to honour and celebrate the lives of all the women who were unjustly taken from their families and communities. We honour the determination, courage and resilience of the families and communities that keep their memories alive. It is also a day to hold those in authority to account.

For 28 years, the February 14 annual Women's Memorial March has been a leading voice, calling for action to end violence against Indigenous women and girls. Our government shares this commitment to work together to support the safety and well-being of women and girls and to doing all that we can to prevent the conditions that caused them to experience violence, poverty, homelessness and racism in violation of their human rights.

Thank you to the organizers, volunteers, my colleagues and all those who continue to advocate for change. While we cannot be with you in person in Vancouver or Prince George, we'll be at the Stolen Sisters March in Victoria on Saturday. We march in step with you in spirit and recommit to our promise to work alongside you so that women and girls can thrive in our communities free of violence, intolerance and fear.

Mr. Speaker: Nanaimo–North Cowichan wishes to make an introduction.

Introductions by Members

D. Routley: I'd like to introduce Dr. Ben Williams, who's in the audience. He is the executive medical director at Nanaimo hospital and a very dedicated member of the Nanaimo community. Please help me welcome Dr. Ben Williams.

[10:40 a.m.]

Oral Questions

RIDE-SHARING REGULATIONS AND CONFLICT-OF-INTEREST CONCERNS

P. Milobar: Yesterday the Transportation Minister was asked about the NDP parliamentary secretary who has a direct family link to the taxi business. But that member still sits on the ride-sharing committee.

The bottom line is this: a member of the government should not be involved in making recommendations for ride-sharing when their family owns a taxi licence.

To the minister, who has now had a day to think about it, does she agree that her colleague should step down from the committee?

Hon. J. Horgan: I thank the member for his question. I see we're going to be spending a half an hour on this today. If the official opposition wants to demonize small business people, if the members of the opposition want to be judge, jury and executioner.…

Interjections.

Mr. Speaker: Members. Members, we shall hear the response.

Hon. J. Horgan: It's a bit ironic, because not a week and a half ago, we had overtures from the opposition: "Why can't we all work together?" If we all want ride-sharing, which we do — we passed legislation to that effect — why demonize the son of a hard-working business person because he happens to drive a taxi for a living? Why demonize people who work 12 to 14 hours a day, just because it's politically expedient?

Mr. Speaker: Kamloops–North Thompson on a supplemental.

P. Milobar: Well, that has to be one of the weaker attempts at deflection that I have heard in the 18 months I've sat on this side of the House.

This is not about the taxi industry. This is not about a gentleman earning a living driving a taxi. This is about the conduct of a parliamentary secretary, and this is about the government's inaction around that conduct.

The NDP parliamentary secretary has been sitting on the committee that's been asked to help to make the rules and make recommendations around ride-sharing. He has done so without disclosing that his father owns one of only 234 taxi licences in the province, a very restricted group. Apparently, he doesn't even know Moe Sihota. This does not pass the smell test for the average British Columbian.

Again, will the minister ask him to step down from the committee?

Hon. J. Horgan: The committee members have no decision-making authority. The committee members are seeking input from the public. It would strike me, and I think it would strike most normal-thinking people, that if you have an individual that has some experience in an area that you're investigating, that would be a positive thing.

I don't know what the member's father did for a living. Quite frankly, I don't care. But I do believe that he has every right to stand in this place and ask inane questions.

Keep going, my friend. I'm going to defend the member for Delta North, because his father is a small business person that I thought you people supported.

Mr. Speaker: Kamloops–North Thompson on a second supplemental.

Interjections.

Mr. Speaker: Members, the member for Kamloops–North Thompson has the floor.

P. Milobar: I think I will take the Premier up on his offer to ask another question.

There really is nothing wrong with the holding of a taxi licence. There's nothing wrong with family members holding a taxi licence whatsoever. What is wrong is not disclosing it and playing a leading role in trying to create the rules around it. Frankly, if this government doesn't understand that basic tenet around real and perceived conflict of interest, it's going to be an interesting next few months.

I don't think most British Columbians believe that someone with this bias should be involved with this file in any way when it comes to recommending rules for ride-sharing. The minister yesterday said the buck stops with her. However, we have the Premier answering today, so maybe it doesn't really stop with her.

Interjections.

Mr. Speaker: Members, we shall allow the member to finish the question.

P. Milobar: My first two questions asked if they were going ask the member to step aside — will they actually show some leadership, whoever the buck stops with on that side of the House, be it the minister or the Premier or maybe the chief of staff, and actually just make the change, instead of waiting for a member to decide on their own whether or not they should be part of a committee?

When will the Premier or the Transportation Minister or the chief of staff, with a long history of this file as a city councillor in Vancouver, actually do the right thing and make a committee change?

Mr. Speaker: Members, before the Premier begins, in anticipation of more noise, if we could be sure that the response is heard. Thank you.

[10:45 a.m.]

Hon. J. Horgan: Again, I assume that all members of this place are acting with the utmost of integrity. I will take direction from the conflict commissioner when it comes to conflict of interest — not members of the B.C. Liberal Party, thank you very much.

I will just add that the member for Peace River North asked questions in this place about aggregate contracts at Site C. His former company has aggregate contracts at Site C, but I did not believe for a second that there was any conflict there, because he's an honourable member, and he wanted to protect the interests of his community.

When the member for Surrey–White Rock talked about maintaining Advantage B.C., which gave tax breaks to companies that she had in her stock portfolio, I didn't call that a conflict. I called that a different perspective on economic development. So when the member for Delta North participates with other members of the Legislature in a collegial committee process and he brings expertise that they know not about, I would see that as an asset, not a conflict.

The member is in this place because he got an education and he was raised by a man who worked day after day after day to make a better life for his family. That's what the taxi industry is. They're not enemies of British Columbia. They're good, hard-working people. That they produced a fine young man like the member for Delta North is a good thing, not a crime.

S. Bond: The Premier has been in this House long enough to know the definition of perceived conflict. This isn't about the taxi industry or whether you own a licence. There's nothing wrong with that. This is about a member's perceived conflict of interest.

Yesterday, apparently, was the first time that the Minister of Transportation learned of the parliamentary secretary's perceived conflict. The perception clearly calls into question — and the Premier can stand up and bluster all he wants —

the results of the work of a committee that the minister has tasked with making recommendations on ride-sharing regulations. But according to the parliamentary secretary himself, staff have been aware of this all along.

I'm sure the minister has now had the time to look into this. Perhaps she can tell this House which staff knew. And why wasn't she told?

Hon. J. Horgan: With respect to the member for Delta North's father and his vocation, he has, at his initiative, asked the conflict commissioner for a ruling on this. Again, I appreciate that we've got another 20 minutes of braying from the other side. I'm happy to continue to stand up and say this.

I'm proud of the member. I'm proud of his father. I'm proud of all hard-working British Columbians that are very proud of their children coming here, particularly the mother and father of the member for Nanaimo, who are here seeing this integrity in action.

Mr. Speaker: The member for Prince George–Valemount on a supplemental.

S. Bond: Well, we appreciate that the Premier has a particularly intimate knowledge with the definition of perceived conflict. It speaks volumes that now the Premier doesn't seem to understand the questions that this raises in the minds of British Columbians about the validity of the committee process. It's about perceived conflict, and the Premier well knows that.

What British Columbians expect…. It is not about whether someone owns a taxi licence. They expect a fair and unbiased process. Frankly, the Premier and the minister should too. It is not unreasonable to expect that a committee dealing with ride-sharing regulations should not include members who have a perceived conflict of interest. That is not an unreasonable or, as the Premier would characterize it, an inane question.

Can the Premier assure the House and British Columbians today that the member has no other family connections to the taxi industry?

Hon. J. Horgan: The member for Delta North has written to the conflict commissioner. He's following up today. I expect that the conflict commissioner, who we charge, all of us in this place, to ensure that the lines that the members are talking about are not crossed…. I will await the decision from that office rather than take advice from the member for Prince George–Valemount.

[10:50 a.m.]

MONEY LAUNDERING IN CASINOS

A. Weaver: Last week's explosive investigative report on CTV's *W5* alleged that the B.C. Lottery Corp. displayed wilful blindness to money laundering in B.C. casinos. Since the early 2000s, multiple whistle-blowing attempts were allegedly ignored. From 2008 up until last year, these warnings were coming with increasing frequency, yet they were still ignored.

It goes deeper than that. Those who tried to expose the racket were penalized. Does this sound familiar? The reports issued on the escalating crisis by the previous executive director of the B.C. gaming policy and enforcement branch were shelved, and at times, senior staff were even told that they should not talk about money laundering. It's astounding. After continually warning of a massive escalation of suspected dirty money infiltrating casinos, the top gaming investigators in B.C. lost their jobs.

My question is to the Attorney General. What action is this government taking to clean up this alleged culture of corruption?

Hon. D. Eby: I thank the member for the question. One of first things that we did on forming government was actually let British Columbians know about what was happening in our casinos, that our regulator believed that our casinos were the hub of an international, large-scale, money-laundering ring. British Columbians did not know that.

The member mentioned the Vancouver model in his two-minute statement. The reason British Columbians know about that now is because Peter German talked with the university professor who was teaching anti-money-laundering professionals about the Vancouver model of money laundering at the same time as officials here were saying that there was no issue with money laundering in our casinos. Can you imagine that?

The action we've taken is to, first of all, let British Columbians know about what was going on, and second, to tell the casinos, even though we knew there was a potential $30 million hit to the budget — even though we knew that — to stop accepting the cash. It cut suspicious cash transactions by 100 times from the peak of July 2015.

I can also tell the member that we have the regulator in the casinos at peak hours now. Previously they were only there Monday to Friday, nine to five. I don't know if the member has ever found himself in a casino, but it probably wasn't Monday to Friday, nine to five. Now the regulator is there when people are actually in the casino, which seems like a good idea to us.

B.C. Lottery Corp., under the supervision of the regulator…. The member was in the House when we passed the legislation to make those 40-plus recommendations from Peter German, all underway.

I thank the member for the question, very much. We're taking a lot of action on this file.

Mr. Speaker: The Leader of the Third Party on a supplemental.

A. Weaver: There's little doubt that this problem occurred under the watch of the previous government. However, it is

now this government that's in power, and it's this government's responsibility to actually get to the bottom of this.

As the *Province* reporter Mike Smyth pointed out, the NDP loves talking and talking about money laundering. According to other whistle-blowers in the industry, there was not only a culture of wilful blindness, but some executives were actively justifying the money laundering. Some said that it would occur anyway and that, therefore, at least the government casinos could be used to recycle the dirty money into productive uses. The seemingly pervasive theme across casino executives and within the BCLC was that the money should not be questioned.

According to whistle-blowers at the centre of this, their behaviour was not unwitting. It was deliberate. A former senior director of investigation for B.C.'s gaming policy enforcement branch has even said that the BCLC could have stopped this at any point. They did not.

My question, again, is to the Attorney General. Those responsible in his ministry must be held accountable. What is his ministry doing to ensure that British Columbians are getting the answers they deserve today — not some time in the future, but now?

Hon. D. Eby: You know, it's a bit ironic to be given information that was in the Peter German report as evidence of the fact that the government hasn't been taking action to get the information out. The reason why CTV and others knew about Joe Schalk and others who were fired when they tried to ring the alarm bells was because that was in Peter German's report. I've actually written to them to congratulate them and thank them for their work in defending British Columbia's interests. We're getting the information out to British Columbians. We're trying to stop the activity that's taking place.

Now, I've heard the members on the other side, in the official opposition, say: "Oh, we had lots going on. We were trying to stop money laundering." We asked them: "Okay, well, give us the cabinet documents. Give us access to cabinet documents. We'll keep that confidential. We won't release that information. We'll use that to inform our anti-money-laundering response so that we don't repeat the work." Did they give us the documents? No, they did not.

[10:55 a.m.]

I can tell the member that it was just about eight weeks ago that the Silver International federal prosecution fell apart. We expected that British Columbians would hear a lot of information on that prosecution. We were incredibly concerned when it fell apart. I presented to a federal finance committee on this issue.

We now have a federal minister tasked directly to work with B.C. on this issue. The federal government is committed to work with us. We have a civil forfeiture action underway that I can't talk about. It's currently in front of the courts. The Ministry of Attorney General lawyers resisted an application to give the money back to the alleged money launderers in the Silver International case. This case is ongoing. The independent prosecution service, provincially, is looking at the federal materials to see if there are provincial charges that are appropriate. I could go on and on, and I would love to.

RIDE-SHARING REGULATIONS AND CONFLICT-OF-INTEREST CONCERNS

M. Polak: Yesterday when the parliamentary secretary was asked, "Are any other members of your family involved in that industry?" his clear answer was no.

Is the minister aware that this statement is not accurate?

Hon. J. Horgan: Again, I appreciate the enthusiasm of the Opposition House Leader on this question. I'll just repeat what I've been saying: I believe that having a well-informed member of the Legislature is good for all British Columbians.

I don't suggest for a minute that the member for Delta South, a farmer, should not talk about agriculture. That would be ridiculous. For someone who has a family connection — their father, who raised them from birth to a seat in this Legislature — to be somehow inappropriate to talk about issues that are relevant to a whole bunch of British Columbians is ridiculous.

The committee works together in a collegial manner to come up with recommendations to the final decision-maker — who is not the member for Delta North nor, thank goodness, the member for Richmond-Queensborough, but in fact, it's the Minister of Transportation.

We have asked, through to the member, the conflict commissioner for a ruling. Again, based on the track record of the 12 years I sat in opposition, I'll await a ruling from him rather than listen to the people on the other side.

Mr. Speaker: The House Leader for the official opposition on a supplemental.

M. Polak: It's my understanding that moments ago the parliamentary secretary confirmed the existence of another direct family interest, that of his uncle, who has cabs in Surrey and Vancouver.

To the point about the conflict commissioner, I have to ask: why did the letter to the conflict commissioner not contain that information?

Hon. J. Horgan: Well, is it my second cousin, first removed, that is going to be responsible for the actions of me in this place and in my community? I rather think not. Again, there are numerous examples around this house, in all parties. Should the member for Oak Bay–Gordon Head not be allowed to talk about post-secondary education? Should he not be able to vote on advancing more resources to the University of Victoria because he's on leave from the University of Victoria? That's ridiculous.

I appreciate it's early in the session. The opposition seems to have a fairly empty basket of issues to bring before the

public. I mean, I would have thought it. They didn't want to talk about the throne speech.

I guess they don't want to talk about B.C. Hydro. We have a report that demonstrates that. It's because of the quick-witted thinkers on the other side, those pro-business people, who are condemning taxi drivers but supporting investors and shell companies from Ontario, which we now owe $16 billion to. They don't want to talk about that.

They don't want to talk about money laundering — the biggest challenge we have in our community. I haven't heard a word about fentanyl. I haven't heard a word about housing, because it all fell apart on their watch.

Interjections.

Mr. Speaker: Members.

SPECULATION AND VACANCY TAX

J. Thornthwaite: There are currently 1.6 million letters being sent to British Columbia homeowners who now must prove to the NDP that they are not real estate speculators. Once again, this is NDP tax policy made up on the fly.

[11:00 a.m.]

Someone thought this negative-option billing — a practice, by the way that is banned in the private sector — was a smart idea.

To the Minister of Finance, why is this government viewing British Columbians as being guilty until proven residents?

Hon. C. James: Mr. Speaker, I think all on the other side need to start with one question: why are we looking at a housing crisis? It's because of inaction on the other side. The old government's choices left us with skyrocketing house prices, speculation in the market, and we're taking action to address this.

Now, I recognize that the opposition has spent more time criticizing a process that takes three minutes than they ever did talking about the housing crisis in British Columbia. We are moving ahead, we are addressing the housing crisis, and we are making sure that families and workers in British Columbia have the ability to live in the community that they work in — unlike the other side.

Mr. Speaker: North Vancouver–Seymour on a supplemental.

J. Thornthwaite: We all know that this speculation tax has absolutely nothing to do with speculators. Using the government's own numbers, British Columbians will spend over a quarter of a million hours on paperwork annually. Our offices have been flooded with complaints from stressed-out British Columbians, and I'm sure the other side has too.

However, British Columbians, like the 78-year-old widow in Coquitlam who was passed from call agent to call agent and couldn't get a straight answer for days…. Our seniors deserve better.

Why is this poor 78-year-old widow being labelled as a speculator by this uncaring minister?

Hon. C. James: As the member knows well, the vast majority of people are filling out their forms on line. It's taking less than three minutes, and they're getting it done. Like us, they want to stand up for housing and affordable housing for British Columbians.

Now, the other side can continue to stand up for speculators. The other side can continue to stand up for people who choose to leave second and third and fourth homes vacant. We are standing up for communities. We are standing up for people in British Columbia, and we are taking action on housing. I'm proud of that.

T. Stone: I suppose the only thing worse than the speculation tax itself is the flippant attitude and comments coming from the Minister of Finance with respect to the stress and anxiety and worries of hard-working, taxpaying British Columbians, including a lot of seniors that are really feeling anxious about this tax policy.

Interjections.

Mr. Speaker: Members, we shall hear the question.

T. Stone: So we'll try this again with the Minister of Finance, another hard-working family here in British Columbia.

Ken Jillings has a small cabin that has been in their family over 60 years. Now, it's a small cabin, approximately 1,000 square feet, with a current assessed value of approximately $25,000. Ken and his family use this cabin on a year-round basis. However, now, under this government…. The government wants to force the Jillings to either sell the family cabin or force these seniors, who are on a fixed income, to pay thousands of dollars for this so-called speculation tax each and every year.

Ken and his family are not part of some wealthy 1 percent, and they are certainly not speculators, so my question to the Minister of Finance is this. Why is the Minister of Finance targeting the cabins of hard-working British Columbians, just like the Jillings family?

Hon. C. James: The member knows I'm not going to talk about specific tax cases, but there are unique circumstances that people are facing. That's why we have the ability for people to be able to phone in and get their specific circumstances looked at. That's why there are a number of exemptions.

[11:05 a.m.]

The member mentions cabins. In fact, British Columbians have an exemption for anything up to $400,000 in value. So if the member's information is correct, the person would not pay the speculation tax.

I do think it's interesting to just take a minute to remember that the vast majority of British Columbians support this direction. In fact, even the member for Kamloops–South Thompson…. When he was running for leadership of the B.C. Liberals, part of his platform said we should levy vacant-home owners with a yearly property tax surcharge.

Interjections.

Hon. C. James: I'll just take a minute, Mr. Speaker, to make sure people know how strongly he felt. He said that we should levy vacant-home owners a yearly property tax surcharge unless they take steps to rent out their property. Even the member from Kamloops south supports the direction we're taking on housing.

Mr. Speaker: Kamloops–South Thompson on a supplemental.

Interjections.

Mr. Speaker: Members, the member for Kamloops–South Thompson has the floor.

T. Stone: Thank you very much, Mr. Speaker.

Despite the minister's claims to the contrary, she and her government are targeting the family cabins of British Columbians. Now, Ken writes: "We are neither foreign owners nor domestic speculators. We are seniors on fixed incomes and longtime, taxpaying B.C. residents."

Again to the Minister of Finance, why is the minister imposing this unfair tax on Ken Jillings and his family?

Hon. C. James: Once again, as the member knows, I'm not going to speak about specific tax cases because we want to make sure that the information that is being given is accurate. But if the cabin is under $400,000 in value, as the member says, then the member is exempt from the speculation tax.

We have a number of exemptions: people who have tenants, people who are going through hardship, people receiving medical treatment, people with disabilities, people who commute long distances for work. There's a long list to ensure that we are making sure that people look at renting their property out. They take a look at getting rid of speculators, because young people are struggling in this province, workers are struggling in this province, and employers can't find people because they can't afford the housing. We are addressing this issue to make sure that we support families and that we support growing the economy in British Columbia.

L. Throness: Let me bring this home to Chilliwack. Ken and Karla Graham have lived in Chilliwack for 35 years, but for the past five years, their work has taken them to Vancouver, so they live there. They still come back to Chilliwack on the weekends. They're going to retire there.

Here's what he said to me. "We have not speculated. Our employment opportunities took us to Vancouver. I am so frustrated with this impossible government."

Ken and Karla are hard-working British Columbians. They're not speculators. Why is the government punching them in the gut every year with a $4,000 bill?

Hon. C. James: An entire generation of young people have been left without the hope of ever owning a home or being able to find a place to rent because of skyrocketing house prices, because of the increasing challenge when it comes to vacancy rates in communities.

This is an issue that is impacting all of British Columbia. This is an issue that we ran on in the election, that the public demanded action on. Unlike the other side, who ignored this crisis and left young people to their own devices — left them without hope in British Columbia, left our economy struggling because we can't find employers — we are taking action. We are going to move ahead on our 30-point plan on housing.

The speculation tax to address vacant properties and address speculation is a key part of that, and we're already starting to see a difference. We're already starting to see affordability when it comes to houses in the Lower Mainland. We're starting to see the price of housing addressed.

In fact, the B.C. Real Estate Association reports that there have been changes. Our action is working.

[End of question period.]

[11:10 a.m.]

Reports from Committees

FINANCE AND GOVERNMENT SERVICES COMMITTEE

B. D'Eith: I have the honour to present the second report of the Select Standing Committee on Finance and Government Services for the third session of the 41st parliament, entitled *Annual Review of the Budgets of Statutory Offices*.

I move that the report be taken as read and received.

Motion approved.

B. D'Eith: I ask leave of the House to move a motion to adopt the report.

Leave granted.

B. D'Eith: I move that the report be adopted, and in so doing, I would like to make some brief comments.

This unanimous report summarizes the committee's review of the budgets of the province's statutory officers,

including a start-up budget for the Human Rights Commissioner, a new independent officer.

On behalf of the committee, I would like to acknowledge and thank all statutory officers and their staff, as well as the Human Rights Commissioner transition team within the Ministry of Attorney General, for their work in supporting this process and facilitating a constructive dialogue over the last year. Committee members appreciate their efforts and commitment to responsible stewardship of public funds.

I would also like to thank all of the committee members and especially the Deputy Chair, the member for Penticton, for their dedication and contribution to this report — and, of course, all of the Clerk's staff.

D. Ashton: I would concur with the remarks from the member for Maple Ridge–Pitt Meadows and thank him for his exemplary chairmanship.

I would like to say to the statutory officers a large thank-you for what they do for all the citizens of British Columbia. I appreciate their incredible hard work and efforts and continue to ask them to provide their services thoroughly, expeditiously and cost-effectively as possible for all that they represent.

Additional marks for it as a committee that I've had the incredible pleasure of serving on for several years. It's one of the committees where, I have to say, all three sides of the House work very, very well together in listening to what the citizens of British Columbia are requesting of government and in being able to forward those requests and comments to the government. As has been shown on numerous occasions, the government does listen and does its best — all governments do their best — to address the issues that are brought forward to that committee.

Motion approved.

POLICE COMPLAINT COMMISSIONER APPOINTMENT COMMITTEE

R. Singh: I have the honour to present the report of the Special Committee to Appoint a Police Complaint Commissioner.

I move that the report be taken as read and received.

Motion approved.

R. Singh: I ask leave of the House to move a motion to adopt the report.

Leave granted.

R. Singh: I move that the report be adopted, and in doing so, I would like to make some brief comments.

This report constitutes the committee's unanimous recommendation to appoint Clayton Pecknold as B.C.'s next Police Complaint Commissioner. Mr. Pecknold has an extensive professional background in law and policing and brings valuable experience in working with a broad range of policing, civil liberties and community organizations.

Committee members were impressed with his vision for policing, his record with Indigenous communities and vulnerable populations and his commitment to public accountability. Combined with his leadership, integrity and values, the committee concluded that Mr. Pecknold was uniquely qualified for his position.

Mr. Pecknold is here in the gallery with his family. Would the House please join me in welcoming him.

Following the retirement of the former commissioner, Mr. Stan Lowe, on January 31, the committee unanimously agreed on February 1 to appoint Mr. Pecknold as the acting commissioner, to ensure continuity in the office.

[11:15 a.m.]

On behalf of the committee and all members of the Legislative Assembly, I would like to thank Mr. Lowe for his service and contributions to the province as Police Complaint Commissioner over the last ten years and wish him well in his retirement.

I would also like to extend my sincere appreciation to the Deputy Chair, the member for Prince George–Mackenzie, and all committee members for their dedication and collaboration.

M. Morris: I'd like to echo the words from the Chair. The committee worked very well. It was comprised of all three parties. We had an extensive list of very, very well-qualified candidates.

I have to say that Mr. Pecknold's vast experience and very significant experience in this field bode him well in this. I look forward to him taking over the chair as the Police Complaint Commissioner. I think the public and all the police departments in British Columbia will be well served.

Mr. Speaker: The question is the adoption of the report.

Motion approved.

R. Singh: I ask leave of the House to move a motion appointing Clayton Pecknold as Police Complaint Commissioner for the province of British Columbia.

Leave granted.

Motions Without Notice

APPOINTMENT OF POLICE COMPLAINT COMMISSIONER

R. Singh: I move:

[That Clayton Pecknold be appointed as an Officer of the Legislature, to exercise the powers and duties assigned to the Police Complaint Commissioner, pursuant to the *Police Act* (RSBC 1996, Chapter 367) for a five year term commencing on February 14, 2019.]

Motion approved.

Point of Order

T. Redies: I rise to request that the Premier withdraw his comments earlier today with respect to me.

Mr. Speaker: That's a point of order? Thank you.

Hon. J. Horgan: The intent of my comments was to highlight that all of us have family members and issues that may overlap with our responsibilities in this place. If the member took issue with that, I certainly apologize.

Orders of the Day

Hon. M. Farnworth: In this chamber, I call second reading, Bill 2, Protection of Public Participation Act, 2019.

[R. Chouhan in the chair.]

Second Reading of Bills

BILL 2 — PROTECTION OF PUBLIC PARTICIPATION ACT

Deputy Speaker: Members, those who do not have House duty, maybe you can proceed outside.

Hon. D. Eby: I move that bill be now read a second time.

[11:20 a.m.]

This is a bill that is intended to protect an essential value of our democracy, which is public participation in the debates of the issues of the day, and in particular, to respond to a mischief that has arisen, which is people who are powerful and wealthy and able to afford lawyers initiating lawsuits or threatening lawsuits against individuals who are critical of them in order to stop them from participating in that public debate.

What the bill proposes to do is strike a balance between a couple of values. One is the value of protecting an individual's reputation or a company's reputation. The other is the value of a robust and rigorous debate that the courts have described as freewheeling, that can be heated, that can result in intemperate comments. But that's part of public debate, and it shouldn't be met with threats of litigation to stop people from talking about the issues of the day. Those are the values that this bill is aimed at addressing.

I'm going to start my remarks today by taking on a bit of an introduction to the defamation action, traditionally; some changes that the Supreme Court of Canada made to it; and the history in British Columbia. We actually had a bill like this in 2001 that the previous NDP government introduced. It was repealed months later by the incoming B.C. Liberal government. We'll talk about how that happened and what the issues were that were discussed at that time. Then I'm going to go through the act to discuss why it reads the way it does and what the government's intent is in introducing this bill.

The law of defamation is really a very old example of what's called a tort in the law, which is a cause of action, basically, a way that you bring a case in front of a court. Historically, this is something that would have protected the aristocrats, protected very wealthy people from commentary from the common folks about them, and it's structured that way. It's structured in a way that is quite unique in terms of different ways of bringing forward a claim in court, or a tort, in that the way that you prove it is very strange.

There's very little burden that's placed on the person that brings the claim in court. The majority of the burden is placed on the defendant to prove that what they said was true or to prove that what they said was somehow otherwise justified. You don't even have to prove damages in a defamation action. So if someone insulted me, I could sue them. I don't even have to prove that there's been any financial consequence, professional consequence, to me. It is actionable simply because the person defamed me.

If you want to sue someone for defamation, the key piece that you have to demonstrate to the court is simply that somebody published something — they said it; they wrote it down — that would cause a reasonable member of the public to think less of you. That's it. That's all that you have to prove. Once you've crossed that hurdle, everything goes onto the defendant — the person who published it, the person who said it — to demonstrate that either what they said was true or that they have some kind of justification or that it was fair comment.

Issues that you might see in other causes of action that the plaintiff would have to prove in order to get over that initial hurdle, like malice…. You don't have to prove that there was malice. You don't have to prove that their intention was bad. It's presumed that whatever the person said is false, so the defendant themselves has to prove that what they said was true, which can be quite difficult sometimes.

As you look at this, you see that all the plaintiff has to do is just: "This guy said this about me, and now people think less of me. A reasonable person would understand that." And then they sit down, and that's their whole case. Then everybody else on the defence side has to stand up. They have to prove that it was true. They have to prove that they did it without malice. They have to prove that it falls within a number of different defences. You can see why it might be tempting to use this cause of action or to threaten it against somebody to stop them from talking about something that you don't want them to talk about, whether or not it's justified.

Damages, in this, are presumed. The court just assumes, without any proof, that you're entitled to compensation when this happens to you. Damages are meant to compensate you for an abstract concept, which is to vindicate your reputation. Unlike other causes of action, where you have to prove fault, you have to prove that you were actually

injured, none of that exists in defamation in its traditional sense, the common law.

So you can see why, as this has happened and rolled out in different cases over many years in common-law jurisdictions, the common-law countries have been changing their defamation laws to respond to this — the unfairness of it; the uniqueness of it; the structure of it to favour the aristocrats, historically, against being criticized by the rabble; and the fact that society has moved on in many ways.

[11:25 a.m.]

Valuing free speech is a key part of democracy, and I'll talk about the Supreme Court of Canada's work to recognize that in the Charter era, where free speech is specifically recognized as a value and protected in the constitution.

Now, I'm going to give a little credit here to someone I'm relying on in this first set of my remarks, who is someone named Hilary Young. She's an associate professor in the faculty of law at the University of New Brunswick. She did an empirical study of how defamation law is actually used in Canada.

Actually, it was part of the debate in the 2001 period — when B.C. introduced its own legislation — which was: "Oh, you feel like this law is being abused" or "You feel like there's a problem." The opposition and then government said: "But there's no proof that there's actually an issue." She did some work around, "Well, let's look at the actual numbers. How many of these actions were brought forward? What does it look like?" — that kind of thing.

I think that, generally speaking — and we'll find out from the opposition where they are on this — there's a recognition that this tort, or this cause of action, can be abused. The Supreme Court of Canada has recognized that in some of their judgments since then, in 2008 in particular and 2009 — that era.

Between 1973 and 1983, there were 238 reported cases related to defamation. But then between 2003 and 2013 — another ten-year period, a couple of decades later — there were 762 reported cases on defamation. So it looks like the number of reported cases more than tripled in 30 years. Now, there's a possible explanation for this, which is that more cases are reported now — population has grown, courts may be more used. But we're also seeing that defamation is used significantly, because this is the very tip of the iceberg.

The cases that actually go to court, have the court decide on something, issue a judgment and then have that judgment reported are a very small fraction of the defamation cases that are threatened, that are filed, that may actually go forward to hearing, because you may have a decision without a reported decision. When you hear 762 cases in the decade between 2003 and 2013, that is a fraction of a fraction of a fraction of the number of threats of defamation that went out, for example, to reporters, to community members, to others who are raising concerns about different issues in their communities. That gives you a sense about the scope of that.

This professor did some very interesting work about the rates of liability in cases involving journalism. Typically, SLAPP suits are talked about in the sense of an activist group which is out there protesting something or encouraging a boycott. There have been some very high-profile cases.

Not often enough is the issue related to journalists talked about, so she looks at the rate of liability in cases involving journalists. These are cases where somebody is suing a journalist for a journalistic publication that is alleged to be defamatory or to have caused the public to think less of the person that's the subject of the news report.

In the 1973-to-1983 data, there were 73 final court decisions involving journalists; 64 percent resulted in liability being found against the journalists, and 36 percent did not. The majority of the cases found that the journalist had actually defamed someone, and the journalist had to pay damages.

In that context, you can understand some of the discussion about what's talked about as "libel chill" or the fact that investigative stories get spiked or the fact that people feel nervous that they might be sued for defamation, because when these cases go to court, even when journalists are backed by news organizations that historically have had resources to defend these cases, they're losing the majority of cases. They're relying on legal advice — you've got a reasonable case; let's push this thing ahead — and they're losing the majority of the cases.

Keep in mind, again, that these are only the cases that go all the way to being reported by court. These aren't the letters that are the threats that result in a story being spiked. These are the cases that went all the way through trial, had a decision, and the decision was reported.

One would hope that, following the introduction of the Charter of Rights and Freedoms, section 2(b), the freedom-of-expression protections…. It specifically mentioned journalists and protecting free speech. You'd think there would be a shift in what was happening in the courts in terms of the values that the Charter talks about. There was a bit of a shift, but there was still a significant number of these cases that were resulting in liability being found against journalists. From 2003 to 2013, of the 89 final decisions involving journalism, 31 resulted in liability — one in three, or 35 percent.

[11:30 a.m.]

These are journalists attending court, most likely represented by counsel advising them that they were in the right in making the report and so on. They're still being found that they had defamed someone and being found that they had to pay damages. When compared with non-journalists, the court actually was more likely to find liability where a journalist was involved in a litigation compared with a company or an individual that had no relation to journalism.

It's kind of strange that in a Charter era, where free speech is specifically protected, especially in relation to journalists, in our constitution, it's more likely that a journalist will be

found to have defamed someone than someone who is not a journalist when the matter goes to court.

I'm going to talk about a case called *Grant v. Torstar*, a Supreme Court of Canada case. It changed the law related to journalists, talking about responsible communication, trying to clarify, responding to this concern that journalists were facing libel chill. They weren't able to report on the issues that they felt that they should be able to, a subject of wide commentary in media.

In the first five years of that defence being established, it only succeeded in three reported cases. The conclusion of the author of this empirical study was "perhaps its effect is not yet apparent" in the data. That went to 2013, a surprising finding.

We have a little bit of an empirical basis for how many defamation cases are going forward. The question, though, is about how many of these cases are what would be called SLAPP suits or considered cases brought with bad intent to stop someone from talking about something they should be talking about. How often is this happening?

The B.C. Civil Liberties Association tackled this question in some of their materials. They're advocates for reform of the law. You would think if an organization was advocating for reform of the law, they would have done some significant work in trying to put numbers on this. Their conclusion was:

> "It's difficult to know how prevalent SLAPPs are in Canada, not least because many individuals and groups are effectively silenced with the mere threat of a suit, let alone having a case actually filed against them. However, even just looking at the cases that do become public, which may be only a very small portion of cases, it is evident that SLAPPs are a serious threat to freedom of expression and the public discourse needed for democratic debate. Community groups opposed to local development or industry activities, environmentalists and journalists are prominent among those targeted for SLAPPs."

So "they don't know" is the short answer.

Media critic Jesse Brown, on his podcast *Canadaland*, often talks about…. I listen to his podcasts with one ear, because sometimes I find Mr. Brown very challenging. He often talks about, and has journalists on his show talking about, receiving these threats of libel and the impact that they have on the ability of reporters to bring forward stories, including very significant stories that have had the effect of shifting public opinion, or that could have the effect of shifting public opinion, if only the story could be told. But they aren't, because people are very nervous about being sued, especially journalists that work in organizations that don't have the resources to defend a case.

The context of defamation law — the traditional context I've talked about, protecting the aristocrats from the commentary of the rabble, ensuring that the rights of the powerful are protected from critique — has been modified in Canada without this law already. This was one of the key defences of those that tore down the 2001 effort by the then NDP government to get a handle on these cases: "Look, the courts can already address these issues." I'd like to talk about some of the measures the courts have put in place, at that time and since then, to try to contain these issues.

First of all, I've talked about section 2(b), which is the section of the Charter of Rights and Freedoms that protects freedom of thought, belief, opinion and expression. I'm going to read it because I think it's important to actually hear the language. Everyone has the following fundamental freedoms: "freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication."

One thing to note in this is that, just in the text itself, it talks about freedom of expression for individuals and then singles out freedom of the press as well and freedom of other media communication in this Internet age that we live in — obviously, freedom of speech on line as well as off line. So the courts have had the opportunity to consider this section in the constitution and its implications for law in Canada.

[11:35 a.m.]

One of the things that they talk about in this section, one of the underlying values that they talk about in this section, is that this is premised on a fundamental democratic value. That is that the search and attainment of truth comes from the participation in social and political decision-making and the opportunity for individual self-fulfilment as a citizen in participating in that through expression.

It's a very fancy way, I think, of saying: "Look, as a democracy, it's messy." But the only way it works is if people get to come out and speak their truth about what they see in the world. If they are repressed in that by government, by law, by some other mechanism, then our democracy is less fulfilled as a result.

I always paraphrase the court with great fear, because, obviously, the Supreme Court of Canada, the key cases…. I encourage anyone that wants to test my interpretation of what the court actually said to read *Irwin Toy v. Quebec* or *Ford v. Quebec*, which talk about these values, and get it directly from the court itself.

The second thing is that the court has really talked about, through their actions and through their judgments, free expression being valued above every other value in terms of being instrumental to democratic governance. It includes the right to hear. As a citizen, I have the right to hear somebody else's free expression. If that's interfered with, my rights are being interfered with because I didn't get to hear that person's opinion — as well as the person expressing the opinion, their right to say what their beliefs are, what their opinions are, and so on, without interference.

That's the purpose of it, and that sounds wonderful. So you say: "Well, with a constitution that has section 2(b), with a constitution with all these judgments that say all these wonderful things about truth and democracy and expressing yourself, why do we need this bill? Why would we ever need it? This is already here."

Well, the issue is that section 2(b) in the constitution only applies directly to government action. There's a case called *The Dolphin Delivery* — the earliest days of the Charter. You

learn it in first-year law school. It talks about the fact that the Charter applies to government action only. Now, as soon as lawyers are involved, of course, it's not immediately obvious what government action is. But it's clear that the majority of defamation cases do not involve the government actually. They involve two private actors.

The courts have tried to reconcile the fact that there's this very high value on free expression in our constitution, yet that part of the constitution does not apply directly to a dispute between two private parties. So the way the court has tried to square that circle and say that we've got this historic, archaic tort of defamation that protects the royals from comments from the plebes and we've got this Charter that says free expression of everyone is incredibly valued and we've got to protect it from government interference is to say that section 2(b)'s values, or the values that underlie the constitution, apply to the common law or the law that applies to disputes between two parties.

They talk about this in a case called *Grant v. Torstar* that I've referenced already. I'm going to go into some detail about the case. I'll give you the quote just so that you know what I'm talking about, because it's easier to hear it from the court directly. This is from paragraph 44 in *Grant v. Torstar.*

> "The constitutional status of freedom of expression under the Charter means that all Canadian laws must conform to it. The common law, though not directly subject to Charter scrutiny where disputes between private parties are concerned, may be modified to bring it into harmony with the Charter. As Justice Cory put it in *Hill v. Church of Scientology*," a 1995 decision of the Supreme Court of Canada, "'Charter values, framed in general terms, should be weighed against the principles that underlie the common law. The Charter values will then provide the guidelines for any modification of the common law which the court feels is necessary.'"

These are the values that the court…. When I talk about the historic tort of defamation and where we are currently, this is why Canadian defamation law has shifted. The court has tried to apply the Charter of Rights and Freedoms, this free expression value, to an ancient common-law right to go to court and to sue someone, and to take the sharp corners off, essentially, to find new ways for people to defend their right to free expression against a tort that was expressly designed to, frankly, prevent free expression.

[11:40 a.m.]

One of the other cases that talks about this application of Charter values to the common defamation law is a case called *WIC Radio and Rafe Mair v. Kari Simpson*. It's a 2008 decision of the Supreme Court of Canada.

In that case…. I'm going to go into that one in some detail, but just to close off this discussion about Charter values, this is a dispute between three private individuals: the radio station, Rafe Mair and then Kari Simpson, who was suing Rafe Mair and the radio station for comments that were made on that radio station. The court said:

> "This is a private law case that is not governed directly by the Charter. Yet it has common ground in the argument before us that the evolution of the common law is to be informed and guided by Charter values.
>
> "Particular emphasis was placed on the importance of ensuring that the law of fair comment is developed in a manner consistent with the values underlying freedom of expression. However, the worth and dignity of each individual, including reputation, is also an important value underlying the Charter and is to be weighed in the balance with freedom of expression, including freedom of the media.
>
> "The court's task is not to prefer one value over the other by ordering a hierarchy of rights…but to attempt a reconciliation. An individual's reputation is not to be treated as regrettable but unavoidable roadkill on the highway of public controversy, but nor should an overly solicitous regard for personal reputation be permitted to chill freewheeling debate on matters of public interest.
>
> "As it was put by counsel for the intervener, Media Coalition: 'No one will really notice if some media are silenced. Others speaking on safer and more mundane subjects will fill the gap.'"

Here you see the court really wrestling with a couple of different Charter values and applying them to the tort of defamation. One is the value of the inherent dignity of all citizens, including reputation. The other is the value of what they call the freewheeling debate.

Again, given that the courts are performing this balancing, doesn't it make sense that we don't actually need this bill that's in front of the House? The courts already do this. They're weighing these important discussions about an individual or a corporation's reputation, and they're weighing the value of the freewheeling debate. They are already doing this. Why do we need this bill?

Don't worry. I will get there. I've got the full two hours to get there. The best way to understand the context for why we need this bill is to look in detail at those two cases, those two Supreme Court of Canada cases — the 2008 decision of Mair and Simpson, which I was just talking about, and the *Grant v. Torstar* decision in 2009.

The reason why you want to look at them in detail is because, while the court definitely considers the values of the constitution and takes the sharp edges off defamation law, creates these defences, and so on, and is doing this balancing, it's important to recognize what happened in these cases in terms of the experience of the people who actually lived through this entire court process. The only way to understand that is to look at the cases in some detail.

In *WIC Radio and Mair v. Simpson*, I'm sure it was a very public controversy. I don't recall it. But Rafe Mair, certainly, I do recall. He's passed away, but he was a very outspoken radio host that talked on a number of different and controversial topics, and the court specifically recognized this. At one point they say: "Mr. Mair was a radio personality with opinions on everything, not a reporter of the facts." In any event, he is eulogized, in some sense, in the Supreme Court of Canada decision that bears his name.

There was someone named Kari Simpson who was an activist opposed to any positive portrayal of what she called "the gay lifestyle" in schools. She would go to PAC meetings and public meetings and make comments about her not wanting to have any positive portrayal of the gay lifestyle in schools.

Mr. Mair disagreed with that. In fact, he disagreed profoundly with that. From the headnote, the court said: "In his editorial, Mair compared Simpson in her public persona

to Hitler, the Ku Klux Klan and skinheads." So it's perhaps understandable that Ms. Simpson brought an action against Mr. Mair and WIC Radio saying that he defamed her.

[11:45 a.m.]

In his defence, Mr. Mair said: "No, I certainly didn't intend to impute that she condoned violence. I just wanted to convey that say she was an intolerant bigot." That was his defence.

I think it's important to actually hear the words that Mr. Mair said on his radio show that resulted in a multi-year court battle, just to give some context. This is what Bill Good said. This is what the court singled out as some of the key commentary that imputed that this person was tolerant of violence.

> "Before Kari was on my colleague Bill Good's show last Friday, I listened to the tape of the parents' meeting the night before where Kari harangued the crowd. It took me back to my childhood when, with my parents, we would listen to bigots who, with increasing shrillness, would harangue the crowds. For Kari's 'homosexual,' one could easily substitute 'Jew.'
>
> "I could see Governor Wallace. In my mind's eye, I could see Governor Wallace of Alabama standing on the steps of a schoolhouse shouting to the crowds that no Negros would get into Alabama schools as long as he was governor. It could have been blacks last Thursday night just as easily as gays.
>
> "Now, I'm not suggesting that Kari was proposing or supporting any kind of holocaust or violence. But neither, really, in the speeches when you think about it and look back…did Hitler or Governor Wallace…or Ross Barnett. They were simply declaring their hostility to a minority. Let the mob do as they wished."

That was the text of the allegedly defamatory speech that went all the way to the Supreme Court of Canada about whether or not Ms. Simpson was entitled to financial damages for having that read on the radio about her. So the court looked at this.

As I said, they were trying to balance a couple of things. One was Ms. Simpson's personal reputation, and the other was Mr. Mair's position as a radio commentator providing his opinion about Ms. Simpson's actions. This case is very much about the court. This is one of the earlier examples of the court grappling with these Charter values that I was talking about with free expression — Mr. Mair's free expression versus the value of Ms. Simpson's personal integrity as a citizen and her ability to express herself as well without people saying that she was Hitler.

When you put those things together, the court really wrestled with it. It's interesting because the court talks about the fact that public debate and discussion is not a tea party — that it is a vigorous back-and-forth. This is the court, from the decision. "When controversies erupt, statements of claim often follow as night follows day not only in serious claims, as here, but in actions launched simply for the purpose of intimidation. Chilling, false and defamatory speech is not a bad thing in itself. But chilling debate on matters of legitimate public interest raises issues of inappropriate censorship and self-censorship. Public controversy can be a rough trade, and the law needs to accommodate its requirements."

Public controversy can be a rough trade, and the law needs to accommodate its requirements. The court is saying: "Look, you can't be applying a standard of a civil tea party to public controversy. It is a rough trade." So we need to find a way that people can express themselves in this rough trade and not hold them to a standard that's not appropriate.

In this decision, the court also talks about something that was key to the debate in 2001. Obviously, it happened seven years later. Mr. Plant, then at the time official opposition critic for the Attorney General was asking: "Is the SLAPP legislation necessary? Do we need it in British Columbia? There's no evidence that there's a problem."

Well, he was answered in 2008 by the Supreme Court of Canada. This is the court again: "The traditional elements of the tort of defamation may require modification to provide broader accommodation to the value of freedom of expression." This is the key line. "There is concern that matters of public interest go unreported because publishers fear the ballooning cost and disruption of defending a defamation action. Investigative reports get spiked" — and here the court uses quotation marks for the word "spiked" — "it is contended, because, while true, they are based on facts that are difficult to establish according to the rules of evidence."

Now, the court is talking about the fact that all you have to do is prove that someone said something about you. It lowers them, in your eyes, and then it's totally up to the defendant to prove that everything that they said is true in order to defend themselves, to rely on some other test. So the court goes through all that balancing of values and so on, and they set out a test for journalists.

[11:50 a.m.]

This is important because this is the first time that the journalists have been pulled out as a separate entity, essentially, in terms of the considering modifying the test for defamation. So they make the decision to modify what's called the honest-belief element of the fair comment defence.

What they say is…. This is important to journalists everywhere, and they should know this — right? — because they might be sued. It's that when somebody is making a comment…. Particularly, this is in relation to Mr. Good in his role not particularly as a journalist but as someone that's commenting as a professional commentator or opinion holder or opinion columnist or whatever. We have a number of opinion columnists in the Legislature that will rely on this, I'm sure, if they ever need to. Hopefully, not. But their opinions are protected by the courts, and they're not held to an inappropriate standard.

[Mr. Speaker in the chair.]

If you want to comment on something, like Mr. Mair did, first of all, you have to be talking about something that's a matter of public interest. The court talks about that in this decision. The comment must be based on fact. Mr. Mair's comment was based on fact in relation to statements that were made at a public meeting of parents. The third thing is

that the comment, though it can include inferences of fact, must be recognizable as comment. You can't pretend it's a news story and then later say: "Oh, that was actually just commentary. I was just providing my opinion." It has to be obvious that it's your opinion on the facts. Finally, you must satisfy an objective test. Would any person honestly express that opinion based on the facts?

The court goes through this with Mr. Mair's comments, and they find that, yes, it was a matter of public interest. Yes, it was based on specific facts. Yes, it was recognizable as comment. And yes, the court believed…. They were flattering, particularly. They said that it was "an opinion that could honestly have been expressed on the proved facts by a person 'prejudiced…exaggerated or obstinate in his views.'"

I don't think Mr. Mair would take any exception to that in relation to the comment, the subject matter and to what he said. I think he would quite value the fact that he would be considered obstinate in his views about the equality of gays and lesbians. But in any event, he met all the elements of the test.

Then finally here — and very important — is that even though the comment satisfies the objective test of honest belief, that defence could be defeated if the plaintiff proves that the defendant was "subjectively actuated by express malice." In other words, if the plaintiff can show that you did this because you intended to cause harm, out of malice, then it can be overcome. That's the court trying to balance this sort of thing.

Also, the court notes, and this is critical to why this bill is in front of the House, that "the defendant must prove the four elements of the defence before the onus switches back to the plaintiff to establish malice." There are a lot of technical terms in there. It takes a second to unpack it. But it means that if you say something and someone sues you and you've got this defence available to you, you have to go through and prove every single element before the plaintiff has to do anything — which is unfair.

And it favours people who are able to bring litigation, who can afford lawyers to sue people to stop them from talking about something, because it puts the burden on them to then prove the defence. That's one of the aspects of the bill that's addressed. Keep in mind that this case went all the way to the Supreme Court of Canada — trial level, Court of Appeal, the Supreme Court of Canada — before Mr. Mair had, at least, limited sanction from the court for making his comments. Whatever anyone might think of what his comments were, the court said: "This is part of the rough trade of public debate, and it's okay."

But can you imagine the amount of time, the amount of money, the amount of effort…? And he had the backing of what then…. Today's media environment is quite different. Media had more resources to defend these kinds of claims. We're not in that environment today. That is one of the reasons why we're bringing in this bill.

Noting the hour, I move adjournment of the debate. And I seek to reserve my place to resume again.

Mr. Speaker: I heard you say you seek leave to speak again.

Hon. D. Eby: I seek leave to speak again. That's exactly right. Can you hear me over the uproarious applause?

Hon. D. Eby moved adjournment of debate.

Motion approved.

Hon. D. Eby moved adjournment of the House.

Motion approved.

Mr. Speaker: This House stands adjourned until 1:30 this afternoon.

The House adjourned at 11:55 a.m.

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