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Her Honour the Honourable Janet Austin, OBC

Fifth Session, 41st Parliament

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Orders of the Day

Proceedings in the Douglas Fir Room

THURSDAY, MARCH 5, 2020

The House met at 1:32 p.m.

[Mr. Speaker in the chair.]

Orders of the Day

Hon. M. Farnworth: In this chamber, I call Committee of the Whole on Bill 9, the Evidence Amendment Act. In the Douglas Fir Room, Committee A, I call the estimates debate for the Ministry of Education.

Committee of the Whole House

BILL 9 — EVIDENCE AMENDMENT ACT, 2020

The House in Committee of the Whole (Section B) on Bill 9; S. Chandra Herbert in the chair.

The committee met at 1:35 p.m.

On section 1.

M. Lee: I wanted to take this opportunity to address a few of the comments made by the Attorney General in response to our second reading speech. I think I will do that in sequence, as it comes up through the committee process.

To be clear, there has never been precedent for an Attorney General serving at the same time as minister responsible for ICBC. Is that correct?

Hon. D. Eby: Mr. Chair, that's totally unrelated to the bill. I will be available through the estimates process for all kinds of conversations. I have no idea what portfolios Attorneys General have held in this province over the years.

I know, at one point, the Finance Minister was also the Attorney General. I don't remember, when the member for Prince George–Mackenzie was Attorney General, what other portfolios she held. I think when the Finance Minister was Attorney General, he was also the minister responsible for gambling as well as Attorney General. I can advise the member, off the top of my head, it's not unusual for an Attorney General to have multiple portfolios. I can also advise the member it's totally unrelated to the bill.

M. Lee: The point that I was trying to make yesterday, repeatedly, through my second reading speech, was that, to my knowledge, in the history of this province, there has never been an Attorney General that has acted at the same time as the minister responsible for ICBC. When the Attorney General took us through memory lane, talked about the previous government and talked about the Attorney General in that previous capacity…. She was not serving as the minister responsible for ICBC.

What we have in front of this House is the Evidence Amendment Act brought by the Attorney General of this province, amending the rules of court for which plaintiffs can bring forward expert reports for the benefit of cost saving for the Crown corporation for which he is responsible, as minister responsible for ICBC.

That is a question that's very relevant to this act. The Attorney General, by bringing forward this bill, has brought forward to the floor of this House his conflict. His conflict is illustrated by this act, this bill. The fact that the Attorney General fails to see that conflict, the fact that he fails to see the relevance of that conflict to this bill, I think, is shocking.

Let me ask the Attorney General this question. What is the role of the Attorney General to protect the rights of injured British Columbians in this province?

Hon. D. Eby: I'll advise the member again that I'm totally available to him in the estimates process if he wants to ask questions about the role of the Attorney General. If he doesn't understand what the role is, I would advise that he start with the Attorney General Act, which sets out the responsibilities for the Attorney General. There are some very good textbooks about the roles of Attorneys General. That is not the point of committee stage on a bill related to the Evidence Act.

[1:40 p.m.]

I can advise the member that on many occasions, Attorneys General, including in the previous Liberal administration, have…. In fact, Suzanne Anton, when she was Attorney General, established an Attorneys General committee exclusively for the purpose of making court rules with only 90 days' notice to the chief justice. So the suggestion that Attorneys General should not be involved in the rules of how courts go forward….

The Supreme Court of Canada upheld the idea that provinces can set out how civil litigation proceeds — and rules and guidelines for that to happen — in relation to tobacco litigation. That's something we mirrored in the opioid legislation.

I am interested to hear the member's questions about the act. He has a theory, disputed by no less an authority than the Supreme Court of Canada, that the Attorney General's role should not include putting a limit on experts or being involved in how civil litigation proceeds in the province. That is his theory. It's an untested legal theory, and it is unique to him, I think. I'm not sure it gets us any further along in understanding this bill — the implications of it — and I welcome his questions on that.

M. Lee: Mr. Chair, I think it's important that we fundamentally understand why this bill is in front of this House and how it is that an Attorney General in conflict can bring forward this bill. Again, I'm not yet talking

about the rules committee or the jurisdiction of an Attorney General to be able to work for the rules committee or not work with the rules committee to bring forward changes to the rules of court by way of the Evidence Amendment Act in this Bill 9.

Under the Attorney General Act — and I'm quite familiar with that act — subsections 2(a) and (b) state the duties and powers of the Attorney General in this province. "The Attorney General (a) is the official legal adviser of the Lieutenant Governor and the legal member of the Executive Council," and "(b) must see that the administration of public affairs is in accordance with law." His primary responsibilities are set out in this act. When we talk about the administration of public affairs in accordance with the law and serving as the official legal adviser to the executive council, that is his role.

I don't see anywhere, in this Attorney General Act, saving costs for ICBC.

Interjection.

M. Lee: The Attorney General Act is the act that we're talking about because the Attorney General is the one who's tabling this bill. Which hat is he wearing? Is it his responsibility as Attorney General to this province, or is it as the minister responsible for ICBC? Let me ask the Attorney General that question: which responsibility and which ministry responsibility is he meeting when he tables this bill?

Hon. D. Eby: The astounding hypocrisy of the member on the other side to stand in this place and impugn my conduct in bringing this bill forward…. His own Attorney General, Suzanne Anton, when they were in power, caused the entire rules committee to resign when she put forward an OIC to change the civil tariff and then withdrew it because of the cost impact on ICBC. Now, when she did that, was she acting as the Attorney General, or was she acting as the puppet of the Finance Minister? What was happening there?

Look. There is an obligation for the Attorney General to make sure that justice is done in the province — absolutely — and that it's done according to the rule of law. What is in front of us is a proposed law, which, I believe, government has full authority to bring forward, based on Supreme Court of Canada jurisprudence about the ability of government to prescribe how civil litigation proceeds in the province. It's also in keeping with the rules of court. It's rule No. 1: the just and efficient determination of disputes in the province.

Here we're talking about efficiency, proportionality — key values in the rules of court. The member is pretending this is some huge abridgement of rights — unheard of, unprecedented — British Columbia being the only province in Canada that doesn't have a limit on expert reports.

[1:45 p.m.]

We're bringing in a limit on expert reports on the abuse of experts by both sides. I apologize for sounding intemperate, but it is a bit much to hear this kind of allegation coming from the other side — that I'm in conflict of interest; this is improper; abuse of injured people — when that member knows full well that if a person was in a single-vehicle collision and they were catastrophically injured, their lifetime benefit under their insurance scheme was $150,000. Well, ask Lorraine Tran how that worked out for her. She lives in poverty because of their insurance system — the insurance system, by the way, that I assume he is standing and defending.

With all due respect to the member, I think it would serve everybody in this place if he focused on the bill, asked questions about the bill. If he feels there's a provision of the bill that's unconstitutional, why doesn't he ask a question about that provision of the bill?

The Chair: Member, on section 1 of the Evidence Amendment Act.

M. Lee: Well, Mr. Chair, I don't believe that he answered my question.

We're talking about the whole nature of the bill. I appreciate that, and that's what we're here to do. But fundamentally, I think it's important that members of this House understand the conflict that the Attorney General is in. It's not an allegation; it's a fact.

Well, the complaint ought to be to how this government has structured the roles and responsibilities of the cabinet. I believe, as we are having this discussion, that it's a mere illustration of the Attorney General's and the Premier's failure to see the conflict that the member for Vancouver–Point Grey is in. It is endemic in terms of his comments in response to my second reading speech in the last debate yesterday.

What we will see today, as we go through this, is a repeated theme of the struggle for this Attorney General. He has clearly lost sight of his responsibility, first and foremost, to this province as the chief legal officer responsible to protect the rights of injured British Columbians in British Columbia. When we talk about the rules committee…. The reason why I focused on the rules committee in my second reading speech is because of my concern about that conflict. This Attorney General, when he brought forward rule 11-8, brought it forward without any consultation with the rules committee.

The example he gave of the previous government and the previous Attorney General was not on a matter that was substantive rights. Rule 11-8 and what is the subject matter of this Bill 9 is a fundamental change to the manner in which plaintiffs can bring forward their cases for recovery of damages in motor vehicle accidents but now expanded to all personal injury actions — another point we'll get to later on in this bill.

In the other example the Attorney General has given, the rules committee was consulted. The Attorney General did not have a conflict in the way that is presented here. The Attorney General plays the role as set out in the Attorney General Act to advise the executive council — whatever considerations were made, decisions were made. The rules committee was unhappy with the result and the decision by government. But the rules committee was involved and was consulted, in this case, on cost tariff — the determination of costs after a dispute, a case, is tried and heard and decided upon.

We're talking about how plaintiffs, British Columbians, can access justice through our court system. This Attorney General, for this mere focus on costs for ICBC — his other hat, his other responsibility — has lost sight of access to justice. What he is doing, effectively, is taking away the rights of injured British Columbians. I want to take this opportunity to at least respond to the Attorney General's comments in that matter.

[1:50 p.m.]

The other comment that I would say: when we look at other jurisdictions in this country as having some prescribed rules around expert reports, there is no other jurisdiction in this country that attempts to limit the jurisdiction and the discretion of the courts in the manner in which rule 11-8 and Bill 9 are doing. It is completely different.

The Attorney General can stand there and talk about other jurisdictions, but the fact of the matter is, in this jurisdiction, the Chief Justice of the B.C. Supreme Court has ruled his presented change in rule 11-8, for reasons we will canvass here at committee. They're the same concerns about fettering and restricting and limiting the jurisdiction and the discretion of the courts.

That is still the case in this bill. It's still the same concern. So again, when the Attorney General talks about the comments that I made in this House, the finding is clear. The finding by the Chief Justice of the Supreme Court of British Columbia is very clear. To limit the number of expert reports, as rule 8 was attempting to do and is being done in this proposed legislation under Bill 9, is the same….

The Chair: Excuse me, Member.

Minister of Labour, rising on a point of order.

Point of Order

Hon. H. Bains: I'm troubled. I'm watching, I'm listening, I'm hearing, and I'm troubled by the conversation and the content of the conversation. The second reading of the bill is over. It seems to me that we're doing the second reading all over again.

We're in committee stage. I don't even see which section of the bill is being debated, what questions are being asked. So I will ask that the member be drawn to the act itself and the sections that we are debating so that we could concentrate on the debate, just on that.

The Chair: Thank you, Minister. The Chair will take that under advisement.

Member for Vancouver-Langara, you're just reminded to draw your discussion back to section 1 of the Evidence Amendment Act. Debate of the pros and cons of the bill did occur in second reading, and I would ask that we try and draw our comments and questions to the bill itself.

Thank you.

Debate Continued

M. Lee: I appreciate the point of order and your guidance, Mr. Chair, in that regard. Appreciate the opportunity to respond to the comments of the Attorney General in his conclusion on the second reading. Certainly, Mr. Chair, we will pick up the additional points that we've had some exchange on, with your assistance, as we look at the specific provisions of this bill.

Having said that, on section 1, could I ask the Attorney General the purpose for which, in section 3 of the bill, there are changes being made to various sections relating to vehicle injury damages being personal injury damages and the like?

The Chair: If I might, Member. We are still on section 1. If the member does have questions for section 3, I would suggest that we ask them there, unless members would like to pass sections 1 and 2. Then we could ask questions on section 3.

Are there any further questions on section 1?

M. Lee: Okay. Well, let me ask this in terms of the nature of section 1 and this bill. Since this bill is being brought pursuant to, in the aftermath of, the Crowder decision — rule 11-8 — can I ask the Attorney General the purpose for which Bill 9 is being tabled in this House?

Hon. D. Eby: This bill is intended to ensure the just, speedy, efficient and proportionate resolution of civil claims related to automobile collisions.

M. Lee: So in terms of the actual ruling by Mr. Justice Hinkson, have those considerations been incorporated in the manner in which the Attorney General described this bill?

[1:55 p.m.]

Hon. D. Eby: We believe the proposed act is responsive to the concerns raised by the court in that decision.

M. Lee: What assessment has the Ministry of Attorney General done in terms of the potential for further consti-

tutional challenges on the same grounds that were set out in the Crowder decision?

Hon. D. Eby: The member will have to clarify what he means.

M. Lee: In the Crowder decision, there were concerns raised regarding the inherent exclusive jurisdiction of the court — the concerns around the limitations in the way that it was set out in rule 11-8. As we walk through — and happy to do so — the various decision points by Chief Justice Hinkson…. He had concerns regarding that attempt to restrict the jurisdiction of the court.

When the Ministry of Attorney General looks at this Bill 9 and considers the limitations still on judicial discretion…. Has there been an assessment made by the lawyers in the Attorney General, advising the member for Vancouver–Point Grey in his capacity as the Attorney General of this province, on whether there are still points of challenge with this bill and how it is amending the Evidence Act and whether that will be challenged on the similar grounds as were challenged in the Crowder decision on rule 11-8?

Hon. D. Eby: I do not have any such concerns that the bill is unconstitutional, if that's what the member is sort of circling around. If he's asking whether I'm presenting legislation in this place that I believe is unconstitutional, the answer is no.

The member is welcome to ask that on any bill I introduce or any bill any member on this side introduces. I'll give him an honest answer, including if I believe the bill is unconstitutional and still being introduced. I think that happened once federally in recent memory. I have no reason to believe that this bill is unconstitutional. I believe it corresponds and responds to the reasons that the chief justice gave in the Crowder decision.

There is discretion for the court — when we get to that section, we can go through it in some detail — where justice requires additional experts, giving the court the authority to allow additional experts. I look forward to getting to that section.

M. Lee: I appreciate the response from the Attorney General in respect of this bill. As I mentioned in my comments to date, there are considerations regarding the concerns around the limitation on expert reports under rule 11-8, which are very similar to — for reasons that we will get to on this committee debate on this bill — concerns in respect of this particular bill. So keeping that in mind, I ask: was the Attorney General provided the same level of advice and assessment by his ministry lawyers, in terms of constitutionality, when the government proceeded with rule 11-8?

Hon. D. Eby: I'm not going to waive privilege over legal advice I've received. Suffice it to say that I believe this bill is constitutional. What I will say is: not helpful for the member to say that there are considerations about concerns and considerations that are concerning. What are they? Let's get to the section. Tell me what section in here the member believes is unconstitutional. Let's have that discussion. Very hard for me to respond about concerns about concerning considerations.

M. Lee: Well, we certainly will get to that on a section-by-section basis. I believe that I took the time to set out those concerns in my second reading speech yesterday. But happy to draw the Attorney General's attention to that as we go through the sections of this bill.

If I can also ask, in terms of the bill in front of us, what level of consultations were had, if any, with the rules committee?

[2:00 p.m.]

Hon. D. Eby: None. This is the Evidence Act, so we did consult with the Chief Justice of the B.C. Supreme Court.

M. Lee: Is it the view, then, that in respect of the requirements that the Attorney General is under, he has met his obligations for consultation?

Hon. D. Eby: Yes.

The Chair: Member, on section 1.

M. Lee: What is the estimated savings to ICBC that the Attorney General, in his capacity as minister responsible for ICBC, would indicate to this House is the cost saving for this measure under Bill 9?

Hon. D. Eby: A very good question for estimates. I don't have staff here from ICBC today. This is an Evidence Act bill.

M. Lee: Well, I think we will have that discussion, then, at estimates, in terms of the level in which ICBC estimates, in terms of their cost saving, by limiting the rights of injured British Columbians…. I know that in the Crowder decision, as I indicated yesterday, it has been estimated to be $400 million, of which $200 million would be based on lower court settlements. The comment that was made…. The fewer expert reports, the lower the claim cost.

Be that as it may, if we turn to section 1, can the Attorney General explain the rationale in terms of limitation on expert reports — the difference and the setting of one expert report for fast-track vehicle injury proceedings versus other types of vehicle injury proceedings?

Hon. D. Eby: One of the key values as Attorney General that I have in relation to the justice system is that British Columbians have the right to an efficient, speedy and just determination of their disputes. Part of that is the value of

proportionality — that the amount of process involved and the costs involved with a claim should be proportional to the amount that is at issue in the claim.

In fast-track proceedings, usually the value of the claim is $100,000 or less. Therefore, the number of expert witnesses, which we know — I assume we all know, but I don't know that to be certain; I assume the member knows this — are quite expensive. So when you end up having to pay 20 or 30 or 40 or 50 or 60 percent of the value of the claim on process, then justice is denied.

This value of proportionality is very important, and it is why the member will see, in this bill, different numbers of experts depending on the value of the claim. It's an attempt to ensure that people have access to resolve their disputes in a way that's affordable, efficient and just.

The member will see similar provisions in Commonwealth jurisdictions, including in Canada, because this value of proportionality is not, by any means, unique to British Columbia or to this bill.

M. Lee: When we see language in section 1 of this bill — for example, in 12.1(2)(a)(i) — around expert evidence on the issue of vehicle injury damages…. The use of the term "damages," of course, is explicit and presumably intentional in its nature, as opposed to liability. So the purpose for this limitation on expert reports, then, would not extend to expert reports that are necessary for a determination of liability. Is that correct?

Hon. D. Eby: That is correct.

[2:05 p.m.]

M. Lee: So if I could ask the Attorney General what the purpose of that distinction is.

Hon. D. Eby: I'm advised that it's common for liability issues to not really recommend themselves to any particular number of reports, and they can be quite complex in terms of the engineering reports and so on that are required to determine liability. So that is the reason for leaving these out and focusing on, essentially, medical-legal types of reports in litigation.

M. Lee: I know that the information we were provided at the technical briefing on this bill, myself and the member for Richmond-Queensborough, was that the focus will be on solely medical reports and that expert reports for crash analysis or demonstrating liability certainly would not be caught within this bill. Are there other forms of expert reports that are contemplated under this bill in terms of expert evidence on, as the words say, the issue of vehicle injury damages?

Hon. D. Eby: Could the member just clarify that question? Is he asking what reports other than doctors'? I didn't quite follow his question.

M. Lee: Yes. In effect, what other types of reports would there be, other than medical reports from doctors?

Hon. D. Eby: The other types of expert reports that may be captured by this limit of three include cost of future care reports, economist reports, life planner reports, vocational care reports or occupational therapy reports.

M. Lee: There is also reference to elements around causation here. That is, parties must prove, in a negligent action, that there was causation. Those experts who are retained to opine strictly on causation — are they caught in any way within the limitations set out in this act?

Hon. D. Eby: It depends on the kind of causation the member is talking about. If you're talking about medical causation, that the injury that resulted from the collision caused a certain outcome in the individual, then that would be captured by the limit. But if the member is talking about causation as in who caused the accident, who is liable for the damages, then it would not.

M. Lee: The limitation on expert reports. The Attorney General did acknowledge, in respect of ICBC, that there is no similar application of this to limit the number of expert reports for recovery to ICBC.

[2:10 p.m.]

I'd like to ask if the Attorney General has had any further opportunity to consider that point and whether there is any view to be looking at that further in terms of how these rules might also apply to ICBC.

Hon. D. Eby: Yes, these rules do apply to ICBC.

M. Lee: In terms of that, when ICBC is the successful party, then they'll be able to recover their costs in any action. Is that correct?

Hon. D. Eby: Up to the limits.

M. Lee: Is there any concern the Attorney General sees in respect of the difference in financial position between a plaintiff and ICBC, in terms of their ability to obtain expert reports but not need to recover the costs of those expert reports — that ICBC is in a better financial position to be doing that vis-à-vis any individual plaintiff?

Hon. D. Eby: It may be helpful for the member to have some background on the issue of costs and disbursements, which is that they're never intended to provide full indemnification. Disbursements are always limited to those that are necessarily or properly incurred in the course of litigation and for a reasonable amount.

As the member knows, litigation typically has a cost, which is significant, and some of which is never recovered by even the successful party. The purpose of this is actually

to encourage more proportionate spending so parties will be fully indemnified or close to it in terms of their compensation.

There are, certainly, some pieces that we put in to ensure that people are protected in the transition period. In the regs, we will have this. The court will have discretion to disapply the 5 percent cap where a notice of trial was filed and served before February 6, 2020 for a trial after October 1, 2020, but the party properly incurred disbursements in excess of 5 percent before February 6, 2020.

Certain things will be excluded from the 5 percent cap as well. This is what I assume the member is asking about. Such things are fees payable to the Crown and sheriff, things like filing fees, court fees, jury fees, disbursements where costs are assessed as special costs, and disbursements for expert reports on liability where the court orders that they be excluded from the 5 percent cap.

M. Lee: I appreciate the response from the Attorney General and certainly, as I spoke to in my second reading speech yesterday as well, recognize that under the existing rules, recovery of costs is subject to reasonable and proper and appropriateness, and that determination is made, certainly, under our existing rules.

The point that I was trying to get at, too, with the Attorney General was really about the unlevel playing field concern in respect of…. Even though the Attorney General has confirmed that the same limits on recoverability apply to ICBC, ICBC is in a better financial position in terms of the number of expert reports, the amount that it's prepared to pay for an expert report and the amount of disbursements that ICBC is prepared to incur in respect of any action because of their financial position, versus a plaintiff who now is being limited in their ability in terms of the number of expert reports they can bring on and tender during that action.

[2:15 p.m.]

The costs for each individual expert report would be limited to $3,000, and their overall disbursements would be arbitrarily limited to 5 percent. Does the Attorney General see a concern around the unlevel playing field that this bill presents to plaintiffs in British Columbia?

Hon. D. Eby: Of course ICBC will exercise due diligence in expenses on files, including expert report costs.

I want to point out to the member — we haven't gotten to this section yet — but of course ICBC and plaintiffs can explore the use of joint experts that don't have this limit on recoverable amounts. We're actually encouraging people, as the previous government did in family law…. They limited experts and had court-appointed experts, two things that the member railed against in his second reading speech — actually done by the previous government in the family law venue.

In any event, I digress. This omission of joint experts from the limit was deliberate. We want people to identify non-adversarial experts to assist in valuing claims. So if the member is concerned about that level playing field, certainly there are opportunities to have experts outside of the limit on experts and the limit on recoverable amounts — the number of expert reports and so on.

If the member wants me to defend the litigation system as a great way for people to resolve their disputes with ICBC, I won't do it. We are transitioning to a new way of doing auto insurance in the province precisely because of the problems with the current system.

I mean, for someone to have to borrow money from their lawyer for a two-year litigation battle with ICBC, who is both supposed to be providing care for that person and, at the same time, hiring the lawyer for the person who hit them in the crash — to say, "Well, maybe it's the person who was injured; maybe it was their fault; maybe they were driving badly; maybe they're not as injured as they seem"…. That system is not a good system.

We're trying to address some of the excesses of the system as a transition to a better way of doing insurance — providing peace of mind to British Columbians, better benefits, lower costs and getting rid of legal costs in the system.

I hope that goes some way to addressing the member's concerns about a level playing field. We have an unambiguous agenda here, which is to discourage this adversarial experts system, where there are these groups of plaintiff experts and this group of defence experts…. The *Globe and Mail* did an excellent exposé on some of these experts.

It's incredibly problematic. I certainly hold ICBC as responsible as the plaintiff bar for cultivating this network of experts on either side.

We can address this as a province by encouraging people to retain joint experts, an expert that both sides have confidence in to assess claims. Those experts are exempt from the limitation on recoverable amounts.

M. Lee: We will talk about the retroactive nature of this bill to come when we get to that particular section. But to be clear, for the purpose of this bill, the consideration ought to be for the outstanding lawsuits that ICBC is involved with. Because those lawsuits are being affected by the changes in rules on expert reports that this bill presents — just to be clear about the impact of these restrictions and the unlevel playing field concern that we're talking about.

It may be one thing to talk about the bill that the Attorney General introduced into the House yesterday for no-fault. That discussion will come, but in this case, we are talking about this bill — limiting expert reports in the manner that is set out in this bill.

I'd ask the Attorney General if he could answer the question as to: what is the estimated number of lawsuits that will be affected by this bill?

[2:20 p.m.]

Hon. D. Eby: In terms of an exact number or even an approximate number, it's difficult to say. I think there are about 90,000 claims in the system that predate today. There will be some more collisions between now and the implementation of the new system on May 1 of next year. For all of those files, they could potentially fall under these rules, with the caveat that there are transition provisions within the bill. So some will not be captured within this, and some will be.

In terms of the pool of potential files, it's about 90,000 active files right now, but all of those will not be captured in the same way.

M. Lee: It's the 90,000 files that, as the Attorney General acknowledged, are being potentially affected depending on their status, depending on their trial date, depending on whether they go to trial, how far they go along this litigation process. There will be, certainly, other claims that may well be affected to come. The nature of this is significant in terms of the number of British Columbians that will be affected by this rule change.

To come back to the question around unlevel playing field, we're talking, as well, about British Columbians that have, with legal counsel, entered into litigation proceedings under the current rules and have relied upon that system and now are having the rules change, which will affect their ability to bring forward their full claim for full recovery of damages relating to their motor vehicle accidents.

That is the concern here. And that in the course of that, ICBC is in a much better financial position. They have a lot more at stake here. These dollars are meaningful, certainly for individuals, and they have a lot at risk. They don't have the financial ability to take that risk.

Is there a concern…? When the Attorney General uses the word "agenda" or "aim" or "objective," is the objective of this bill to encourage earlier settlements of those 90,000 lawsuits?

Hon. D. Eby: The vast majority of these claims, if history is any guide, will settle before they go to court. Far in excess of 95 percent of them will settle.

I want to clarify one of my earlier responses. I said that there were about 90,000. I'm told there are actually 95,000 active injury claims with ICBC; however, only 48,000 of those are actually in the court system right now. Just a little bit more clarity. I got new numbers from staff here.

I hope that assists the member with his understanding of the bill.

M. Lee: I'd still look for a further response from the Attorney General in respect of the concern around the different financial position under these rules and the impact on injured British Columbians. Does the Attorney General see that as being a concern — that we're changing the rules? Even if we're talking, for discussion purposes here, 48,000 active lawsuits in court proceedings. Certainly, for those 48,000 court proceedings, they have relied upon different rules. Now we're changing those rules.

Does the Attorney General see the concern that this is effectively creating an unlevel playing field between those plaintiffs in those 48,000 lawsuits with ICBC?

Hon. D. Eby: I don't acknowledge that. This bill is intended to encourage plaintiffs and defendants in personal injury matters related to vehicle collisions to retain joint experts and to move away from the adversarial system.

[2:25 p.m.]

What I do acknowledge is that the system as a whole is not a good one, in the sense that if you're injured in a collision, the last thing you need is a two-year court battle and to start borrowing money from your lawyer at 10 percent to fund litigation through that two-year period and then to give up a third of your award at the end to contingency fee. It's not good for drivers who pay their insurance and pay for lawyers on both sides, expert reports on both sides, all of the disbursements on both sides. It's not a good system for administrative efficiency or for peace of mind for British Columbians.

I won't defend it, because we're moving away from it, if that's what the member is wondering. But I will say that this bill that I put forward has an objective. It has an intention and an agenda, which is to move away from these adversarial experts. If you still want to use adversarial experts, you can. You can use up to three. You can use more on the issue of liability, and the maximum amount you can recover is limited.

I do want to talk a little bit about what the member is calling the retroactivity of the bill. The member will know, and in fact he mentioned it in his question, that we had legislation limiting the number of experts. I was very clear, held press conferences, media events. I spoke to the bar. Our intention was to limit adversarial experts in the system.

We introduced legislation. It was challenged in court. It was in the news. When we lost, I announced that it was government's intention to go back and study the decision and find a way we could limit those adversarial experts. The bill, no surprise to anybody, came forward again.

Despite all of that press and all of that sky-writing that it was government's intention to limit adversarial experts and expenses related to adversarial experts and to move people towards joint experts in civil litigation, especially in automotive collisions, we still said: "Maybe, before February 6, before we announced this latest bill, maybe you didn't know that we were going to do this."

We said: "Before that date, maybe you didn't know that new limits were coming, and maybe you would've been conducting yourself according to the old way of doing things. We also wanted to make sure, though, that you didn't have a big race down to the courthouse to get filed. So the amendments refer to steps already taken by February 6."

I want to give the member an example of a race to the courthouse. When the minor injury cap on non-pecuniary losses was introduced, there was a rush to file cases before the new limits applied. In one instance, a single lawyer filed over 300 notices of civil claim in a single day. As it happens, they didn't avoid the new limits, but it created a lot of work for registry staff.

Our data on filings shows two significant spikes in claim filings — one in January of 2018, which was around the date of the product reform announcements, and another in March 2019, which was when the minor injury caps took effect. In both cases, the data showed filings were twice as high as normal monthly volumes.

The member, I'm sure, can appreciate why we would require steps to be taken by February 6, but I think the member can also understand that people might have had a notion that government would be introducing legislation this session to, again, attempt to rein in this practice of the use of adversarial experts in personal injury litigation.

M. Lee: I appreciate that we'll have an opportunity to more thoroughly canvass the concerns around retroactivity and what British Columbians are reasonably expected to do.

I'm not sure that British Columbians, in the face of the decision on October 24, 2019, would have thought: "Well, this rule 11-8, the rule on the constitution, was thrown out by the Chief Justice of the Supreme Court of British Columbia." I'm not sure they would have said: "Oh, well, you know, despite what the government says, it's going to come forward still." I don't know that the writing in the sky or the notion that that might occur is something that we're asking British Columbians to rely on. It's also the reason why this bill is in front of this House.

I don't think we expect British Columbians to conduct their affairs based on press releases, based on what is said, because sometimes, as we know, what is said is not actually what is done.

I want to come back, though, to the other agenda here that the Attorney General has been speaking to, which is around joint experts.

[2:30 p.m.]

I appreciate that, certainly, in areas of family law and other areas, we continue to find ways to bring about better ways to resolve disputes, particularly in the family law context. But we are still, for those 48,000 lawsuits — and potentially others, to get to the 95,000 — under the current rules.

I'll just ask this question because we're having this discussion, so just to keep that in mind. In terms of joint experts, what is the understanding of the Ministry of Attorney General in terms of the use of joint experts in motor vehicle claims and lawsuits?

Hon. D. Eby: Just briefly to the member's lead-in to the question. We don't expect members of the public to conduct themselves according to any kind of press release or anything else government does. That's why we accept past loss, and that's why we set out February 6 as the date.

I was just saying to the member that this didn't come out of nowhere. It shouldn't have been a huge surprise to anyone. We telegraphed this in several different ways. Despite all of that telegraphing of our intention to do this, the date is still February 6.

[S. Gibson in the chair.]

Now, with respect to the member's question — what is our understanding of joint experts in personal injury claims related to automotive collisions? I don't know what that means.

M. Lee: Just to rephrase the question for a better understanding: what is the use…? How frequently are joint expert reports utilized in motor vehicle injury claims and lawsuits?

Hon. D. Eby: The rules do currently allow joint experts in all litigation. However, there is no incentive to use joint experts, and our understanding is they are used very infrequently. However, we do not have statistics about exactly how many files use joint experts. I would guess that it would be a very, very low number indeed. What we're attempting to do with this bill is to incent and encourage the use of joint experts.

M. Lee: Well, that is my understanding as well, that today, under the current system and the rules, there is a very low or infrequent use of joint experts. I think it is, at least for this discussion, helpful to understand the true objective and agenda as the purpose — at least one of the purposes — of this bill. It would leave situations where, when you're limited on cost recovery, on the number of expert reports that you can receive recovery for, and then the dollar figure…. As the Attorney General has indicated, that limit doesn't apply to joint experts.

Can I ask the Attorney General, though: in the context of a motor vehicle injury lawsuit, what are the challenges that the Attorney General has seen or understands to be the case with the use of joint expert reports?

Hon. D. Eby: The challenge has been that there's no incentive to use joint experts, and therefore, people don't use them. This results in the cultivating of and expansion of a network of plaintiff experts and a network of defense experts, which, to my opinion, are of limited assistance to a judge.

[2:35 p.m.]

To have one expert come up and say "black" and the other expert come up and say "white" — what is the benefit that either the court or the participants get from that? If you have an expert that both parties agree is somebody

who is expert in the field and is jointly retained to provide an opinion, there's great assistance in that — in fact, so much assistance that it may set settle the claim.

The issue is the significant and growing expenditure on adversarial experts by both sides — delayed justice, inefficient process, unresolved and unsettled disputes that should be settled. There are many costs associated with the failure to use joint experts. There are costs associated with a lack of proportionality, as well, between the use of experts and the actual value of the claim.

M. Lee: There are a number of points that we could pick up in the Attorney General's response. But just on the last one. When it is the concern of the Attorney General that there are a number of costs that are incurred that get away from proportionality, how does the Attorney General see that concern being dealt with differently from what's already set out under rule 1-3 of the Supreme Court civil rules?

Hon. D. Eby: The new bill provides an incentive to use a joint expert.

M. Lee: Well, I'll only say that proportionality is dealt squarely within rule 1-3(2) of proportionality. That states: "Securing the just, speedy and inexpensive determination of a proceeding on its merits includes, so far as is practicable, conducting the proceeding in ways that are proportionate to (a) the amount involved in the proceeding, (b) the importance of the issues in dispute, and (c) the complexity of the proceeding."

This is in context or in relationship to the object of the rules themselves, which is to secure the just, speedy and inexpensive determination of a proceeding on its merits.

Again, I ask the Attorney General, when he talks about proportionality and the importance of that, why isn't that already dealt with fundamentally front and centre within the Supreme Court civil rules? What is lacking in rule 1-3?

Hon. D. Eby: I agree with the member. I mean, the object of the rules is the same as the object of this bill. Our objective here is to be, so far as practicable, conducting the proceeding in ways that are proportionate to the amount involved, the importance of the issues and the complexity of the proceeding. That is exactly the intent behind this bill. So it shares an intent with the rules.

The rules themselves are silent on any kind of limit on the number of expert reports, and motor vehicle collisions do not, as I say, provide an incentive to use those joint experts. So this is a complement to the objective of the rules.

M. Lee: Well, I know that we will come back to the Supreme Court civil rules and how the current system works. But I did want to at least address proportionality, and I believe the Attorney General has acknowledged that framework.

Turning back to joint experts, I hear, in the Attorney General's response to my questions, that there are certainly cost concerns, and the Attorney General speaks to the need for providing an incentive. Well, that is a different way of turning this bill, in terms of how it's being presented.

[2:40 p.m.]

It's providing an incentive by penalizing, limiting, constraining plaintiffs for utilization of expert reports, both in terms of number and cost and in recovery of disbursements. That is certainly a stick methodology; it's certainly not a carrot. It is forcing plaintiffs to do something that I don't hear from the Attorney General, which I would ask in a moment. I hear this is all being driven by cost concerns.

Are there any other reasons for which the Attorney General, by presenting this bill, is seeking to provide the incentive — in his words — to plaintiffs for using joint experts? Is there any other reason besides cost?

Hon. D. Eby: I would add to the issue of costs — and, frankly, costs on both plaintiff and defence sides when experts and adversarial experts are abused in the system — the reputation of the justice system as a concern. I don't think it does the justice system any favours — and ICBC wears this one — to have an expert whose office is above an airplane hangar, who doesn't see the person involved in the litigation before issuing an expert report about their medical condition.

Then it shows up in the *Globe and Mail*. I don't think people read that and think: "Gosh, the justice system sure seems to be working well." I think they read that, and they say: "What the heck is going on down there?" So I would say that one of the benefits of encouraging people to use joint experts, experts that are respected by both sides as being expert, in the process — getting that opinion and making a decision about whether or not to go to court based on that — is that of a lot of people saying: "Yeah, I think that's the way the justice system should work."

If there's a legal issue to be determined, the judge is now in place to do that, with an expert opinion that is relied on by both parties. I think that we can't take too lightly the concern of the public around the cost of going to court. When they see a lawyer's bill where, of $248,000 paid out by the insurer, 70 percent of that goes to administration costs, 30 percent goes to the plaintiff and $84,000 of that goes to expert reports, they say: "What the heck is going on down there?"

I think that public confidence in how the system works is a really important value, and this bill responds to that. It says: "Here, we've got this problem." It's not a problem that I made up; it's not a problem that someone else made up. This has been a problem that was widely discussed in the legal world for many years.

From a civil rules review committee, established by the previous government, one of their key recommendations was: "Address the abuse of adversarial witnesses." It's one of their key recommendations — totally unacted on, in my opinion, by the previous administration, despite the fact they had assembled this civil rules working group to advise on how the civil rules should be reformed. So it's a widely recognized concern, a concern that's raising public concerns about the administration of justice, a concern that is corroding public confidence in the administration of justice.

It's a bill that attempts to address that, as other jurisdictions across Canada and other Commonwealth jurisdictions have, in ways that are both more lenient and far more significantly constraining than what's proposed here. Just look at the U.K. rules or the Australia rules around resolving automobile tort claims, and you'll see that we fall somewhere in the middle — in fact, much closer to the lenient side.

The member.... I hear in his tone, you know: "How dare...? Costs? Just costs? Really?" But costs have this impact on public confidence in the justice system, how it's working, how efficient it is, who has access to court, who doesn't. It's important to address those issues.

[2:45 p.m.]

M. Lee: Well, there's a lot to address, certainly, in the comments from the Attorney General. Just focusing on joint expert reports, I'm still not hearing the considerations around how they actually function under our current system. I understand that there is encouragement — incentive — to utilize joint expert reports, but as the Attorney General acknowledged, they're very seldom used in our current system. Again, there is consideration around why that is.

When we look at considerations around the adversarial system, expert reports are being provided by the plaintiff to support their case. The unlevel playing field that we're talking about, which is backed by ICBC on the other side of this, would not see joint expert reports being utilized. It's because there is an imbalance of power there; there's an imbalance of resources. This bill is merely feeding that imbalance. It's forcing plaintiffs to utilize a mechanism that hasn't been utilized in the past, and there are reasons for it.

There is what Chief Justice Hinkson referred to in his decision around concerns for litigation privilege. The use of expert reports on a joint basis would have concerns raised, in a similar manner, that you're unfairly requiring and incenting plaintiffs to have to put forward their case in a manner that is prejudicial to their own interests. Does the Attorney General see any concern relating to the forcing of joint experts on plaintiffs under this bill in respect of the ability of that plaintiff to bring on their case in a way that still preserves litigation privilege?

Hon. D. Eby: I'll just remind the member that litigation privilege is not absolute. There are restrictions on it. If you want to use an expert report at a trial, you have to deliver it 84 days before trial. The court can order the disclosure of names of witnesses and summaries of their evidence. If you do want to maintain litigation privilege forever, you can do it by not tendering expert evidence at trial and just using it in preparation. But if you want to use it in trial, then there are limitations on that privilege.

I want to point out as well that we've had ten years now of joint experts in the family law field. They're working well. The administration of justice is the better for it. We're hopeful that joint experts can have a similar salutary effect in the litigation world as well.

M. Lee: Well, I appreciate, in terms of the response, at least the acknowledgment of the concern regarding litigation privilege. Having said that, it still is fundamental, in terms of the incentive that's being set out here in this bill, that it effectively will force plaintiffs to be limited in the way that they can access expert reports and in that being not a viable option. If I can ask about the movement here, in terms of looking at expert reports themselves....

[2:50 p.m.]

There is a subcondition in subsection (6) which requires that "the subject matter of the additional evidence...is not already addressed by expert evidence permitted under subsection (2) or (4)." If there is a joint expert under subsection (3) that covers a particular subject matter, does that preclude the ability to introduce additional expert evidence?

Hon. D. Eby: I think this may be responsive to the member's question. Joint experts are exempt from all of this. I'm not 100 percent sure, but I think that is responsive.

M. Lee: Thank you for that response. In terms of the condition under sub (6)(a), the condition I'm referring to, it refers to subject matters already addressed by experts, without specifying whose experts. Giving an example here, if the first party has an expert that covers the subject matter of, say, headaches or head injury, but the other party wishes to obtain an expert that also covers that same head injury, does this provision in sub (6) prevent the second party from retaining their own opposing expert?

Hon. D. Eby: The subsection refers specifically to (2) or (4). Joint experts are (3), and they are excluded from this provision. It's only (2) and (4), not (3).

M. Lee: I appreciate the answer and the previous answer that was given relating to joint experts. I'm referring at this point to any expert.

Hon. D. Eby: Okay. If a plaintiff brings a headache expert, the defence can also bring a headache expert to

respond, but it would count as one of their three expert reports.

M. Lee: Sub (6) relates, of course, to sub (5), which is the application which a party to a vehicle injury proceeding may make to the court. If the court is satisfied, then the court can grant leave to allow, in effect, additional expert reports to be tendered and obtained.

When we talk about sub (6)(a), the condition for which that application can be made and court can grant leave is conditional upon sub (6)(a), which is "the subject matter of the additional evidence to be tendered is not already addressed by expert evidence permitted under subsection (2) or (4)."

[2:55 p.m.]

Again, I'm just querying, as the Attorney General just raised…. If there is one party, say the plaintiff, who has tendered a report — or has a report, as part of his or her three — on head injury and headaches arising from that head injury, and the defence would like to have an additional report on the same subject matter as per the language of sub 6(a), does that preclude the court from granting leave for that additional expert report, pursuant to sub (5)?

Hon. D. Eby: I think that we've narrowed it down, and hopefully I can be responsive to the member's question. Subsection (6) refers to your own evidence — so the same party evidence. It doesn't refer to if the other party has done something. I'm hopeful that that clarifies things for the member.

M. Lee: So as we look back at the provision under sub (2)(c), it's worded that the party must not allow a party "to tender expert evidence at the trial of a vehicle injury proceeding if doing so would result in exceeding the limits set out in this subsection." So sub 12.1(2). When we set that out, how does that affect what follows in sub (4)? That doesn't have any exclusion from the language as do other sections, in terms of reference back to sub 2(c).

Hon. D. Eby: At the very beginning of sub 12.1(2), it says: "Except as provided under this section or the regulations." So it sets out the general rule. The general rule is that you're limited to this number of experts: in this kind of proceeding, you're limited to this number expert reports on this type of proceeding, and the court shouldn't allow any more. That's the general rule.

Then the exceptions come: "Except as provided under this section or the regulations." These are the exceptions. The exceptions start with subsection (3), which relates to a joint expert, and subsection (4): "With the consent of all other parties" to the proceedings. If you get everybody else's sign-off, you can add additional experts above and beyond the limit. So (3) is one exception, an exception for joint experts, and (4) is another exception, an exception for agreement of all parties.

M. Lee: In terms of sub (4), that is another avenue for which, with consent, a party may tender additional expert reports that are not subject to the limits. Under this current system, if I could ask the Attorney General, how often is the mechanism, for which consent is provided by both parties for expert reports, in a similar way as to what this is set out?

[3:00 p.m.]

Hon. D. Eby: Under the current system, you can call as many experts as you want, so there's no need for consent. In terms of the proposed change here, consent typically would be arranged by counsel before the trial, and there would be cost consequences for failing to consent to a reasonable request from counsel on the other side. Typically it's done in writing, and if the court asks, you just stand up in court and say: "Yeah, we've consented to this extra expert evidence."

I hope that addresses the member's question.

M. Lee: Recognizing and acknowledging that there is no need for consent to be obtained under the current rules because there's a limit on expert reports, under this bill, what is the expectation that the Attorney General would have as to how this consent process will work between the two parties?

Hon. D. Eby: Just like any other consent process between parties to litigation, it would be speaking in advance of any trial about trying to resolve issues and so on. There would be a request, I assume, by one party to add additional expert evidence with an explanation of why it's needed. Consent would either be given or it would not be given by the other party, noting that unreasonably refusing would potentially lead to cost consequences.

M. Lee: Again, in terms of how this might be utilized, are there any concerns that the Attorney General sees as to the position this puts the plaintiff party in, in terms of this mechanism, in having to enter into discussions with the other party as to the nature of their claim and the theory of their claim and the strategy that they're going to bring forward? Would this effectively lead to prematurely prejudicing the case of the plaintiff him- or herself?

Hon. D. Eby: The safeguard is in this same section. It's subsection (5). If one party — and this rule applies equally to both parties — unreasonably refuses consent, the party who received that refusal would apply to court. The court would consider whether there's a reason to allow the additional expert evidence and then would order that it be allowed or not.

M. Lee: I'm just trying to break down the various avenues for which plaintiffs can seek to recover their full damages here. We've talked about the use of joint experts and the incentive that this bill, from the Attorney General's point of view, will create. We will get to the court-ordered process under sub (5) and sub (6) and sub (7) in terms of the nature of that application to the court.

Just coming back to consent again, though, is there a concern as to how workable, in the nature of these current proceedings, the outstanding claims that are in front of various courts in this province — that we're providing for a mechanism here under sub (4) that really is not all that workable for plaintiffs?

Does the Attorney General see that as being a viable avenue to obtain consent where the plaintiff, for reasons that I gave, would have concerns about putting themselves in a position where their own case would be prejudiced by having to go through that consent process?

[3:05 p.m.]

Hon. D. Eby: The member is going to have to be more specific about what the issue is here. The way consent works is that you ask the other party: "Do you consent to this departure from the rule?" They say: "No." You bring your application in court. It happens all the time on countless different issues.

He'll have to be more specific about the concerns. Again, I don't know what he's talking about.

M. Lee: In order for parties to utilize this consent process, there will need to be a level of interaction request being made, as the Attorney General sets out. And to engage in that, at any process, particularly as the claim approaches the trial, that forces the plaintiff to have to go through revealing and indicating to the other side parts of their action and the theory of what they're presenting to the courts.

I'm only pointing out that this avenue that's been provided in this bill is very unlikely to be utilized because it's not that workable for plaintiffs. I'm asking the Attorney General if he sees that same concern.

Hon. D. Eby: I'm trying to put together the vision of the justice system that the member has in terms of civil litigation. There is not trial by ambush in British Columbia. This isn't a criminal proceeding where the defence is keeping everything close, only to test on cross-examination the Crown's witnesses.

Expert reports are fact-finding reports about what happened — or, in this case, about the injuries that a person has. It's alien to the idea of resolving a dispute that you're keeping your injuries secret, that you don't want to tell the other side what your injuries are. The goal is resolution of the claim. How injured are you? How can a fair settlement offer be made if nobody knows how injured you are, and you want to keep it secret?

I don't understand why that's a negative thing — that someone who is injured, who has a claim, who is advancing that claim through the court system and wants it, I can only assume, resolved as quickly, inexpensively and efficiently as possible would want to keep their injuries secret. In fact, that value is recognized in the rules in terms of when expert reports need to be disclosed, as when we went through and discussed litigation privilege.

You have to give it 84 days in advance. So at least the other side knows, you know, what is the nature of the injuries. There's a very live question about whether that's enough time. I think it needs to be significantly more time.

The issue here that I'm trying to understand that the member believes plaintiffs will have — as I understand it from him, and he's going to have to correct me — is that his concern is that someone will have to reveal that they wish to put forward a report that shows how injured they are and that they would have to somehow disclose some aspect of that in an application to allow that report to be used — that his preference and his thought would be that that should be held, I guess, until trial.

That's not what this is. That's not how the rules are supposed to work. That's not just speedy and expensive resolution at the earliest opportunity. That's just a different system that he's recommending.

M. Lee: Well, you know, I think that we're just having a discussion as to how these new rules are going to integrate with the existing rules. I certainly recognize the existing rule around the 84-day disclosure before trial. And we've talked about litigation privilege, which this Attorney General doesn't seem to be as concerned about in the nature of these proceedings. But that's certainly something that Chief Justice Hinkson had talked about in his decision as well.

If we look at the requirement under subsection (7), if I can ask the Attorney General: what are the indications of the kinds of information that are being required to be included in their application for the purpose of sub (7)?

[3:10 p.m.]

Hon. D. Eby: In any application, subsection (7) lists out that a party must include the following: "(a) the name of each expert whose evidence the party intends to tender at trial; (b) the scope of expertise of each expert whose evidence the party intends to tender at trial; (c) records that support the need for additional evidence."

M. Lee: In stating what is set out in sub (7), if we look at sub (7)(c), what kinds of records would be necessary to support the need for the additional evidence?

Hon. D. Eby: Examples could include medical reports or employment records.

M. Lee: Sorry. Could the Attorney General repeat his answer?

Hon. D. Eby: Examples could include medical reports or employment records.

M. Lee: In terms of the need for medical reports, what kinds of medical reports would be included in this application?

Hon. D. Eby: I can see that it would be very easy to conflate a couple of different types of medical reports. We're not talking about expert reports here from a doctor. We're talking about, for example, a family doctor's medical records that they would be keeping in the family practice in the course of regular administering to the patient — as an example of a medical record that I was giving as an example of records that support the need for the additional evidence.

M. Lee: Just to understand this, the purpose for which a family doctor's medical report would be included in the records, as necessary, to support the need for additional evidence by way of experts…. Why would that be necessary in the sense that, presumably, the nature of the expert report that's being requested would demonstrate a particular medical injury or a physical injury or the like? Why is there a need to have a duplication here?

Hon. D. Eby: There is a need to establish the evidentiary basis for the application in order for a judge to make a finding. I'll just remind the member that, of course, in civil litigation, you're under an ongoing disclosure obligation — both sides are — of relevant records to the claim.

M. Lee: When the Attorney General refers to that ongoing disclosure obligation, why is there a need, then, to include these records as part of the application if they're already being disclosed?

Hon. D. Eby: There may be literally thousands of records that flow both ways in civil litigation. What you want to do is you want to attach the relevant records to an affidavit that supports your application so that the judge has the evidentiary basis for the application handy, and then, in chambers, you go through your argument. You draw the judge's attention to the evidence that supports the basis of your application. It's like any chambers application.

[3:15 p.m.]

I know the member is counsel as well and is familiar with that process. This is no different.

M. Lee: In terms of the other types of records that would be included, the Attorney General mentioned employment records. How is that relevant to a medical expert report?

Hon. D. Eby: We'll go down a hypothetical road here and say, well, if the person needs accommodations in order to be able to work and their records from the workplace reflect those accommodations that needed to be made, or if the person's unable to work, or if the person was terminated from their job because of injuries related to the accident…. There are any number of potential hypothetical records and why records from work might be relevant to a personal injury matter related to a car crash.

M. Lee: With this scope of information, certainly under sub (c), we get a sense from the Attorney General as to the nature of the kind of information that will be necessary to be included in the application. If I could ask, though, in terms of sub (7)(b), when we talk about the scope of expertise for each expert, the purpose for requiring that information is what?

Hon. D. Eby: In order to apply the test in subsections (5) and (6), the court needs to understand why the person who is proposed to provide the expert report would provide relevant additional information that's necessary to assist in the determination of the claim and satisfy 6(b), which is: "without the additional expert evidence, the party making the application would suffer prejudice disproportionate to the benefit of not increasing the complexity and cost of the proceeding."

Without the information in sub (b), it's very difficult to know what this additional expert's report will bring to the court, and it makes it very difficult for the court to know whether it would satisfy the test to justify the additional expert report.

M. Lee: In terms of looking at sub (6)(b), there is a test that is required here that the party making the application would suffer prejudice disproportionate to the benefit of not increasing the complexity and costs of the proceeding. Is this a new test?

Hon. D. Eby: There are a number of influences on this section, including the federal court rules, but to my knowledge — and I'd say don't quote me, but *Hansard*, of course, is going to quote me — I think that this is not a test that is elsewhere in the rules in British Columbia, if that's what the member is asking.

[3:20 p.m.]

The value and the judgment that we are asking the court to apply here is one that is very inherent to the court system and the rules in British Columbia, which is the value of proportionality. It's a test that the courts apply regularly throughout chambers applications in consideration of rule 1-3, I think, that we talked about in some detail before. So

the value and the type of test is certainly not unique, but the particular wording may be.

M. Lee: The determination of proportionality, though, certainly is a determination that is considered under rule 1-3, as we talked about. When is that proportionality…? Under the current rules, when is that determination made?

Hon. D. Eby: So this is a value the rules say the court is supposed to apply. Every time the parties take a step or in any applications that are made, this is a value that the court is supposed to keep front of mind — the just, speedy and inexpensive, proportionate resolution of disputes.

This particular test, obviously, the court would apply in determining whether or not a party should be allowed to bring expert reports in excess of the rule.

The Chair: Hon. Members, we'll take a recess and return momentarily.

The committee recessed from 3:22 p.m. to 3:33 p.m.

[S. Chandra Herbert in the chair.]

M. Lee: We were talking, just before the break, about proportionality. From what I understand from the Attorney General's response, he referred back to the usage of proportionality in subsection (6). I was asking for the Attorney General's response on, under the current rules, when proportionality for costs would be taken into account. When is the appropriate juncture in any proceeding for that to take place?

[3:35 p.m.]

Hon. D. Eby: The rules contemplate that the court should have that front of mind throughout the entire process, every time the parties make a step at case management conferences and so on. That is my answer to that question.

I do want to clarify. We had some discussion over the break about the member's question related to 12.1 subsection (6)(a). The drafter was watching on television and had a better sense of the member's question than we did here.

I wanted to clarify just so that everyone is very clear. The intention of sub (6)(a) is that the section should be read as "addressed by expert evidence…." I said this in my answer, but I just want to be extremely clear about it — that the party making the application is not already addressed by expert evidence that was tendered by the party that's making the application.

Now, we're going to clarify that in the regulations but just to be really clear. The drafter reread it and thought: "You know what? We can clarify that more in the regulations." You certainly could read it the way the member read it, which is that if the other party had introduced evidence on that point, you would somehow be blocked from doing that or having the court consider that. That is not what is intended by this section.

M. Lee: I appreciate that watchful eye by other staff of the ministry and the need to add clarity, of course, to this particular amendment act. That's helpful to have that response.

Just going back, though, to subsection 6(b). In terms of determining whether the party making the application would suffer prejudice, what is the expectation of the court's decision-making in order for a judge to formulate and meet the requirement under sub 6(b), in terms of formulating an evaluation as to whether the party would suffer prejudice disproportionate to the benefit of not increasing the complexity and the cost of the proceeding? What is the expectation the Attorney General would have as to the nature of the decision that that particular court would have to make?

Hon. D. Eby: The test is set out completely in 12.1 sub (6). So on the one hand, the court has to consider any prejudice that would be suffered by the party making the application if they were not allowed to tender that expert evidence, and they would have to consider how that weighs compared to the benefit of not increasing the complexity and cost of the proceeding.

These are two separate values of our justice system, and so the court is required to weigh those two in this test.

M. Lee: In weighing the prejudice to the applicant against the benefit of not increasing complexity and cost of the proceeding, presumably the court will need to make some preliminary assessment as to the nature of the proceedings in front of the court.

Is there not a concern the Attorney General sees with requiring the court to make an earlier predetermination of the judge's view as to how a potential additional expert report would meet or support the case of a particular party?

[3:40 p.m.]

Hon. D. Eby: This goes back to our discussion earlier. It's not intended by our civil litigation system that the parties are going to trial blind to what the issues are or who the witnesses are going to be or this kind of thing. It's not trial by ambush.

The court already does this in a number of different ways. They determine how many days are needed for trial. They have witness lists. There is disclosure in order to ensure that the parties know what they're going into trial on, because there's a hope, in many cases, that the matter will settle.

I don't share…. I don't know if the member has concerns; he's asking the question. I don't have any concerns about that issue.

M. Lee: Well, if we look at some of the concerns that were addressed by Chief Justice Hinkson in his decision in Crowder, there was particular emphasis on considerations around other decisions of the court. At one point in his decision, he referred to the Mian decision, in 2014, of the Supreme Court of Canada and Mr. Justice Rothstein's view in that decision.

Just to, for the purpose of this discussion, read it into the record:

> "Our adversarial system of determining disputes is a procedural system 'involving active and unhindered parties contesting with each other to put forth a case before an independent decision-maker'…. An important component of this system is the principle of party presentation, under which courts 'rely on the parties to frame the issues for a decision and assign to courts the role of neutral arbiter of matters the parties present.'"

If I just pause there for a moment, it clearly indicates that it's the role of the parties to present their case and that it is put before the independent decision-maker, being the court. The court's role is to be the neutral arbiter of the matter being presented before the court.

Again, coming back to this provision in section (6), it's asking the court to make a determination before the parties have completed presenting both the plaintiff side and the defence side of the case. And it's putting the court and asking the court to make a decision which is predetermining the outcome of what is put in front of the court, prior to conclusion of both cases being presented.

The concern that I'm raising is that section (6) is having the effect of going to a concern that was raised in the Crowder decision as to an aspect, this mechanism, as being inconsistent with what has been seen to be the ways in which legal disputes in Canada are litigated. So that is the concern. Does the Attorney General not see that concern with section (6)?

Hon. D. Eby: No. The quote that the member read out was in relation to the chief's comments related to court-appointed experts and the chief's reluctance to have the court participate in court-appointed experts because, in his writing of the judgment, he felt that that put the court in a position of more of a participant in the process than, as the member outlined, the neutral arbiter.

This is not in relation to court-appointed experts. This test addresses the concern raised by the chief justice in the Crowder decision that the court needed discretion. The three-expert limit in rule 11-8 was deemed unconstitutional, because it did not allow the court to appoint more than three experts. I believe that 12.1, by giving the court discretion and outlining what factors we would like the court to consider in exercising that discretion, responds entirely to the chief's concerns.

[3:45 p.m.]

M. Lee: Well, the paragraph that I read out into the record is still a good summary of the adversarial system in Canada and the roles of each of the parties and the role of the court.

The comment that was made by Chief Justice Hinkson that follows, I believe, is still applicable to the concerns that one could raise, that I'm raising, in respect of sub (6). That is the concern, as the chief justice said, that "unless and until the evidence that the parties have chosen to lead has been adduced, the court has no way of determining what further evidence might be needed and no way of obtaining that advice if it is thought to be required."

The point being that sub (6) is asking the court to determine and weigh what further evidence might be required before both parties have presented their full submissions. That's what this sub (6) is doing.

The question that can be raised is…. It is again having the court formulate an improper, inappropriate predetermination of the result, preforming judgments on the nature of the case, what's being presented, the theories of both sides, before each side has had the opportunity to fully present their case. That's the concern that I can see with sub (6) — that it is having courts having to play that role in order to meet that test.

Again, does the Attorney General not see the concern with respect of having to force courts to make an early predetermination in terms of their judgment on this case, on a particular case in front of them?

Hon. D. Eby: I have total confidence in our courts to be able to do this. They do this all the time. I gave the member examples of where courts do this, other examples of whether it should be a jury trial or not, another example of whether it should be a summary trial or not, another example of whether the defendant should get an independent medical examination or a party should get an independent medical examination.

There are a number of examples where courts need to make these determinations in the lead-up to a trial. There are many examples of chambers applications where different issues are canvassed in front of the court. This will be another one.

M. Lee: Well, I think this, of course, in respect to the kinds of procedural matters that the Attorney General gave in response, is a substantive measure. It goes right to the heart of the dispute in front of the court when we're talking about recovery of damages. So the nature of the claim and what is being sought is what the medical expert report is presumably going to go to. This is different from the types of examples that the Attorney General gave.

Does the Attorney General not see that difference?

Hon. D. Eby: I do see that those are different tests, yes.

M. Lee: Well, certainly, in respect of being different considerations that the nature of the decision that's being required here by the courts is far more substantive in

nature and goes again to the judgment that a court is being asked to make.

[3:50 p.m.]

Again, that's the concern as to this application and the way it is set out in subsections (5), (6) and (7) of this particular section of the bill — that that will, again, force courts to make that earlier predetermination. I believe that that will still be a challenge in terms of this bill, one that may well be questioned as to how it is in terms of the exercise of that discretion.

If I can ask the Attorney General, though, in terms of the nature of what is set out here providing judicial discretion, how is it that the Attorney General sees it being appropriate to put parameters around the court's exercise of discretion? This parameter is not set out in other jurisdictions, so why is it appropriate in this jurisdiction?

Hon. D. Eby: It seems the member misunderstood my answer to the last question. They're different tests, but there are some similarities. For example, whether a defendant gets an independent medical exam of the plaintiff has very similar considerations, very similar deliberations that a court has to make. Whether or not a jury notice is struck, you have to go and show the court that the issues at play are far too complex for a jury to consider, which is a combination of evidence and law.

These are comprehensive presentations to the court about the issues at play in the litigation, the appropriateness of certain steps in litigation and how litigation should be structured, that need to be determined as preliminary matters.

Now, the member is concerned that we've set out a specific test for the court to consider. The discretion was really set up in a way to ensure the court has enough flexibility while ensuring that the principle of proportionality is front and centre. We've really been canvassing this ground — of the importance of proportionality for public confidence in the justice system, for access to justice — for a whole bunch of reasons.

The member may know, or may not know, that the expert limits in other jurisdictions apply to all civil litigation and, in some jurisdictions, to all criminal proceedings as well. So it's certainly reasonable for a court to have broader discretion in those broader circumstances, but in B.C. at this point, this is only limiting expert evidence on damages in motor vehicle injury cases, which is a subset of experts in a subset of litigation.

It's important to recognize that, as I said, there was a civil rules working group that identified this issue around the abuse of adversarial experts and how it was causing problems in the system. There were reforms to the civil rules that came into force in 2010. Some of those reforms were intended to reduce complexity and delay. We've heard that the reform-oriented tools and processes introduced by those rules were not always used to their fullest extent in the litigation process. An example — we canvassed one of them — is joint experts.

We've chosen language that's focused on the overarching principle that animates the rules: namely, proportionality — just, efficient resolution of disputes. I hope that helps the member understand why we think that it's important to underline proportionality as the value that we want the court to consider while giving the court the flexibility asked for in Crowder to, when justice requires, allow additional expert witnesses.

M. Lee: I appreciate the Attorney General's response in terms of the other jurisdictions and the broader discretion that is appropriate, given the nature of what expert rules there are in other jurisdictions. But here in British Columbia, given the focus of this bill on motor vehicle accidents and personal injury, in effect, there is still the same concern, though, about the way that this discretion of the courts is limited.

[3:55 p.m.]

Certainly, in terms of what was looked at under Crowder, in terms of rule 11-8, this is intended, as we hear from the Attorney General, to address the concerns raised in that decision by Chief Justice Hinkson. What we are presented with, though, is still a much more limited discretion by the courts. Recognizing and acknowledging the focus of this bill, it is still a narrow discretion that is being asked by the courts.

I don't see any optionality here in terms of what the courts may consider. Sub (6) says: "The following are the conditions for the purposes of subsection (5)." Sub (5), in the lead-in, is permissive: the court may grant leave if it is satisfied that the conditions set out in sub (6) are met. In order for additional expert reports to be granted leave for by the court, this test in sub (6)(b) must be met. Again, for the concerns I raised earlier about this being an earlier predetermination of the result prior to the cases being fully presented, this still is a restriction and a narrowing on the discretion of the courts.

That is the concern that can be seen with this particular subsection 6(b). So again I would ask the Attorney General: in terms of the nature of this test that's being utilized in sub (b), were there alternatives considered, then, recognizing that it was the intention by the Attorney General and the ministry to put some sort of limit on the discretion? Were there other alternatives that were considered to provide conditions that the courts must meet in order to grant leave?

Hon. D. Eby: Any time you're preparing legislation — I say this without commenting specifically on this bill and waiving any kind of privilege that might attach to deliberations that were entered into — or considering policy related to legislation, you consider various options. The option that is chosen makes it into the bill. This test is a test

that emphasizes proportionality, and as a policy choice, that is what we are putting forward to the court.

M. Lee: As a policy choice, it weighs the prejudice that an injured British Columbian would suffer by virtue of not being able to obtain an additional expert report against the benefit of not increasing the complexity and cost of the proceeding. So to whom is that benefit owed?

Hon. D. Eby: All parties to the litigation.

M. Lee: Well, I guess if the party is the one who is going to suffer prejudice, though, the one that is not able to meet this test…. I'm not sure, under this rule, how they would have a benefit, because, of course, they're already being limited by the amount that they can recover under these proceedings — the number of expert reports, the cost per expert report and the disbursements.

[4:00 p.m.]

To the extent that the introduction of an additional expert report would add to the costs of the proceeding, aren't they already limited in terms of what they can recover? Who bears the cost of that additional expert report? Certainly, the plaintiff is not able to recover that cost.

Hon. D. Eby: One of the pieces that we canvassed and one of the values that we canvassed in relation to this bill is the idea that by transitioning to more joint experts, and encouraging and incenting the retainer of joint experts, people will have a better idea before trial about the value of their claim, which will incent and encourage earlier settlement and faster resolution. This rule, I think, accrues to the benefit of the person, who often is the plaintiff.

I've seen the bills where $84,000 goes to expert reports, and they're paying 10 percent interest on money they're borrowing from their lawyers in a two-year litigation battle. If it settles early, it's to everyone's advantage, but particularly to the plaintiff, who is the injured party, in the sense that they're accruing fewer costs with their lawyer.

It's also important to recognize that the limit applies to both parties, both the defendant and the plaintiff equally. The benefits to both parties of having a just, efficient, speedy, proportional determination of the dispute is a very real one, and it's one that we believe that this rule advances.

M. Lee: In terms of the actual benefit, though, I want to come back to that. Of course, when I talk about cost to the party that's going to introduce the additional expert report, the one for whom the application is made, the actual flip side of that is not increasing the costs and complexity of the proceeding itself. But again, on the disbursement side, regardless of how much the proceeding actually costs in the end, that party is only able to recover 5 percent of the disbursements.

These disbursements, of course, don't just relate to the expert reports, although there will be disbursements that would relate, in the terms of travel and time by that expert, other time of the expert to participate in other proceedings related to the case, the lawsuit. So why the need for the additional limitation on disbursements at the 5 percent level, particularly as I hear the Attorney General, again, reiterate the desire to incent the greater use of joint experts? Why is it needed, then, to have a 5 percent cap on disbursements overall?

[4:05 p.m.]

Hon. D. Eby: The rules of court say that the process should be proportionate to the amount that is at issue. It doesn't say what that is equivalent to. So we are setting out a value of 5 percent as being proportionate in this proposal.

M. Lee: Well, I suppose, even at that determination by the courts on costs, there is a significant process that is gone through on disbursements. For example, when we look at rule 14-1 on costs and sub (5) on disbursements, registrars in their capacities when assessing costs "must (a) determine which disbursements have been necessarily or properly incurred in the conduct of the proceeding, and (b) allow a reasonable amount for those disbursements."

Again, we've talked about, and the Attorney General cited again in his own responses, the importance of rule 1-3. But when you read 1-3 together with this particular rule that I cited under 14-1(5), taken together, that determination is already there. Again, why is it that it's needed to cap disbursements when the court already has, by the existing rules of the Supreme Court's civil rules, the requirements to apply the reasonable test and determinations that are necessary that would meet the proportionality concern that the Attorney General is indicating in his response to my questions?

Hon. D. Eby: The registrar will still play an important role here. Government really just wanted to clarify what exactly a proportionate amount of disbursements is in our view.

In addition to the valuable role played by the registrar, I think there is consensus that the 2010 amendments to the rules of court did not realize the kinds of benefits that were intended around, among other things, efficiency in relation to adversarial experts. Our hope is that this will assist, on the motor vehicle side as a start, in articulating a value — like a specific numerical value — around proportionality while recognizing that the registrar and the courts will still play an important superintending oversight.

M. Lee: One thing that I spoke about is how, when you look at disbursements and the 5 percent test…. If we're talking about damage recovery, the actual resolved claim amount that is concluded may well be very different between one plaintiff who is employed, earning in excess

of $200,000 on an annual basis, as a professional versus someone who is elderly, a homemaker or a student whose — for a variety of reasons — income loss damage claim may be significantly less than the other individual I just described.

When you take a percentage limit on the disbursements that that plaintiff could recover, it's quite different depending on the nature of the claim and the costs.

[4:10 p.m.]

The concern that is there is it has a discriminatory effect depending on the nature of who the individual is and, effectively, undermines the ability of someone who has lower income, someone who has a lower settlement, from their ability to bring forward their claim, because they will be limited in terms of the amount that they can recover on the disbursements they need in order to bring forward their case.

To the Attorney General, what is his response in terms of the discriminatory nature in which that disbursement limit would be imposed on different plaintiffs, depending on their financial and income potential, as might be resolved on by the courts?

Hon. D. Eby: If you have a claim that's worth less than $5,000, you can go to the civil resolution tribunal, where there are very limited procedural rules. You resolve the matter over your phone. There is considerable leeway in how evidence is introduced, and it's intended that you resolve your dispute very quickly.

If it's worth less than $35,000, you go to provincial small claims court. You have, again, more limited procedural rules, greater leeway around the introduction of evidence and an expedited process because the value of the claim is less.

If you have a residential tenancy dispute, you're not allowed to go to B.C. Supreme Court. You have to go to the residential tenancy tribunal — again, an expedited process, more flexible rules of evidence. I don't think anyone would say that your right to live in your home is worth less or that it's discriminatory that you go to a tribunal instead of going all the way to B.C. Supreme Court with unlimited expert witnesses and unlimited resources arrayed in a hearing about a tenancy.

The system is set up in a way that one of the considerations around procedure is the value of the claim that's at issue. So if you have a $10 million business dispute, it might be a different procedure than if you have a small business. If you have a non-profit organization that serves, disproportionately, people of a certain marginalized group, you'll have less money at issue and you'll have different procedural rights in your dispute.

I take the member's point in that the amount at dispute is part of the formula in determining the recoverable disbursements. I would also underline that counsel need to take into account the value of the claim that they're advancing and the person that they're advocating for when they're spending money to resolve that claim — to consider those things and to ensure that they're proportional. Proportionality is a key value of our justice system.

M. Lee: Well, I think it's important to be able to consider the impact of these restrictions on court proceedings and the differences in result of that impact depending on the circumstances — financial, economic potential, or otherwise. I think that if we come back to the disbursement limit itself, the Attorney General, in his previous answer, acknowledged the role of the registrar and the judgment of the registrar.

Is there an assessment that's been done by the ministry that the registrars of this province are improperly conducting their duties and meeting the requirements under Supreme Court civil rules and that their decisions to allow disbursements are somehow coming to the wrong result? Is that what I'm hearing from this Attorney General?

[4:15 p.m.]

Hon. D. Eby: I certainly have no criticism of registrars or courts, but I do see room for improvement in proportionality. It is probably a function of the existing rules and the existing laws that fail to incent the use of joint experts that counsel have not taken those up. How would I blame the registrar for counsel failing to take up the use of joint experts or counsel failing to proportionately litigate? It's not the registrar's fault. Frankly, I'm not even sure it's counsel's fault. They work within the rules that are out there.

What we're trying to do is set out some different rules. We're following in the footsteps of many jurisdictions that have limited expert reports in various ways, some in a far more restrictive way — the United Kingdom and Australia — and some in a less restrictive way — other provinces in Canada.

We have a British Columbia proposal, here in this bill, of how to address this issue of adversarial expert reports, one that has been widely identified as a problem by many, many observers of our court system, and, in the absence of reform, seems like it will continue to be an issue. So this is an attempt at reform that we hope will bring proportionality, starting with motor vehicle collision litigation.

M. Lee: The continued conversation through this committee stage is around proportionality. I believe that I have made it clear, in terms of the understanding around the current rules that are set out to address proportionality, both under 1-3 and 14-1, as I've described…. The Attorney General is conveying a view that, given the nature of claims and how disbursements, presumably, and costs are being incurred in our court systems, there needs to be further rules established.

We've talked, certainly, here about the limit on expert reports. We haven't yet addressed what is to be set in regulation in terms of the actual cost per expert report. But as

we talk about, again, this third further limitation around disbursements…. In view of the Attorney General's response, I'd just like to ask the Attorney General, in terms of the actual limitation on disbursements, what other jurisdictions are utilizing this limitation.

Hon. D. Eby: Can the member advise to which limitation he's referring?

M. Lee: The limitation that would be, effectively, under sub (9)(a)(B), which is that "…the amount of disbursements payable as a percentage of the total amount recovered in an action…" be set out by regulation.

We understand, by virtue of the Attorney's announcement on February 6, that that would be set at a 5 percent level. The Attorney General has commented on that, or utilized that percentage here, so that's the limitation. I'm asking if the Attorney General can indicate to this House what other jurisdictions currently employ a similar restriction or limitation on disbursements.

Hon. D. Eby: Staff are not aware of a jurisdiction that uses a percentage of the claim as a disbursement limit. However, there are very different approaches in the U.K. and Australia, which I would say are significantly more restrictive, in terms of this type of disbursement.

[4:20 p.m.]

In the U.K., the maximum disbursement for a general practitioner report is £180, which is about $307 Canadian. The maximum for specialists, like an orthopedic surgeon, is £420, $716 Canadian.

For New South Wales in Australia, they start at $250 Australian for a general practitioner, which is about $225 Canadian, and increase to a maximum of $1,600 Australian for a specialist who has never seen the patient before. That's roughly $1,440 Canadian as the maximum disbursement claimable. They also have limits on the number of experts that you're allowed. For example, in Australia, you're only allowed a single joint expert report.

M. Lee: Thank you for indicating other jurisdictions. I didn't hear any Canadian jurisdictions, so I take it that British Columbia would be the first jurisdiction in Canada to have this percentage limitation on disbursements. I'd ask the Attorney General to confirm that.

Secondly, that when we're talking about the other examples of other limitations in the U.K. and Australia, the examples that the Attorney General has stated are examples where the cost, presumably, of recovery of a particular expert report is limited to lower figures. I take the Attorney General's comment on that compared to the proposed limit or the limit that we expect by way of regulation under this bill at the $3,000 level.

Again, we will get to that discussion around that particular cost item and some limitation on the number of expert reports.

Those types of limitations are consistent with the two other types of limitations under this bill, but again, I did not hear in the Attorney General's response that there is any other jurisdiction even outside Canada that would have the type of percentage of disbursement limitation that is being proposed under this bill. Is that also correct?

Hon. D. Eby: I thought I did say it in my original answer. I'm happy to say it again. To the best of my knowledge, we — and staff — are not aware of another jurisdiction that takes this approach yet. I think if it is upheld, there will be other jurisdictions certainly looking at it. We have every reason to believe it will be.

I'll note…. It's not a perfect comparison. Some caution has been urged on me because the U.S. is so different in many ways from Canadian litigation, including the size of awards. The default model in the United States for litigation is that each party must bear their own costs, period, in advancing litigation. None of the expert report costs are available. So that would be a zero percent limit.

When you look at the amounts in Australia, where you're only allowed a single joint expert without leave of the court and you're limited to hundreds of dollars, not thousands of dollars, in terms of the cost of those reports in…. In the U.K., I believe it's no expert evidence without leave of the court. We've got three. In the United States, zero dollars in terms of supporting you in advancing your own litigation. All common-law jurisdictions.

Then our approach. We fall somewhere between other Canadian jurisdictions and the U.K. and Australia. Again, I'm reluctant to adopt the U.S. as a comparator, but it is instructive that those policy decisions can be made.

[4:25 p.m.]

I hope that eases the member's mind in the sense that he seems to have a belief that this is a profoundly draconian and unprecedented incursion into litigation, when in fact, there are many precedents for limiting experts and for limiting disbursement costs. This is one example of it and not particularly restrictive compared with other common-law jurisdictions.

M. Lee: I think as we go forward here, certainly in Canada, there is no disbursement percentage limit anywhere else in this country. B.C. will be the first one to add a further limitation on top of the limitation on expert reports and the dollar figure per expert report.

We've talked about that first limitation as being subject to judicial discretion, which is far more narrow than in any other jurisdiction in Canada. And now, when you couple that with this disbursement limitation, I would think that what we are being presented with is very much a more restrictive legislative framework around expert reports and costs.

When I look at the disbursement restriction, can I ask the Attorney General: where did this particular limitation, the proposal for this limitation, originate?

Hon. D. Eby: The 5 percent limit is consistent with the reimbursement that's currently estimated to be made by ICBC in about 70 percent of cases. The reimbursement rate may be closer to 6 percent per file, but this figure includes approximately $800 in court filing fees, on average. Fees payable to the Crown are exempt. So the cap is set to 5 percent.

Now, I note that in the civil resolution tribunal, it's a $5,000 maximum disbursement recovery. Their jurisdiction is $50,000. That was a limit that was set by the previous administration.

M. Lee: Thank you for that response in terms of the figures that ICBC is working with. Is there any concern, though, in terms of the…? What does the balance of that look like in terms of the other 30 percent of cases? What, typically, is the disbursement range on those costs?

[4:30 p.m.]

Hon. D. Eby: We don't have those numbers.

M. Lee: Well, I think that in the context of reviewing this bill and understanding what is, as the Attorney General confirmed, a novel, groundbreaking limitation that this country has not seen, it's important that we understand how this limitation is coming back on disbursements, particularly with the understanding that it's being looked at as being set at 5 percent.

Is the Attorney General's expectation that that disbursement limit would be set at 5 percent?

[S. Gibson in the chair.]

Hon. D. Eby: That is what is in the bill.

M. Lee: The actual 5 percent figure is stated where in the bill?

Hon. D. Eby: The member is right, and a brief moment of inattention on my part. It is and will be in the regulations. It's not in the bill.

M. Lee: That's the reason why I asked the question, because it's a pretty material factor here for us to understand the nature of, again, what we have discussed, being a further narrowing of costs for parties, particularly the plaintiffs' side. I think it's important that the Attorney General can confirm to this House that by way of regulation, that limit that's expressed in sub (9)(a)(B) will be 5 percent.

Hon. D. Eby: Yes.

M. Lee: In receiving that confirmation, then, can I ask again…? In the absence of understanding the full experience, financially, of ICBC, which, in response to my previous questions, the Attorney General has referred to, were there any other considerations around costs that were utilized to establish that 5 percent figure?

Hon. D. Eby: Not that I'm aware of, but I guess the member would need to clarify a little bit more what he means by costs in terms of our considerations.

M. Lee: As I understand it, the Attorney General has indicated that the 5 percent figure or a limitation on disbursements is related to ensuring proportionality of disbursement costs that ought to be recoverable by parties in the nature of these proceedings and that it's necessary to give courts and registrars further rules, parameters, under which they're able to award those costs.

[4:35 p.m.]

To be specific, I am mindful of the test that the courts are having to meet — and parties — in sub 6(b), which refers to the cost of the proceeding, versus the limitation that's set out in sub 9(a)(B) as disbursements. As we talk about disbursements, again, the Attorney General has indicated that there are reference points around 70 percent of decisions, court cases.

In motor vehicle accidents, it's been ICBC's experience that disbursements are usually at the 5 percent level of 70 percent of those cases. He does not have with him access to the figures for the balance of those court cases. I'm interested to still understand that, what that figure would be. Because for anyone to assess here in this House whether this is going to be a reasonable limit….

First, I question whether there should be a limit in the first place on disbursements. I think that's clear from the discussion we've had to date. Secondly, even if there is to be a limit, as is proposed under this bill, why is 5 percent the appropriate limit? I am querying to the Attorney General: what other data sets, reference points, were utilized in assessing the 5 percent limit, setting it at that particular numerical percentage of 5?

Hon. D. Eby: As a transitional matter, for trials after October 1, where the party properly incurred disbursements in excess of 5 percent before February 6, you can apply to be exempted from the 5 percent. The second thing is that there are a number of pieces excluded from the 5 percent — fees payable to the Crown and sheriff, filing fees, court fees, jury fees, disbursements where costs are assessed as special costs, disbursements for expert reports on liability where the court orders that they be excluded from the 5 percent cap.

Now, the member…. I understand his question — that he wants very specific data about the number of claims and the value of disbursements. ICBC does not have that data. But they do have…. I can advise the member and this House that 70 percent of claims are going to be falling within that 5 percent. Now, for those remaining 30 per-

cent, there are a number of potential explanations of why they're outliers.

One is that ICBC acted very badly and that they litigated in a way that drove costs up. In that case, if this happens in the post-implementation environment of this bill, special costs are available to the court to sanction that conduct and to increase the amounts recoverable to the party that's been aggrieved by ICBC's bad conduct.

The other possibility is that the plaintiff acted very badly, that the plaintiff's counsel went out and incurred a whole pile of expenses well in excess of 5 percent, without any regard for proportionality or appropriateness of incurring those expenses, and that's why they're well outside that range. In that case, there's no special costs award available to you, because it's your own conduct that resulted in that.

Now, I don't know if that's adequate assurance to the member or not that there are still safeguards in place if ICBC acts very poorly. Now there is incentive for both plaintiff counsel and ICBC to use joint experts and to limit the number of expert reports.

I hear from the member that he disagrees with the premise of this, that he believes there should be unlimited disbursements regardless of the value of a claim. On that, we're just going to have to agree to disagree. We won't resolve it in this committee stage, because that is a fundamentally different perspective on how courts should operate.

[4:40 p.m.]

M. Lee: Well, of course, you know, we talked about this at second reading. I took some time to outline how disbursements and how the rules of court work. It's not unlimited. It's not unlimited now. Again, I took some time and attention to refer the Attorney General to rule 1-3 and rule 14-1 of the Supreme Court civil rules. The Attorney General confirmed here that he takes no issue on how registrars are interpreting and utilizing those rules.

Under the current rules of court, it's not unlimited. So when the Attorney General gives an explanation that of the 30 percent of cases that are outliers, to use his words…. Aren't those outliers dealt with by the existing rules of court?

Hon. D. Eby: I thought that I was clear before. Maybe not. The issue of adversarial experts — the cost of them, the system that has grown up and the cost and complexity that they bring to the system without adding any clarity to the court — has been recognized as an issue for many, many years in British Columbia's courts. It is not the fault of the registrars, the courts or even the lawyers. It is the nature of how the rules have come together to operate, which is in a way that many people think needs reform.

Now, we can have disagreements about what kind of reform there should be. But I don't even hear the member saying that he thinks that there's an issue here. I think that there's an issue here with adversarial experts. I think that there needs to be reform.

This is the proposal the government has put forward around that reform. If the member disagrees with this model, that's fine. But I disagree with the member's core assumption that the current system is working just fine, as do many people. I can do that without assigning blame to anyone, because that is simply the set of rules that people are operating under right now, and it's not working the way that it should.

This is our proposal for reform. The member can vote for it, or vote against it and put forward his own proposals. Or if he thinks that things are working fine, then he can advocate that personal perspective. I just don't agree with it.

M. Lee: I think members on this side of the House are very clear about our opposition to this bill. Part of the reason that that is the case, as I expressed in our second reading speech — my colleague from Richmond-Queensborough the same — is the lack of fairness in this bill and the concern around the rights of British Columbians and their way to access the courts.

This disbursement limitation, as we've talked about earlier, has a discriminatory effect, depending on which individual we're referring to. So I continue to question the assertions and the premises that the Attorney General gives for portions of this bill. That's what we're doing here at committee stage.

Access to justice is very important for British Columbians. We want to continue to ensure that is the case. Certainly, for the outliers, for abuses, we need to ensure that there is not an inordinate amount of cost that is exhibited and incurred in our court proceedings. But as I have said, our existing rules already deal with that. It's not unlimited.

The other purpose of my question, though, to the Attorney General, which he did reconfirm, is that…. I'm not hearing in the analysis of this limitation on disbursements that there were any other data sets utilized, other than what ICBC has provided for the purpose of this bill. Can I ask, just as that is done: how does that analysis work between the ministerial responsibility that the Attorney General has for ICBC with the Attorney General Ministry? How does that combine in terms of the efforts when it comes to analysis of this disbursement limitation?

[4:45 p.m.]

Hon. D. Eby: The member will know that ICBC is a Crown corp. directed by a board. They have no ability to advance legislation, nor should they. This bill…. The policy work, the analysis, was done within the Ministry of Attorney General, and it is a Ministry of Attorney General bill tabled by me in this Legislature.

I think the member knows all of those things, but sometimes it's good to go over them.

M. Lee: I think it goes back to the discussions we've been having on this bill in terms of the joint responsibility that this Attorney General has. But without replaying that discussion that we had already at the beginning of this committee stage, what the Attorney General just confirmed is that the policy analysis and the sponsorship, certainly, and review of this bill is through the Ministry of Attorney General.

What I've heard in terms of discussion around limitations and amounts…. The data sets which the Attorney General's ministry is looking at for the purpose of establishing further limitations…. What I heard from the Attorney General is that the data sets are coming from ICBC. The experience of ICBC in terms of the 70 percent of claims settling or incurring disbursements at the 5 percent level was a figure the Attorney General indicated that ICBC had provided or analyzed. Again to the Attorney General: what level of involvement has ICBC had in this bill?

Hon. D. Eby: I hear the member talking about data sets as if there are a large number of data sets out there that were either ignored or preferentially chosen by government. I welcome his suggestions about data sets.

Unfortunately, in our court system, we don't do a great job of collecting data. That's part of why we signed the triple aim agreement with the B.C. Supreme Court chief justice and the Chief Justice of the Court of Appeal to work together to improve the experience of people in the justice system. A key part of that is data collection, understanding better how people move through the justice system, where we can address pinch points and so on. A recognition by all involved is that there's an opportunity to collect more information and to make better decisions about how the court system operates.

It's early days. There are not great data sets out there, in the level of detail that I'm hearing the member ask for in his questions. They just don't exist.

Why did we gather data from ICBC in doing the policy analysis? It's because ICBC is involved in fully one-third of litigated cases in the B.C. Supreme Court, and it gives us a perspective about how some of this might play out. This is really helpful when you're designing policy and law to understand what the impact might be on people, which is a lens that we put on all of our legislation when we bring it forward. How will this affect people in British Columbia? We get the best data we can.

Now, if the member has suggestions about other data sets of which he's aware — I'm glad to hear them — that might shed light on some of these issues, we would do our best to gather them up. But in terms of the data we did have, we think that it's reliable, and it informed the policy decisions that were made by the Ministry of Attorney General staff in advising me, and my colleagues and I as the government, putting forward this proposal to this House.

[4:50 p.m.]

M. Lee: Turning, then, to the limitation on the expense per expert report, at the $3,000 level. First, let me just confirm to the Attorney General. Again, $3,000 per expert report has been stated in the February 6 announcement by the Attorney General about this bill. Is that what will be set by regulation, pursuant to this bill, if it passes?

Hon. D. Eby: Only for damages.

M. Lee: You say only for damages. When we look at the regulation-making power under this bill, under (9)(a)(i)(A), it is on the amount of disbursements payable for an expert report. So when the Attorney General makes a distinction for damages, is there a different type of expert report that might be caught within this framing?

Hon. D. Eby: It's the same as we canvassed earlier. Liability expert reports is the best example.

M. Lee: I understand that in the guidelines for the B.C. Medical Association, there is guidance given as to the amount to be charged for a medical report in the $1,800 level. Was there any consideration of that? Why was the $3,000 level selected?

Hon. D. Eby: The member is correct. Doctors of B.C. provides non-binding guidelines to their members suggesting a price of $1,832 for a medico-legal opinion of average complexity, which is well below the $3,000 limit. According to the ICBC data, about half of the expert reports currently reimbursed by ICBC cost $3,000 or less.

M. Lee: In terms of the other half of medical expert reports from the ICBC data, what is the range of expenditures or costs for those medical reports?

Hon. D. Eby: Expert reports reimbursed by ICBC can range anywhere from $1,000 to $10,000, depending on the complexity of the report and the rate charged by the expert who's writing it.

It's important to note that litigates can negotiate an expert's fee with them, and the amendments don't tell experts what they're allowed to charge. They only limit what a winning party can recover from the other side for the cost of those reports. A party who considers spending more on an expert report has to decide whether it's worth it, whether it's proportionate to spend more than the limit on an expert or not.

Right now there's no incentive to negotiate with experts on the price they charge for their services because 98 percent of the time the defendant pays the full amount at the end of the day.

M. Lee: The Attorney General is applying the word "incentive" here again with respect to this bill and how it's supposed to work. Just on that, is it the experience here

that the Ministry of Attorney General is expecting that plaintiffs, injured British Columbians, are able to negotiate with experts on the amount that that expert will charge to assist them in proving damages?

Hon. D. Eby: It would be their lawyers who would be doing that, I imagine.

[4:55 p.m.]

M. Lee: Again, then, is it the experience the ministry has seen that there are rates that are to be charged here that lawyers are expected to negotiate with doctors in terms of the medical reports? Is there a degree of flexibility that the Attorney General's ministry is seeing?

Hon. D. Eby: I think the member can see, when looking at the limits set in other jurisdictions — in the U.K., about $307 Canadian for a general practitioner report and $716 Canadian recoverable for an orthopedic surgeon report; New South Wales, $225 Canadian for a general practitioner report to a maximum of $1,440 Canadian for a specialist report, where the person hasn't seen the patient before; the Doctors of B.C. number of $1,832 for a medico-legal opinion of average complexity — that there is some recognition in the $3,000 limit that there are matters of more complexity and that there are situations where more money may need to be spent.

However, the party needs to consider, if they wish to go beyond $3,000, whether it is worth it, whether it's proportionate to spend more than the limit on the expert. That is something that doesn't happen currently under the existing system. Certainly, litigants can negotiate an expert's fee with them. There is no reason why they wouldn't be able to do that. I'm not sure, if that's what the member's asking me, if there's some reason that you couldn't do that, but I can't think of a single reason why not.

M. Lee: Well, I think there's a theory here that medical experts are overcharging and that parties — lawyers — ought to be negotiating down what those experts ought to be charging. Presumably, Doctors of B.C. would have something to say about that in terms of what's acceptable in their professional code of ethics and professional conduct rules. Has this been an issue that the ministry has raised with Doctors of B.C.?

Hon. D. Eby: I don't adopt the member's premise for his question, so it makes it difficult to answer.

M. Lee: Well, I think that by virtue of the fact that, under this bill, there is a setting of a limit on the dollar figure to be charged or recovered on an expert report…. That suggests that in the hands of a plaintiff, they should only be paying for a $3,000 report and that when that plaintiff needs a report from an expert who is highly qualified who chooses, whether through negotiation or otherwise, to require a value of their report at a $4,000 or $5,000 level, the plaintiff will only be able to recover $3,000 of that. That means that the plaintiff has to take a risk — the risk that even if the plaintiff is successful, they will be out of pocket, out of their settlement, and that they won't be able to recover the additional costs required, even if they're limited to three experts.

This government is saying to injured British Columbians that the cost of your expert report should only be valued at $3,000. It is giving incentives to you to give instructions to your lawyers to negotiate costs for those expert reports for $3,000 or less, because if you don't, you bear the risk that you'll be out of pocket — that moneys that you need, for the existing 48,000 lawsuits that will be affected by this bill retroactively, that you need to give that instruction to your lawyer.

And if you can't find an expert that is prepared to give you the report that you need, you have to go to another one. Well, I mean, we're getting into government telling plaintiffs what kinds of experts they can bring on, the quality of the expert.

[5:00 p.m.]

We haven't done the analysis. Maybe I can ask the Attorney General. In terms of the nature of expert reports that, of course, span the continuum of what might fall under this, the Attorney General has indicated that it ranges between $1,000 and $10,000 in cost. He referred to the $1,832 figure for Doctors of B.C. for an average complexity.

What is the range of expert reports for not average complexity, where we're talking about catastrophic injuries, complex injuries of multiple natures? What is the range of expert reports that ICBC has seen that has been charged?

Hon. D. Eby: I think I outlined that for the member — the $1,000 to $10,000 number. Government is certainly not telling people what experts they should and shouldn't retain, although we're definitely encouraging them. We're encouraging them to contemplate joint experts, especially on complex matters, where those reports are not captured by the $3,000 limit. We're trying to encourage joint expert reports.

The member makes it sound as if plaintiffs never pay for expert reports and now this is a dramatic change. It's not true. The member himself has pointed out that the registrar can cut down the amount of costs that are recoverable from existing expert reports that are costs that are incurred by a plaintiff.

In addition to that, it is certainly not unusual that a plaintiff gets an expert report back, and it's a bad report. They decide to use it for their preparation, but not to disclose it, not to serve it. Then they pay the full cost of that report. So there are a number of situations in which people currently are paying either the full cost of the report or a significant portion of the cost of the report.

What this does is it says that if you're going to go beyond

$3,000, that's the maximum you're going to be able to recover. It's your choice to do that or not. But that is the maximum that you're going to be able to recover from the other side, unless it's a joint report.

M. Lee: Well, I must say, the Attorney General continues to use language around "encourage" and "incent" British Columbians. That's one way of describing a bill that limits the rights of British Columbians, in terms of what experts, how many experts they can use, how much they need to negotiate, how much cost they can provide to that expert and, again, the percentage on disbursements. These are limitations, so it's an odd way of describing "incentive" or "encouragement."

We're talking about restricting people's rights. I would say that the data analysis that the Attorney General is referring to is one that doesn't sound very precise. I don't hear the Attorney General answering me in terms of what the assessment has been by ICBC — ICBC providing the data to the Attorney General's ministry about why, and the level of a cost limitation on expert reports for complex medical situations.

This is where we're being asked here, as members of the Legislative Assembly, to pass a bill which doesn't establish these limits — it's going to be done by regulation — based on setting amounts for which we have no clear understanding, at the time we're passing this bill, as to how they're set. We have ranges. We have indications, but not really any clear understanding as to what this government is basing its analysis on or how it's getting to this figure of $3,000.

[5:05 p.m.]

I think that that is where it's a concern as to the levels that this government is setting in the course of this bill.

Let me ask the Attorney General: was there any consideration, as he talks about the amounts per expert report being at such a level, of actually putting the restriction for the level on the experts themselves as to the amount that they can charge? Why is it that the plaintiff needs to bear the risk and the cost of recovery? Was there any consideration of ensuring that experts themselves have a range, depending on the level of severity, that they can charge per report?

Hon. D. Eby: It's hard to imagine that this is the same member that just expressed concern that government was telling people what experts they should retain. Now, I don't know. I assume when a question is asked that it comes from a belief that there's a preferred alternative, but maybe it's just a question.

The decision of government was not to tell people about how much they should spend on experts. That's up to them. The decision of government was to say that the maximum amount that you can recover is 5 percent and $3,000 per report.

You want to go out and pay more for a particular expert because you think that helps your case? You can do that. Just like now, you can go out and retain an expert to do an exam, receive the report, never serve it, never disclose it as part of your litigation privilege and pay for the whole thing by yourself. These are decisions that people can make in litigation. It seems to us to be less restrictive to put the emphasis on what can be recovered as a discipline, rather than to say that you can only retain people who charge this amount of money.

M. Lee: Well, we are starting from the proposition that disbursements, including expert reports that have been necessarily or properly incurred in the conduct of the proceeding, and reasonable amounts for those disbursements, including these medical expert reports, can be recovered, and the registrar is empowered and authorized to make that assessment.

When this government is imposing limitations on that, new rules as the Attorney General indicated, I think that it's very appropriate to be asking the question: why is the consequence of that limitation being borne by, in our consideration, the plaintiff? The plaintiff does not have unlimited financial resources to take the risk, unlike ICBC. ICBC certainly has greater financial resources.

Why is it that different plaintiffs, depending on their financial situation, can bear and effectively have a different position vis-à-vis these limitations? We've talked about the recovery on disbursements as being 5 percent of the total recovery. But in terms of taking the risk on engaging experts and not being able to recover more than $3,000 per expert, that, again, has a disproportionate effect on plaintiffs, British Columbians, who earn less, who don't have as strong a financial position.

Again, to the Attorney General: does he not see the concern of the disproportionate effect that this rule has, depending on the financial situation of the plaintiff?

Hon. D. Eby: A lack of proportionality in litigation costs disproportionately impacts low-income people. It's just that easy.

[5:10 p.m.]

If it costs 20, 30, 40, 50, 60, 70 percent — as was in the news — of your claim, just for the administration, just to get into court and to argue your case, how is that not a profound disadvantage to a low-income litigant?

If the member is asking me if I think that there's a challenge in our court system around access to justice based on whether people have money or don't, yes, there is a problem. The problem is that if you have money, then you can litigate your claim for many years, stretch it out and bring applications. There is unfairness that…. Who's available for you as a lawyer, based on how much money you have? More junior counsel; more experienced counsel.

One of the reasons why I hope the member will vote for our reform around car insurance, generally, to be in place for May 1, the enhanced care model, is because I don't

think that courts are a great way to arbitrate these kinds of claims where people are injured in collisions. I think people need care right away. I think they need access right away. They don't need their insurance company litigating against them, and they shouldn't depend, for the amount available for the recovery, on whether or not there's another car involved and that other car had insurance and that other car was at fault. If they hit a moose, have a one-car collision, spin out on some black ice, they still, in my opinion, are deserving of the necessary resources to recover.

The member won't get me to defend this as the ideal system around car insurance dispute resolution. But what I will defend is the idea that proportionality is really important for public confidence in the justice system and, more than that, to recognize that when you have $100,000 at play, spending $30,000 or $40,000 makes absolutely no sense to resolve that issue.

The member talks about limiting the rights of British Columbians. Every rule of court is a limit on the rights of British Columbians, every rule in the Evidence Act. It prescribes how litigation should go forward. You can't just do whatever you want when you go to court. You have to operate within a framework that restricts your rights to do whatever you want in court. But it does so with an aim, the rules of court, of the just, speedy, efficient resolution of disputes. I think those values are important. That's why we have those rules, and that's why we're putting these proposals forward.

M. Lee: Well, we certainly have continued to have the discussion, and we agree on the existing rules and the concerns around proportionality that are set out, that "just and speedy determinations" is what is set out in the existing rules.

The concerns are, of course, with the new rules that are being added here, under this bill. As we look at that, the concerns are, again, the nature of these rules and how it will affect the current plaintiffs going through the court process with their existing claims. That's what we're talking about here.

We will have the full opportunity to talk about the Attorney General's no-fault bill coming up, when we resume after the break, but for the committee purposes here, we are talking about rule changes — in addition — that will make it more difficult, more challenging for those plaintiffs in a way that changes rules midstream.

If I can just go to a particular section of the bill. In sub 9(a)(ii)(B), this would enable a court, in terms of its nature of order, to determine "whether to include or exclude prescribed disbursements when determining the application of a limit established under subparagraph (1)."

What is intended here in terms of those prescribed disbursements?

[5:15 p.m.]

Hon. D. Eby: Liability reports.

M. Lee: When we talk about the limitation under sub (i), that is the limitation that we've been canvassing here at committee. Prescribed disbursements would relate to the form of expert report that is contemplated under sub (i). So when the Attorney General indicates liability reports…. Isn't sub (i) relating to medical reports for damages?

Hon. D. Eby: The section itself is in an enabling section that enables government to set regulations. I express to the member the intent of the government in regulations is to not limit those liability reports. I hope that answers his question and helps him to reconcile this section with my previous answer.

M. Lee: I guess I'm just pressing on the clarification around distinction of terminology use that we're having here. When the Attorney General refers to liability reports, is that intended to be separate from the kind of medical reports for damages that we've been discussing?

Hon. D. Eby: Yes. Liability reports are not subject to the $3,000, but they are subject to the 5 percent.

M. Lee: Are there any types of disbursements that would be excluded from the 5 percent disbursement limitation?

Hon. D. Eby: There are pieces that are excluded. In particular, the court will have discretion to disapply the 5 percent cap where "a notice of trial was filed and served before February 6, 2020." For a trial after October 1, 2020, that the party properly incur disbursements in excess of 5 percent before February 6, 2020 — that is a transitional exclusion.

There are other pieces that will be excluded from the 5 percent cap. I think that we did canvass this a bit in relation to an earlier section. Fees payable to the Crown and sheriff. Disbursements where costs are assessed as special costs. And to the member's question, disbursements for expert reports on liability where the court orders that they be excluded from the 5 percent cap.

M. Lee: The Attorney General, I believe, just alluded to something, and I meant to ask earlier when he referred, in the transition, certain exemptions that would be available by way of regulation to the disbursement limitation. Could the Attorney General just reiterate on what basis those exemptions would be provided?

[5:20 p.m.]

Hon. D. Eby: I think the member is just asking what the transition rule is. That is that the court has discretion to disapply the 5 percent cap where notice of trial was filed and served before February 6, 2020, for a trial after October 1, 2020, but the party properly incurred disbursements in excess of 5 percent before February 6, 2020. That is the transition, I think, that the member is asking about.

M. Lee: When we look at sub (b) in terms of the types of matters in respect of "expert evidence on the issue of vehicle injury damages in a vehicle injury proceeding," what are the expected consequences that would be expected under sub (b)(ii) for failure by a party to serve expert evidence within the timeline prescribed under sub (i)?

Hon. D. Eby: Again, this is a regulation-making power. So it's enabling for possible regulations, but currently we have no plans for regulations under this section at this stage. Potentially, they could be something like: "Well, you can't rely on a report that has not been served." But that's already currently a rule that applies. So that wouldn't really add anything.

The short answer to the member is that we don't have any regulations currently that we intend to put forward under this section.

M. Lee: In terms of looking at the following provision relating to fast-track vehicle injury proceedings, that, though, would be a necessary provision to include in terms of the Court Rules Act. Is that correct?

Hon. D. Eby: The reason for this section and for having it in regulation rather than in the text of the bill is because it refers to a rule of court, and the rules do change more frequently than legislation typically. So it makes it possible for government to update the reference to the rules and the section of the rules, or the rule number when the rules change, without having to reopen the entire statute.

For example, a fast-track proceeding, now, is under rule 15-1. So rather than put that in the legislation, it's going to be in the regulation so that it could be quickly updated if the rules change.

M. Lee: In sub (d) there is an ability to, by way of regulation, provide for exemptions. In the non-exhaustive, non-inclusive references below, they include establishing circumstances under which the exemption would apply and setting conditions of or limitations on the application of the exemption.

[5:25 p.m.]

To the Attorney General, if I could ask for him to set out what the anticipated exemptions are that would be passed by way of regulation to this bill.

Hon. D. Eby: One of the exemptions that is anticipated is for certain responding reports and supplementary reports, and in particular, something that is called a 126-day rule. The limit on expert reports will not apply to responding reports delivered by a party in response to expert reports that are served on them fewer than 126 days before trial. The limit will apply to responding reports that respond to reports served more than 126 days before trial.

It might help if I give an example. If the defendant receives a report, say, 130 days before trial, they must determine whether to use one of their three allotted reports to respond to it. If they receive the report 120 days before trial, they can respond, as of right, with a reply report and still provide three additional expert reports.

M. Lee: When I went back and referred to, under sub (b), the timelines for service, already, as we talked about earlier, there is a requirement under the Supreme Court civil rules for those expert reports to be served at least 84 days before trial. So this particular regulation under sub (b)(i), in terms of reg-making power, will enable regulations to change the service deadlines.

Why, on its face, for serving expert evidence, the need to provide for that, given the nature of the current 84-day requirement?

Hon. D. Eby: What the amendment does is it encourages plaintiffs to serve their reports earlier — in particular, more than 126 days before trial. If they choose to do so, they get an advantage, because the defendant will be held to the three-report limit for their responsive reports.

Now, of course, the defendant could apply to court to exceed the three-report limit, but if the court decided not to grant that discretion, then that is the advantage of earlier service. The earlier the plaintiff serves those reports and provides information about the nature of the injuries, the earlier the defendant can potentially make a reasonable settlement offer, which could include a formal offer to settle with the reasonable chance of beating a trial award.

[S. Chandra Herbert in the chair.]

The goal is to provide opportunities and incentives for earlier settlement and, in that way, reduce expenses associated with resolution. To the member's point about someone who is low-income, it's really important for them to resolve the dispute as quickly as possible and to settle it. So we're incenting behaviour that will lead to earlier settlement but leaving it to the parties how they choose to run their litigation.

M. Lee: As we talked about the consequences, though, for failing to meet that service deadline, the Attorney General already indicated, though, that there is no current contemplation for setting that out. But I would just raise to the Attorney General and ask him for a comment on this.

[5:30 p.m.]

In terms of the actual setting by way of regulation, again, is this not just another example under this bill where the court's jurisdiction is being limited? Would it not be up to the court to decide what those consequences would be?

In putting it here, appreciating that the Attorney General has not currently had in mind what the nature of that consequence is, why the need for this provision in the first place? Why not just leave it up to the courts to decide?

Hon. D. Eby: I think I need to clarify, because I think the member is looking at sub 12.1(9)(b)(i) and thinking that the proposal is to adjust the timelines for serving expert evidence. What I went through there with the 126-day rule is an exemption from the application of subsection (ii), which is sub 12.1(9)(d). We are not changing the timelines for serving expert evidence. I think that may address both the member's previous question and the member's current question.

M. Lee: Thank you for that clarification. That certainly is helpful in terms of discussing sub (d) and what exemption might be available and the incentive, again, coming from the Attorney General's approach here.

On sub (b), though, if there is no contemplation of changing the timelines or setting down consequences relating to failure to meet those timelines that might be prescribed under this regulation-making power, what is the need then to have sub (b) in this bill?

Hon. D. Eby: Government is currently doing policy work in relation to considerations around changing the timelines for serving expert evidence to encourage earlier settlement. That work is not completed. We don't currently have any proposed regulations to add to this section.

M. Lee: It's important to consider, as we move forward with this bill for further consideration here, that there is that provision that provides for further changes to what is already prescribed under the rules of court. Also that from posing consequences on parties who fail to meet any particular timeline that would be prescribed here by way of that regulation….

The concern is around further encroaching on the court's jurisdiction and domain. That is a repeated theme through this bill and one that, in the absence of knowing what those changes would be…. Perhaps I could just ask the Attorney General: what policy process will the Attorney General and ministry be following to develop those further timelines and consequences?

Hon. D. Eby: We would be looking at other jurisdictions — their rules and their experiences under those rules. Then any proposed regulations, of course, would be subject to an engagement with the chief justice and a discussion about any concerns the court may have about a proposed change.

With that, I would like to note the hour and move adjournment of committee stage. I move the committee rise, report progress and seek leave to sit again.

Motion approved.

The committee rose at 5:35 p.m.

The House resumed; Mr. Speaker in the chair.

Committee of the Whole (Section B), having reported progress, was granted leave to sit again.

Committee of Supply (Section A), having reported progress, was granted leave to sit again.

Mr. Speaker: Hon. Members, I'm advised that the Administrator is in the precinct. Please remain in your seats.

His Honour the Administrator requested to attend the House, was admitted to the chamber and took his place in the chair.

[5:40 p.m.]

Royal Assent to Bills

Clerk of the Legislative Assembly:

Environmental Management Amendment Act, 2020

Arbitration Act

Education Statutes Amendment Act, 2020

Municipal Affairs and Housing Statutes Amendment Act, 2020

In Her Majesty's name, His Honour the Administrator doth assent to these acts.

[5:45 p.m.]

His Honour the Administrator retired from the chamber.

[Mr. Speaker in the chair.]

Hon. M. Farnworth moved adjournment of the House.

Motion approved.

Mr. Speaker: This House stands adjourned until 10 a.m. on Monday, March 23.

The House adjourned at 5:47 p.m.

Proceedings in the Douglas Fir Room

Committee of Supply

ESTIMATES: MINISTRY OF EDUCATION

The House in Committee of Supply (Section A); S. Malcolmson in the chair.

The committee met at 1:37 p.m.

On Vote 21: ministry operations, $6,657,927,000.

The Chair: Minister, do you have any opening statement that you'd like to give?

Hon. R. Fleming: I do, Madam Chair. I welcome the opportunity to say a few things before we get underway in estimates debate, and I'm sure the critic will have some opening remarks he wishes to make. It's really an opportunity to talk in detail about some of the budget highlights and then answer some of the detailed questions that my counterpart the critic for Education will undoubtedly have, as well as some of his colleagues.

I just want to set the context, though, for today's debate, where we're seeing tremendous improvements across the school system in British Columbia — the lowest class sizes we've seen in generations; new parents coming into the school system, with their kindergarteners in class sizes 18 students or lower; smaller class sizes in every grade level; more teachers in the system; more one-on-one support time for young people to be successful in school.

We've also been working at an incredible pace as a ministry, as a government to ensure that there are more resources for students in the classroom than ever before.

The budget writ large this year is a record $6.7 billion in funding for the fiscal year. It's $1.1 billion more for B.C. schools than what was in Budget 2017. I'm also pleased to tell you that Budget 2020 will make this momentum continue, with the highest school operating and capital funding ever, investing more than $20 billion in B.C. schools over the next three years, the period covering the service plan that is before this committee for debate. That's more than $2.2 billion over the introduction of Budget 2017 in this fiscal plan.

[1:40 p.m.]

Included in that amount is $6.1 billion for public schools. This will help districts support a growing student population. It will help them enhance innovative programs and services that they deliver in their communities, custom-tailored to the learning needs of the students that they serve. It will allow us to continue to hire teachers and other educators in the school system.

Within this budget, allocated funding for students with special needs has gone up 30 percent. Under our government, funding to support Indigenous education has gone up by 29 percent. The Ministry of Education budget has increased by a total of — and I want to be accurate here — $1.088 billion since Budget 2017. We will continue to increase education funding in the years ahead.

The context is that we're very proud to be working with a diverse set of stakeholders, our partners — the B.C. School Trustees Association, who represent all 60 school districts in British Columbia — to have made a lot of progress in a very short period of time. Since we formed government, enrolment has increased by 3.4 percent. Our operating budget for the school system has increased 19.4 percent.

Again, to put this in context and to see how progressive B.C.'s successive budgets, which Budget 2020 builds on, are in making investments into the education system — long overdue investments, I might add — it's 19.4 percent since we formed government into our public education school system.

Over the same period of time, the average of all other Canadian provinces is a 5 percent investment. In other words, we have proceeded, and Budget 2020 will build upon a rate of investment in our school system — in our kids — four times greater than what the national average has been over the last three years.

We have to do this. We have more families choosing to make B.C. their home. School enrolment is growing throughout the province, from communities like Surrey to Langford to Chilliwack and Kamloops. I know members here will agree that B.C. is a highly desirable place to start a family, to build a life. That's why we're making forward-thinking investments to match the growth in enrolment that we see for years to come.

The Ministry of Education capital budget, in this regard, is the highest ever. Again, it is increased to $2.8 billion for new and expanded schools, seismic upgrades, maintenance and property purchase for future schools over the next three years. We've already invested $637 million to add 11,000 new seats that are under construction, designed to get kids out of portables and into an enriched classroom environment. Budget 2020 guarantees that this is a sustained investment, building on the momentum. We've been working at breakneck pace with our partners, the school districts, to get projects from green-light to groundbreaking faster.

The example of Surrey comes to mind, where about 1,000 new students move into the district, typically, each year. While there was only one new school built and completed between 2014 and 2017, our capital plan includes funding to build schools with enough new student spaces for every student learning in a portable today. In fact, 7,300 students in Surrey alone will move from portables to classrooms by September 2022. That's the equivalent of more than 300 portables that will be reduced in Surrey and replaced with real classrooms in the heart of new neighbourhoods that are being built out in that fast-growing city.

We'll continue supporting the district to move forward with other new projects, in this budget, in Surrey and in other communities. As I mentioned, we're making tremendous progress to fast-track capital projects throughout the province. We've streamlined the process for approval, and we funded project offices in Surrey, in Vancouver and most recently in Richmond. This is helping to accelerate construction projects in a tough construction market.

Of course, members will know it takes land to build new schools, so this is really about government being able to turn the corner and plan ahead. And that's why we've been actively funding the purchase of new sites in fast-growing districts.

Since September 2017, our government has more than quadrupled the pace of approvals for capital projects here on Vancouver Island. We have tripled the rate of approvals in the Surrey school district and doubled the pace of approvals in Vancouver. The investments in Surrey to date includes $270 million. Some 13 projects. Nine are in business case development. There's more good news to come for Surrey, building on the investments we've made.

And $169 million in Sooke, close to $100 million in Coquitlam, close to $100 million in Chilliwack, over $50 million in Langley and tens of millions invested in Abbotsford, to name a few of the fast-growing communities in British Columbia that have seen projects approved and get underway.

[1:45 p.m.]

Seismic safety, of course, remains a key priority in this budget. It's why we've been working hard to accelerate upgrades to B.C. schools. Families deserve to know that their kids will be safe in the event of a major seismic event here on the coast of British Columbia. We have to be prepared in the event that an earthquake hits, and that is why the pace of seismic project approvals has nearly tripled under our government.

So $935 million has been allocated for 41 projects that have been announced in just 2½ years. What that represents is 25,000 safer seats for students in our province. If you pause to think about 25,000 seats, that's the size of a small city. That certainly means a lot to families who send their kids to these schools.

The good news in Budget 2020 is that there's an additional $925 million available in the seismic mitigation envelope in that program that will allow us to continue accelerating the creation of tens of thousands of safe spaces in school districts where this is a priority.

Another feature of the budget, relatively small in consideration of the $2.8 billion that's allocated there but very, very important and personally gratifying to parents who work hard and volunteer in their children's schools, is an initiative we undertook to reduce fundraising pressure.

I speak specifically about the playground equipment program, a $5 million annual program. So far, it has built playgrounds at 101 schools in B.C. It's benefited 25,000 kids throughout the province who have access to those playgrounds. We expect this pace to continue. Another $5 million more is coming in Budget 2020. We know that these have been well subscribed by school districts. We expect to get their priority list for new playgrounds. They wanted confirmation of the money, and I'm pleased to say it's in the budget.

As part of new school construction projects, we're recognizing how critically important child care is in the life of a school and the life of a community. So we're making sure that capital plans, when they come forward, address the needs by funding what are called neighbourhood learning centres, for which child care is the ministry's number one identified priority.

To date, we've funded 23 neighbourhood learning centres at new or replacement schools just since September 2017. That's 1,200 direct, new child care spaces in schools, and much of it is aimed at the precious early childhood education spaces that families queue up to try and get their young infants and toddlers into.

More is on the way, by working in partnership with MCFD to ensure that quality child care services are available to families. It's an efficiency to link siblings together during the school days, some of who will be in primary grades, with their younger siblings in child care. It's convenient for families and communities right around British Columbia. Given the success we've had in those 23 projects, we intend to continue doing it at every opportunity — to build a new or replacement school.

To date, over 2,600 new, school-based child care spaces have been created since September 2017. I think what that gives us is an experience and a track record. School districts are able to work with their communities, often nonprofit-based partners, to apply for grants available through the new spaces fund and build even more spaces. That's what we expect with Budget 2020.

Additionally to this, and I know members will canvas it, perhaps, in more detail in a different ministry, the fee reductions that have been available to parents, making life more affordable…. The setting for much of these operations and the money back in the pockets of parents comes at the school itself.

New facilities, high-quality child care, more affordable for families, who, typically, after housing costs are met, child care is their number two family cost. By reducing that, we're putting money back in people's pockets to do other things and to make life more affordable.

I want to highlight the legislation that passed recently. I think we expected it to pass. We certainly planned for it in our budget, and I'm pleased it did. It awaits royal assent now.

Part of that package was around personal education numbers, which have been in existence since 1993. But we're going to expand their use so that children who are assigned this number can get one, can register with a PEN, prior to going to school.

[1:50 p.m.]

This will give us a powerful planning tool for kids coming into the school system well before they arrive, help them adjust and give powerful data analytics to government investments on early childhood education and demonstrate to the taxpayer that this is improving student success and is a wise investment.

We're going to invest $2.9 million more in Budget 2020 in child care and other early learning initiatives. I'm speaking specifically around curriculum, if you like, and the early learning framework, which is receiving national and international attention for its potential to make a positive difference in the lives of our early learners. This is in addition to…. A few months ago I had the privilege of announ-

cing over $1.2 million in funding for school districts to help improve the outcomes for early learners with planning grants that all 60 districts eagerly pursued and put into action.

Let me speak briefly about the funding review. The member opposite may have questions about this. I'll just say this. It has been a very busy time in the ministry, working with our partners. In addition to all the work and new programs and innovation we've been doing, the project offices we've established, work on the graduation program and completing the curriculum review, we've also done the province's first comprehensive funding review in more than two decades. This was a response to a decade, a decade and a half of calls from trustees, education professionals and parents to have a thorough review and envisioning exercise as part of the funding model review in the province of British Columbia.

All 60 school districts and over 350 education stakeholders took part in that review. We heard time and time again that there are too many children who are not getting the supports they need to be engaged in the life of their school. I feel very strongly that if we're looking at making improvements, we need to look at what challenges there are before and after the school bell rings.

That's why we're moving quickly, in Budget 2020, to work with one group of students in particular who have not been historically well-served by the school system, who we are trying to give opportunities in life to be successful. I speak of children and youth who are in care, whose guardian is the government, living in foster care.

The graduation rates have been abominable for decades. We are seeing improvement now, which is very positive. But we have a long way to go, especially if they're to access other programs government has designed to help youth in care become successful adults in our community, such as the tuition waiver so that they can benefit from college and university programs and get into careers. So we need to increase the focus that we bring to those students, and this budget will be the first time British Columbia has ever had a specific student supplement directed towards kids who are in care.

I want to also just highlight that we have expanded our ERASE strategy — Expect Respect and a Safe Education — to be a more comprehensive resource that goes beyond just an anti-bullying initiative, although it has been a tremendously successful one in its fifth anniversary. The expansion is focused on mental health and wellness; preventing substance abuse; training parents, school staff and kids themselves on social media and online safety; a focus on gang prevention, which has been in partnership with the Solicitor General; and also making sure that students feel welcome at every single school community in the province of B.C. by supporting, in particular, students of all sexual orientations and gender identities.

We now, I am pleased to say, have policy support of SOGI initiatives in all 60 school districts and, in fact, in many independent schools in British Columbia.

In partnership with the Ministry of Mental Health, we are investing nearly $11.9 million over the next four years to enhance services and resources they need. This will help government work more efficiently. Clinicians and those who work with children, specialists, will be more integrated and better integrated with the school system.

We're hosting our third School Community Mental Health Conference in 2020. This will bring, again, more than 500 educators and community partners together to focus on what the mental health challenges of our students look like, to have deep discussions about what meaningful preventative work means on promoting mental wellness in our curriculum and our physical and health education and how to get services for those that are in acute need who attend school.

[1:55 p.m.]

I mentioned SOGI earlier. I'm pleased to say, in terms of furthering the development of SOGI education, we are investing $350,000 to expand the annual provincial SOGI Education Summit. This is something that teachers, staff and students are interested in from a professional development point of view and from a promotion of respect for one another.

We're helping students get off the path to gang life by investing over $6 million in the ERASE school-based gang and gun violence prevention program. This has engaged thousands — more than 8,000, in fact — of students, parents and educators who have now received formal training in gang awareness and prevention. Something like 20,000 educators and community partners have also been trained in what are called violent threat assessments. This has helped prevent a number of tragedies in communities around B.C., because it has demonstrated that it is highly effective.

Let me just talk a little bit, briefly, about Indigenous students as it relates to the funding model review process. There are going to be benefits that come from targeted funding for culturally appropriate support and services. This is really in recognition that government as a whole needs to continue to move forward on the journey to reconciliation — as a province, as a country. As the Truth and Reconciliation Commission itself outlined in its calls to action, much of this falls to the education system to put our society moving forward on a healing path that is inclusive of Indigenous perspectives. It's at the heart of everything we're doing in schools today.

We will continue to build on supports for Indigenous students, including a $20 million increase in funding for Indigenous education since 2016-17. That will increase again through Budget 2020.

I mentioned curriculum briefly. The curriculum transformation is now officially complete at the beginning of the 2019-20 school year. We worked closely with Indigenous communities to take the first steps to ensure that

Indigenous ways of knowing and being are included in all grades and subjects through a child's learning career.

I'm pleased to say there are now 17 certified Indigenous languages that have curriculum available to them in B.C. schools today. At least six more are currently under development. What we're seeing is that the focus on indigenizing the education system and some of the curriculum content is actually improving all student outcomes — importantly, helping Indigenous students see themselves reflected in their school day, in the knowledge that they're learning, but also helping all students understand the historical development of this province.

In furtherance of Indigenous student outcomes and promoting a parity with non-Indigenous students, B.C. is continuing to lead the way as the only jurisdiction in Canada that has a collaborative tripartite agreement. This ensures that there is absolute equity of funding between First Nations students whether they study in a First Nations school on a reserve, in public schools or in independent schools.

In signing this agreement, which has four of five years remaining in it, we are now beginning to see the fruits of an additional $100 million in investment coming from our federal partners to help with things like language and culture, adult education and solving transportation problems from rural and remote communities where, often, First Nations communities are located.

It's a big deal. It wouldn't have been possible in the slightest without the hard work of the First Nations Education Steering Committee. They were instrumental in developing this tripartite partnership. It has far-reaching and profound impacts for First Nations students for the duration of this agreement and for generations to come.

These are all extremely positive things to date, but we know we have a lot more work ahead of us. Reconciliation is a long process. It comes after hundreds of years of colonization that will not disappear overnight. But as I mentioned earlier, the school system is critically important to moving British Columbia and Canada to a better place in this regard.

Just a little bit on teacher seats. Undoubtedly, the critic will have questions on this. We have invested directly, as the Ministry of Education, for the first time ever, $3½ million to directly fund expanded new teacher education program seats. This has created, thus far, about 250 new seats in B.C. universities to bring teachers in high-demand areas and make them trained, ready and available for employment right across British Columbia.

[2:00 p.m.]

This is in addition to the 1,500 to 1,900 teacher graduates that B.C. typically produces each year. This is an additional investment, really, to get at specialist teachers: French immersion, Indigenous teachers, special education specialists, teacher-psychologists and others.

We have $3 million invested to support curriculum development for Indigenous teacher training included in that amount. We also know that the demand for French immersion is increasing, not declining. We celebrated the 75th anniversary of the Francophonie society earlier today.

One of my colleagues mentioned that ten years ago, French immersion enrolled approximately 25,000 students in B.C. It's now in excess of 55,000 students. At or about, maybe in excess of, 10 percent of all students earn a French immersion program. There are wait-lists in some communities. We have to be clear about that. We are trying to do what we can to match the increasing demand for instruction in the French official language.

Just yesterday I joined Mélanie Joly, the federal Minister of Tourism and Official Languages, to announce that students and families will benefit from more than $2½ million, the majority of which is federal money that's going to help us in our French teacher recruitment and retention efforts in B.C. That will fund 74 new seats in French teacher education programs in B.C. universities, and that money will be available immediately. Some of the money will fund bursaries and scholarships to support students in French programs at SFU and UBC.

I'm also pleased to say that the latest statistics on international recruitment…. That was a new tactic that this government attempted to use to meet demand for qualified French instruction. We reached out to France and Belgium in 2018. We're starting to see more and more applications from those two countries in particular, up from 17 just a couple of years ago to 64 applications so far in 2019. Some are still being processed. In other words, a fourfold increase of international applications for certification from those two countries.

That is certainly helping to build on the success that includes 4,200 new net teachers in British Columbia that we've hired just in the past 2½ years, 700 of which are special education teachers. Nearly 200 of them are teacher-psychologists and counsellors. We've also benefited from having over 2,000 additional education assistants hired. I'm happy to say that what that means is that the number of classes assisted by an educational assistant has gone up by 37 percent just since 2016-2017. So it's much more likely to be a feature in a child's learning environment today thanks to that additional hiring.

There are more teachers that will be hired. Budget 2020 outlines an additional $98 million in funding over the next three years to hire even more teachers and education professionals in this document.

I'm very pleased too. I think the teacher recruitment effort is going to be helped, for new teachers, by the new student access grant that the Ministry of Advanced Education has brought into being. That will help lower student debt. It will reduce the repayment burden for people going into the profession of teaching and other professions.

We're going to continue, I think, to benefit from out-of-province interests. We've seen 1,127 teachers come to B.C. just in the 2018-19 year. It's up 80 percent from where it was a decade ago. B.C. is, by all accounts, by all the data,

a significant destination for teachers to begin or resume careers in teaching who come from other provinces. We have asked, and the teacher regulation branch has met the demand to process applications more quickly. So 1,900 new certificate holders just since last July, approximately eight months ago, have been certified.

I'll leave it there, I think. I want to thank, in advance, the member for Peace River North for his questions and his colleagues' questions. I have with me deputy minister Scott MacDonald, assistant deputy minister Reg Bawa and Joel Palmer, from the capital branch, to assist me in answering the members' queries today.

The Chair: I recognize the member for Peace River North and invite you to make any opening statements.

[2:05 p.m.]

D. Davies: The minister might not be thanking me after this is all done on my questions. But that's what we do this hard work for anyways.

First of all, I certainly want to thank the minister. I know that all of us come to this place with an incredible job ahead of us, and we do the best that we can. I certainly appreciate the minister's efforts, as well as his ministry staff, not just the ones that are joining us here today but, of course, throughout the ministry. I'm not even sure how many staff members you have, but I know there are quite a few. Certainly, thanks for their incredible work.

As a former school teacher myself, education has always been an absolute priority for me. I have two children that are in the public school system. My grandfather was a teacher before me. Education is extremely important. I'm proud to say that British Columbia has had, for a number of years — and I'm sure, hopefully, will continue for a number of years, or forever — one of the best education systems, recognized around the world.

That is certainly done by the work of the incredible teachers that are throughout the 60 school districts in the province, the hard-working school district staff, the trustees, by whom I've always been amazed. Most school districts, when you talk to the trustees…. The creativity that they have to manage budgets and do amazing things within their school districts…. Of course, the PACs play an incredible role, and our parents. Of course, the students, most importantly, are the benefactors of this incredible system that we have here in British Columbia.

I'm not going to take up too much time. The minister gave a very robust opening statement. I almost don't need to do estimates. But I'm not going to let you off that easy. I'm going to be starting with capital. That will probably, I suspect…. Well, it will take all day today and probably a little bit once we return from our constituency weeks.

I've got a couple questions here to start, and then I have a list of colleagues that will be probably taking most of the afternoon for riding-specific questions that they'll be asking the minister.

I just want to start off with…. The minister spoke of Surrey, some of the work and the planning that's happening for Surrey. I'm going back. It's been mentioned in this House numerous times by myself and other members to the minister. The minister and the Premier made a promise of eliminating portables in 2017. The promise was made again in 2018. It was somewhat less reconfirmed in 2019. Understanding that Surrey is a fast-growing school district…. We recognize that. The member from Surrey here, I'm sure, can attest to the incredible growth. I think it's 600 babies a month are born in Surrey, which is an incredible number.

I want to go back to the promise and the promises that have been made by this government. I was going through *Hansard*. *Hansard* is a wonderful thing when you pull out these great little pieces of quotes. In 2018, we were sitting here in this room, approximately two years ago now, and asking the same questions around the Surrey portables. The minister stated that there was an aggressive campaign to eliminate portables. He dared me — these are his words — to judge him "in two years from now" on the progress that they will have made on eliminating the portables.

I guess today is judgment today. I have to ask the question on the progress that the ministry has made on eliminating the portables, because from the numbers that we have, and I'm sure the numbers are quite factual, they've increased by 88 portables since this government has taken over.

My question is: can the minister can give us a robust update — I know he touched on it during his opening remarks — on how the plan is coming along for eliminating the Surrey portables?

Hon. R. Fleming: Let me say to the member that progress is going remarkably well in Surrey. I think we're thrilled with where we're getting to. We have 7,500 seats, new student spaces, under development. This will significantly reduce the number of portables in Surrey.

He mentioned that the number of portables has gone up while we have endeavoured to build schools, and he is correct. But if he were to talk to the superintendent or the director of capital operations in Surrey and ask him for an explanation….

[2:10 p.m.]

I'll repeat it. The vast majority of those new portables that have been made necessary were due to the Supreme Court decision going against the previous government — in fact, from class sizes going down, which is a positive thing. But in a place like Surrey, which hadn't received enough attention to build new schools, it meant a 10 percent space absorption, most of it related to the government's 12-year fight with the teachers in the courts, which they lost and which our government had to respond to. So yes, portables were required in order to address the legal failure of the previous government.

The other, over a dozen — I think 14 — portables that

were added are not for K-to-12 students; they're for adult basic education in Surrey. The reorganization of adult basic education and the imposition of fees under the previous government…. We reversed that and made adult basic education tuition-free, to help adults who didn't have a graduation certificate or who didn't have a strong enough graduation certificate to get into college programs. We made it free. We made it available at post-secondary institutions, and that included in Surrey school district.

So 14 of the portables that the member quotes are directly related to growth in adult basic education. That's great. That's helping people get their graduation certificates, get into work, pay taxes, contribute to the community of Surrey and help fill valuable positions in the job market. It's actually a good-news story in the case of those portables.

D. Davies: I understand that the Supreme Court ruling did, obviously, increase student numbers out of the classrooms, but that ruling was, I believe, in 2016 — when that came down. Going back to 2018 — when, again, the statement was made that judged the minister on removing the portables — he talked of 7,500 new seats that were under new development. If I could maybe get some more details on exactly what that looks like. When will those 7,500 seats be open?

Hon. R. Fleming: What I will tell the member is that the projects that are in construction or in planning will be completed, representing 7,830 seats. I misspoke; it's higher. I'll have to get him a date for each project, if he wishes. I do not have that with me at this time. But by 2022, it's projected that 7,830 seats will be completed.

What this represents is a pace of construction in Surrey three times faster than what we saw in the previous mandate of the last government. If the previous government had proceeded in the manner and at the pace that we have as a government, there wouldn't actually be any portables in Surrey today. We wouldn't even be talking about this. It would have been done, and those resources would be available in other school districts.

[2:15 p.m.]

I have to say that we've worked quickly and that we have secured, on some projects, reductions in timelines, which is very positive, very hard to do when you're trying to get workers on construction sites and there's a lot of infrastructure and private market construction going on.

We've been able to start a very close working relationship with the city of Surrey, both the current mayor and the previous mayor. We've held five Surrey summits to date. That has involved the city manager, the political representatives of the city, the chair and trustees and superintendent and director of operations for the Surrey school district. In other words, it's been all three levels of government, if you will, sitting down to identify how we can make things move faster.

The city of Surrey has lived up to its commitments to try and reduce permitting time. The use of qualified professionals, for example, to get things like drawings signed off more quickly has, in some cases, reduced timelines for projects by six months. We've committed to go to Treasury Board and process business cases more quickly, and we've delivered on that time after time.

Everybody has brought things to the table. The school district has a project office that's working extremely well, that's able to develop business cases and conduct planning more quickly. Where there are cash contributions from the school district, which is usually a small portion, both the province and school district have committed to bringing their money to the table more quickly, once we know the cost of the project.

I have to say the time and the effort that we've invested in convening regular summits in Surrey has paid off. You're hearing that from the Surrey Board of Trade, very positive quotes about the level of cooperation they're seeing. You're hearing it from the board chair, who has served in Surrey for a long, long time, about seeing announcements actually become funded projects.

This is good momentum. I don't want to scoop any future announcements in Surrey, but I'll let the member do some guessing. With nine further projects in the design process right now, I think it's fair to say there's even more good news coming soon to Surrey.

D. Davies: We will coming back to this. I've got a bit of a schedule set up for my colleagues, so I'm going to turn it over to my colleague from Surrey South.

S. Cadieux: Back in 2017, I congratulated the minister on the decision to fund playgrounds, and I asked some questions about that. I asked some questions about whether or not they were going to be accessible to all children and whether or not they had thought that through in terms of how much those playgrounds would cost and, indeed, if that was what they were planning to build.

The minister responded that it was a good question and that he understood that they cost more, up to $200,000 and more, to build a truly universally accessible playground but committed that the ministry could go away and look at it and get back to me, which did not happen.

However, since then, the ministry has announced two rounds of playground grants in 2018 and 2019. I think that's great. There's no criticism of funding playgrounds. But in December, I called into question what had happened in terms of the accessibility of these playgrounds. Parents, in the announcements, were promised universally accessible playgrounds for about, well, 25 of the playgrounds in 2018 and 30 of the playgrounds in 2019. They aren't.

A few of them are, and that's great. It's a celebration. In fact, Westerman in Surrey is a very good example of a uni-

versally designed playground. It isn't perfect, but it is really quite good, and I think it's a good step forward.

There are a great many others that I have seen that received grants and were called universally accessible playgrounds that, at best, provide a limited level of access, a limited level of inclusion for some kids with some disabilities. Kids are still on the sidelines.

[2:20 p.m.]

I raised this in 2019 — again, not to criticize the government for funding playgrounds but to criticize calling it something it's not. I criticized government for the way they had funded these playgrounds knowing full well that there was no hope that they would be building accessible playgrounds with that amount of money.

The initial set of grants issued for universally accessible playgrounds designated $90,000 to update standard or aging equipment or services and $15,000 to add accessible features. Can't do it; $15,000 won't buy you an accessible surface. It won't buy you an accessible piece of equipment. Government must have known this, if they had done any research whatsoever or even if they had listened to my estimate in estimates about the cost. But they still went forward and told parents that's what they were getting, told schools that that's what they were getting, when, in fact, they didn't.

In December of 2019, when I brought this to the attention of folks because I had people telling me about, questioning, the playgrounds…. I had a number of parents talk to me. We saw one in the newspaper, and we did a little bit of digging and started to see what we found. The minister responded, in a letter to the editor, to my criticism, mostly criticizing me. But at the end of that, he said: "Next year all school districts who receive funding under the program will be required to build accessible playgrounds. We are currently reviewing the total amount given for each playground." That is good. I hope that means that the minister has taken note that in fact the plan wasn't a good plan.

I do question, though, whether or not the applications that were in place for 2021, this budget year…. The call for projects which went out and were required by June 30 of 2019 — if the minister anticipates that those projects will be accessible?

Hon. R. Fleming: Thank you to the member for the question. Hopefully, I can answer all the questions she may have at once. I was anticipating seeing her during the estimates process. I did take her comments to heart on previous occasions.

I want to say, maybe, at the outset that most districts took the ministry's capital instructions previously, of the 101 playgrounds that applied for the universal playground, to mean "to a high standard," which meant that every child could access it — so that it had accessible ground cover for those, so that it was mobility-accessible, and those kinds of things. Some school districts did not, and I compliment the member for working with parents who were a little disappointed that what was billed as a universally accessible playground was not.

A couple of things. One is that we have increased the funding amount to $125,000 for this year. We no longer have categories of non-accessible and accessible. They're for universally accessible playground equipment — period. Those are the kinds that we wish to support. The $125,000, by the way, is to support what's called a playground equipment program. It's for the equipment.

We expect, and we typically see, very eager partnership from school districts and often local business communities. What we wanted to do was alleviate a huge burden for the equipment itself that often fell to parents, and we've done that. The grant will go up to $125,000. The category that…. We will only fund universally accessible playground equipment.

I've had an opportunity, myself, to talk to Rick Hansen, when I met with his foundation recently. We had him present to the Council of Ministers of Education of Canada last year about a whole bunch of building code issues, primarily. I brought to his attention that we had this equipment program. I'll have a further occasion to talk with him.

Maybe lastly, to give the member an idea of the instructions we're going to give to the school districts this year, which were — I'll be generous — misinterpreted, maybe, in a couple of instances last time. We've made it much more explicit about what we expect in exchange for the grant.

I'll read it. This has actually not been sent to school districts, but I don't think they'll be surprised to hear it, because we've let them know it's coming.

[2:25 p.m.]

> "The playground equipment program is available to provide specific funding to purchase and install new or replacement playground equipment, supporting inclusion and accessibility for all children. The Ministry of Education will require all playground equipment systems to be universally accessible and include appropriate ground cover for fall protection and ease of mobility.
>
> "Universally accessible playground equipment is considered to be adventure-style playground equipment that is designed to be accessible by all elementary-aged students, including children with disabilities or developmental challenges who need to interact with playground equipment in a specialized manner, including wheelchair, walker and crutch use. This equipment is to be permanently fixed on a school site and include appropriate ground cover for fall protection and ease of mobility."

It's a much more detailed set of instructions. I've given her a copy before any other school board chair has seen it, so don't let them get mad at me.

S. Cadieux: I'm going to just go backwards a little bit, because I do have a couple of questions that arise out of the minister's statement.

Now, knowing that, as the minister says, some districts may have misinterpreted…. I think, frankly, it was a failure on the government to provide clear direction given that there are standards that exist, like the Let's Play guide that government helped fund with the Rick Hansen Founda-

tion, about how to do this — right? It's not hard to find. I just googled it, and there it was. So I think it was a government failure to adequately equip districts when they put out the first two rounds of grants.

Since now finding out that, in fact, what was promised was not delivered in the vast majority of cases….

Interjection.

S. Cadieux: Well, okay. Then, we'll let the minister explain. Did they have an independent audit done of all of those playgrounds by a certified professional in universal design to ensure that, in fact, they know which ones are and which ones aren't and which ones will need further upgrades — of those hundred?

Hon. R. Fleming: First of all, as to the equipment itself, it's certified to a high standard. It's part of a coordinated buying program to get the best price possible for school districts.

[2:30 p.m.]

What I would say, in general, is that we are learning as we go. We're improving. This program never existed before. The previous government had no such program for 16 years. Didn't have one at all. Didn't have it.

In the first year, we had two categories. We looked at that and we said: "We shouldn't have two categories." The second year we had one category: accessible. I think most people who would read the instructions from the second year would interpret it according to high-quality guidelines. Some clearly didn't. So this year, we have made more explicit the guidelines. We also have increased the amount of the grant, recognizing that it needs to be a larger amount to be able to buy this equipment.

In other words, the program isn't static. The program is evolving and improving, and it has funded much-needed playground equipment in communities around B.C. that is accessible for kids. And 25,000 kids now have access to a playground where they didn't before. So it's a good program, and it's getting better all the time.

S. Cadieux: Again, no argument. Full credit to government for funding playgrounds. No argument with me. My argument is that government is continuing to fail kids with disabilities in this process. There are 25,000 kids that have access to a playground, and in at least half of those cases that does not include kids with disabilities.

Sure, it's not possible to build an accessible playground for $125,000. It is not possible. It is possible to buy equipment, but if the surface is not purchased at the same time — which can be $40,000, $50,000, $100,000, depending on the surface — it still doesn't work.

What we've seen, in a number of circumstances, is a number of playgrounds where kids can show up, and they can go to this little tiny part over here, but they can't go over here. I'm concerned by that.

I'm heartened to hear the government's learning. I am heartened to hear that the amount is going up a little bit and that the expectation is that these are going to be accessible playgrounds. However, the reality is, for the funding amount, those are going to be some very interesting accessible playgrounds. That's still, then, requiring the school district or the PACs to come up with the money for the rest.

Now, again, I'm heartened to hear there was only one category for the 2019 intake for accessible playgrounds. That's not what was announced. There were half accessible and half not accessible. So I'm not sure what the minister is referencing there. However, I will clarify why I'm confused. The 2020-2021 call for projects dictates, "standard playground equipment or universally accessible playground equipment," which, by their own definition, serves the same purpose as standard playground equipment but is designed to be accessible by all elementary-aged children.

Then when you go to the second page of the application, it says that schools are to provide a number of things — the priority of the project, if it's new or replacement equipment, etc. Then it says to provide "a rationale for universally accessible equipment. If universally accessible playground equipment is selected, describe the need at the school. Include the number of students with physical disabilities currently attending the school, the known number of children with physical disabilities that are expected to attend the school in the near future — i.e., the next couple of years." Well, this just doesn't jive with the minister's own statements.

If I was a school district and I was applying for a playground under this program for the 2020 year that we are now in estimates for and hoping to receive one of those grants, I'd be asking myself a question: am I applying for standard equipment or universal equipment? And gee, if I have to apply for universal equipment, which I want to do because I believe it's the right thing to do…. But gee, you know what? Right now in my school, I don't have a child with a physical disability that's going to require universally accessible equipment, and I don't know if any are going to show up in the next two years. Maybe I better just apply for the standard playground equipment so I get it.

Can the minister explain why that while at the same time this government is drafting accessibility legislation for the province of British Columbia, we are asking people to justify whether or not there are kids that might require the equipment?

[2:35 p.m.]

Frankly, I can tell you, in every community in this province and probably in every school, there are children that require this equipment today and/or will in the future. This equipment is expected to last for many years, as we know, because we're only going to be able to, even with a new playground program, replace a few a year.

Can the minister explain, please, where we are at today?

Because if the call for projects required people to justify universally accessible projects, where are the projects at going forward?

Hon. R. Fleming: A couple of questions ago I read out to the member the playground equipment instructions that have been revised. She's reading the one from the first intake. We're now on intake three.

Interjection.

The Chair: Member, please, for the benefit of the public, we want to have this through the microphone, as well as questions come through the Chair.

Hon. R. Fleming: I read the member the draft language that will go out in the capital instructions — we're not in the new fiscal year yet — that will accompany round three. I'm happy to provide the text to the member so she can review it again. But I think she'll find that it's pretty explicit. Therefore, there is no rationale for a grant application to include why they're choosing a universally accessible playground over a standard playground, because we don't fund standard playgrounds.

We already have submissions from the districts who have applied for these grants, and because it is now a requirement that all playgrounds we fund be universally accessible, 100 percent of the applications for new playground equipment is for universally accessible playground equipment.

I mentioned to the member the amount has gone up. The standard has been made more explicit. The district that received a lot of media attention for falsely billing something as being universally accessible in the Okanagan has apologized to the parent advisory group and to the parents of families who raised objections, understandably, because their kids couldn't participate and access that playground equipment. They acknowledged that they did not live up to the commitment they made to the ministry in exchange for receiving that grant.

S. Cadieux: Chair, I apologize for my interjection.

I am reading from a document, Minister, from your ministry called *Playground Equipment Program (PEP) 2020-2021: Call for Projects*. It includes, "The completed spreadsheet must be emailed by June 30, 2019," to a person's name, planning officer, at a government email address at the Ministry of Education.

Now, I accept that the minister says now he has changed his mind. He has gotten religion on this issue and understands that there needs to be something different. But my question is…. Given that for this coming year, 2020-2021 projects, applications were to be in by June 30, 2019…. If that's not the case, then a whole bunch of school districts have some incorrect information, and I'm concerned about that.

I'm also a bit concerned about the minister sort of pushing off that this was a mistake made by districts. It wasn't a mistake made by districts. I made that very clear, and the districts did a really good job, I think, of responding to criticism when it came and looking at what they could do to change.

The reality was that at the beginning of this project, there weren't clear instructions. There weren't clear expectations. There was no guideline prepared. So in various districts, clearly, where there are varied sizes and capacities for work, a lot of that work fell to the parent advisory councils who were raising the additional money to make these playgrounds work. They made some decisions, and sometimes, they weren't good. They had nothing to go from. They had no idea. They didn't know. They were doing the best they could.

It's government's responsibility to ensure that government facility, government infrastructure is accessible to everyone. It's government's responsibility. It is not the parent advisory's responsibility. So I am concerned.

I am happy if this document is no longer the document that is expected to be worked from. I'm happy to hear that the minister has a new set of guidelines that are going to go out to districts. But none of this fits. It's hard to know what the policy is, what the expectations are and when, if ever, we are going to see fully accessible playgrounds planned for every child in the province of British Columbia with public funds.

[2:40 p.m.]

I'll reiterate. You can't build an accessible playground for $125,000. The reality is that we aren't going to get them. But I would really like to know what the instructions to districts are. Who is overseeing whether or not this actually is accessible? Are they putting them in touch with experts? Are they putting the districts who are granted the money in touch with experts to oversee the planning of these playgrounds to ensure that similar mistakes aren't made, going forward?

Hon. R. Fleming: To the member, I would say this. At the outset of the program, we gave the school sector a high degree of input into how we would design this program, including BCCPAC. The districts actually wanted to have two categories. There were some that made the argument that they had just funded accessible playgrounds — that they wanted a second playground on a large elementary school, for example, and they wanted to have the choice. Most districts made the choice for universally accessible.

The second year of the fund revealed that some districts had not applied a high-standard interpretation of what most of us would consider universally accessible play equipment. The instruction documents were updated in April 2019 to read as follows: "The program…."

The Chair: Minister, I'm going to remind you not to use a device when you are in possession of the microphone.

Hon. R. Fleming: Okay. I'll read the paper version.

> "The playground equipment program is available to provide specific funding to purchase and install new or replacement playground equipment. Supporting inclusion and accessibility for all children, the Education Ministry will require all playground equipment systems to be universally accessible and include appropriate ground cover for fall protection and ease of mobility.
>
> "Universally accessible playground equipment is considered to be adventure-style playground equipment that is designed to be accessible by all elementary-aged students, including children with disabilities or developmental challenges who need to interact with playground equipment in a specialized manner, including wheelchair, walker and crutch use. This equipment is to be permanently fixed on a school site and include appropriate ground cover for fall protection and ease of mobility."

That change has been made. The next change is around the amount. It will be increased to $125,000. There's now only one category.

As I mentioned to the member earlier, it's a playground equipment program. It buys the equipment. We centrally procure that and get it as cheaply as possible, much cheaper than somebody who just bought it through a distributor. We pass on those savings to school districts, obviously. We're funding them.

It does mean that there may be some additional costs, but let me tell you. A school district facing no budget, no grant program, didn't build playgrounds. What we're finding is that with a grant program — and now a much more robust grant program, in its third year of operation — this is well subscribed. That's why it's contained in each year of the next three years in the service plan before us. That's a $15 million investment for play equipment.

Look, the people that are highly supportive of it include the B.C. Confederation of Parent Advisory Councils. We have inclusive advocacy organizations that are supportive of this program. All the districts are supportive of it, so the program will ask for further grants very shortly. We will send the improved instructions.

We expect districts to continue to contribute things like installation costs, using a mix of their own staff and volunteers. We expect them to access grants from organizations like the B.C. tire stewardship council to get soft ground cover. There are other foundations and private companies out there that are matching, essentially, or supporting the investments that we're making in playground equipment. The point is that the grant program has succeeded in taking the burden off the backs of parents who, depending where they live, don't have the means to raise hundreds of thousands of dollars. They no longer have to. They can work with their school districts.

I would, finally, add that districts are able to partner with us on these playground installations because the amount of money that they have in the school system is $1.1 billion more annually in the budget that we're debating. The rate of surplus and transfers to reserves has increased dramatically. We're talking in the hundreds of millions of dollars since we formed government.

[2:45 p.m.]

They have small equipment and other program reserves that fund playgrounds, and that's great. What we're finding is that when they can leverage a significant major grant like the playground equipment program from British Columbia, they're willing to make their own local investments to match it and release 100 percent of the burden from parent advisory councils.

S. Cadieux: Once again the minister wants to make this a partisan attack. I'm not making this a partisan attack. I am not talking…. I have said multiple times, and I will continue to say: I support the program. I support the efforts of the government to do this. I think it's a good thing that they're doing, in building playgrounds.

I am questioning the method by which they are doing it and the expertise with which they are deciding what an accessible playground is and how they're actually ensuring that that is delivered. The reality is that, previously, when districts and others and parent advisory councils decided to build playgrounds and they were not accessible, it was frustrating. But I also understood that they were making a decision. They were not necessarily making a decision in the best interests of everyone, but they were making a decision that made sense for them — and financially that they could manage.

I'm not critical of folks who don't have the expertise in making decisions that, in the end, are not ultimately inclusive. Often they don't realize they have made a decision that excludes others. This goes beyond playgrounds to all sorts of decisions.

When we have a government that has decided and states frankly in many, many places: "Playgrounds are a key factor in a child's development and learning. They encourage outdoor physical activity, help children learn how to share and overcome challenges and help them focus and learn more effectively in the classroom."

Government recognized this. I support them in that recognition. They decided to use provincial tax dollars to pay for infrastructure — in this case, playgrounds — and they are not ensuring that those are accessible. They are continuing, through this process, even now, saying that you have to have an accessible playground. "We'll give you $125,000." It's not possible, which means these districts are still going to have to be fundraising a great deal of money. The minister just said that these districts have to raise money from grants and contributions from corporations and what have you.

In order to do it right, that has to happen. It hasn't happened with the previous ones, and the reason was there wasn't enough money, and there wasn't clear direction on what "universally accessible" is. I'm very hopeful that they are hearing this and that they are taking it as constructive criticism, because I want this to work. I want them to get this right.

The reality is that at the same time as you are drafting legislation on ensuring that everyone has access to

everything they need in this province — in terms of infrastructure, in terms of work, in terms of government services — we have a government that is putting out documents that suggest you have to justify universally accessible playground equipment. That's just problematic.

I understand now that the minister is assuring me that this is wrong — that this document is outdated, even though it clearly says, "2020-2021 call for proposals" and "please send them in by June 30 of 2019," meaning that applications will have already been received, based on this criteria. This was sent to me by a district. This is what they are using. So if that is not the case, then I hope that the minister will commit today to ensure that no decisions on playground capital are made before a new process is clearly defined for all of the districts, articulating what an accessible playground is and how the process will go forward.

Frankly, this document is offensive. Maybe it was a mistake. Maybe they figured it out, and they pulled it back. But it's still out there, and that worries me. I hope the minister will take that under advisement and provide me with a copy of all the documents that go out related to this program henceforth.

[2:50 p.m.]

I'd be happy to be certain that, in fact, they have corrected their very large mistake.

Hon. R. Fleming: Thank you to the member for the question and the points and what she described as constructive criticism. I think many of the points that she's raised today and previously are ones that have been taken into account to improve the program. She's asked if we would copy her on the instructions for the next round of grants before they go out, and I think that's something that we can do. They will become a public document, so we will give you those public documents when they are delivered to school districts.

We have worked to make the instructions clear. We have sought the advice of the inclusion community, the disability community, about what language would be clear and capture it so that, you know, it would be really impossible to make an argument that it was confusing. It's much more explicit and, I think, in keeping with language used on project planning around inclusion and accessibility.

I will commit to have the ministry give a copy of the new instruction letters that are going to go out to districts for the playground equipment program.

S. Cadieux: I thank the minister for that. I'll appreciate that.

Just one follow-up question on that and then one very brief question after that. I'll put them together because I think the minister will be able to answer them quite quickly.

The question, then, is…. The document that existed, that districts were in possession of, that suggested that applications for the next round for 2020-2021 had to be in by June 30…. That is incorrect information, and those applications have not yet been received for the 2021 year. Is that correct? I think that's just a clarification.

The second piece of this is…. All of the documentation that I've read — acknowledging, Chair, that there may be changes when we see this new document — is that districts can apply for up to three playgrounds per intake. Maybe that's not the case, but that is the documentation that I have. It suggests that districts are eligible in the year, provided they didn't receive funding the year before. So that, too, may be incorrect.

I'm curious. How is government deciding where to build playgrounds when, in fact, some districts, as the minister will know, like the one I represent, are vastly larger and have vastly more schools, playgrounds and children than other districts? It would seem completely unfair to be able to do all of the schools in one district in a short period of time and yet have, for example, Surrey take, in theory, 20 years.

If the minister could just clarify those points for me before we wrap.

Hon. R. Fleming: The program takes into account the distinction between district sizes. So, yeah, she's correct. We have some districts with as few as 500 students and her own district with approximately 70,000 students. So a district like Surrey can expect to, in some years, be awarded two or three playgrounds. The smallest districts may get one every three years or until they run out of schools, which is sometimes the case.

It is weighted, roughly, towards population — larger districts getting more announcements. And it could be the case that there are some districts that stop applying for it if they, presumably, run out of the need to apply for that grant. We haven't hit that point yet, but maybe by year 5 or 6, we will.

I will look into the instructions, whether the…. I see the member has a printed copy, so it could be the version that was not updated. I was looking at an electronic device. I was ruled out of order for trying to read from it. But it was on line, live, that had instructions that had been updated in late 2019. It was in red text which highlighted and made very explicit to districts the changes around the standard and what the new standard was — in red text, in the new application form. The date of which was, I believe, April 2019.

[2:55 p.m.]

Interjection.

The Chair: Member, if we can please speak through the Chair.

Hon. R. Fleming: I'll just consult about getting a date for the next intake application.

S. Bond: I just would like to add my comments — the fact that I am hopeful that a discussion about accessible playgrounds is a place we can find some common ground and actually make this work. It's a pretty important issue in all of our communities. Hopefully, we can, across party lines, figure out how to do the job as best we can.

My comments today are related to my constituency, which, obviously, is Prince George–Valemount. It's a large urban-rural school district. I'm sure the minister is well aware of some of the challenges that districts like mine face.

I want to raise two issues. Obviously, our community is excited about the fact that we will soon see the opening of a new secondary school in Prince George, Kelly Road Secondary. It's something, I know, that I advocated for, for a long time, even with our own government. I'm very happy to see that move forward, and I know that it's going to be well received in our community.

Perhaps something that other MLAs may not be aware of: portables are not just an issue in urban British Columbia; they're actually a concern in my constituency as well. I know that school districts annually put forward a request for their capital needs, and I know that my school district has a list of things that they're interested in seeing move forward. The most critical of those and at the top of their list is a full expansion of D.P. Todd Secondary School. My understanding is that that school will see, potentially, a number of portables — I think up to six portables being in place in the coming year.

We know that there is a growing shortage of secondary school spaces as we move forward into the 2023 school year. I'm wondering if the minister can just give me a sense of the priorities of the government when it comes to additional investment in communities like mine. We may not be Surrey, but we certainly are having some challenges. This is the top priority, as I understand it, identified by my school district. So I just wanted to just get a sense of the minister's awareness of that issue and when he would expect to have some dialogue with my school district about that important capital requirement.

[3:00 p.m.]

[M. Dean in the chair.]

Hon. R. Fleming: Thank you very much to the member for the question. The short answer is that D.P. Todd has not been supported to date. It's a fairly new request for additions. We review that annually. We'll review it again as a district priority. We will review it along with requests from all 60 districts, of course. We recognize that there are some districts that do not have space pressures but they do have some localized space pressures within their districts.

By the numbers, the Prince George district…. Only 2 percent of students in that district study in portables. That's quite low in the provincial context. It's among the lower. But we recognize that sometimes there are space pressures within families of schools transitioning from elementary to high school or middle school, as the case may be.

We are also keeping our eye on an uptick in growth after many, many years of decline in enrolment. It's not significant, but in 2017-18, there were 13,047 students in the district. The latest I have is the March 19 enrolment number — 13,221. So about 150 students added. It's moving in the right direction. We're looking at that enrolment growth.

It was one of the reasons that we reopened a previously closed elementary school and worked with the district to refresh that. It had been closed for a number of years and didn't have things like up-to-date Wi-Fi and needed to be brought back into service. We'll look at requests from Prince George or other districts where that may be helpful in avoiding the demand for portables.

S. Bond: I do appreciate the minister's response, and I know he wouldn't be surprised that I'm here advocating for my community, because that's what MLAs do. That's our job.

I know that, as I understand it, Kelly Road, the new school — which I said we're very grateful for — will open at or near capacity, and there is an ongoing shortage of seats as we move through the next number of years. So I would be very appreciative of an ongoing monitoring of that situation when it comes to the number of secondary school seats.

I'm told that the number of seats, in terms of secondary school spaces, will be 300 to 500 short as we move into 2023-24. I think the school district has been fairly public about that. I should also say that I very much appreciate the hard work done by our trustees in terms of looking at the capital needs in our community. They certainly are working hard to try to figure out, as the minister points out, how they manage through those transition issues. I appreciate that, and I will look forward to further information and the minister monitoring.

The other issue I wanted to raise…. I certainly appreciate the critic making time for us this afternoon. I know we're doing capital now. I'll come back with a couple of other issues more broadly impacting our school district, but we'll do that when the critic gives us the nod. Whatever his schedule looks like, we'll fit into that. So I do appreciate the opportunity.

[3:05 p.m.]

I did want to raise, though, the issue of annual facilities grants. I know that this is an ongoing challenge for governments, whoever is sitting in the government benches.

I know that the school district has, I think, for a number of years in a row, through the Select Standing Committee on Finance, raised the issue of facilities grants with a concern to look at: how do we keep schools updated — as the minister pointed out, "refreshed" — and deal with capital issues, preventative maintenance, those kinds of things?

It has been an ongoing request by school districts,

including ours, to take a look at funding in that particular envelope. So perhaps the minister could give me a sense of where we're at with the annual facilities grant. How will we begin to keep up with the challenges that many, many school districts are facing with buildings that are aging?

I fully recognize how challenging it is to balance the demands in the education system, having sat in that chair myself at one point in time and having been a school board chair.

Just a bit of an update on that particular program. Is it increasing? How are we managing? There's an awful lot of demand, and I'm just wondering if the minister could give me an update on that program.

Hon. R. Fleming: Thank you to the member. Just to go back to her previous question around capacity and enrolment growth, as I said, we're going to monitor that. We're certainly very pleased with the progress reports on construction around Kelly Road. Obviously, the community is going to really, really enjoy that new facility and all that it brings to the students and to the community.

The new capacity is larger than the current overcrowded school. So the capacity will go up to 850 seats. Right now there are 788 students. I don't believe it was designed for that. So it's over capacity, and it will have additional capacity when it opens.

[3:10 p.m.]

Specifically on the annual facilities grant that deals with maintenance requirements in B.C. schools, we were pleased, at a previous set of estimates, to highlight that for the first time in, I think, ten years, the AFG had gone up by $5½ million, which is positive. I think what I would say in this budget, Budget 2020's feature, is that we're going to augment that by tripling the funding that's in the carbon-neutral capital program in government. This is part of CleanBC.

I say augment, because the clean investment program is available for things like energy system replacements and windows. It essentially augments or stretches the AFG dollars further, so that's a good thing. That's a $12 million addition. The program will grow from $5 million to $17 million.

There are a couple of other complementary programs, too, that I think help us with deferred maintenance types of problems. The building envelope program remains. So for those types of specific building envelope failures, there's an $8 million program that is ongoing and continues. Also relatively new — at least, in comparison to the AFG program that exists — is the school enhancement program, which is $65 million annually, and that's in Budget 2020 as well.

S. Bond: I appreciate that answer. Can the minister just remind me? Are those dollars distributed on a prioritized basis? Do they look at where the need is greatest? Is it per capita when it comes to school districts? Is there a distributed formula? Perhaps, could the minister just remind me? Is it done after an assessment of where the needs are the greatest in the province?

Hon. R. Fleming: Thank you very much to the member for the question. Yes, there is a formula, but it has some variables within it, so it would be inaccurate to say it's based on per-capita, strictly equity, allocation. It looks at things like the number of schools in a district and the age of those schools, what the facility condition index or the needs of those schools are. In practice, I'm told that often it does work out to almost a per-capita type of basis. But because larger projects can be concentrated in one district one year and less in another, it does vary.

[3:15 p.m.]

The school enhancement program is an application-based program. There are priorities that are set there. Funding goes to the projects that have the greatest impact on improving the facility condition index of the school. And the carbon-neutral capital program is also a priority-based application fund. It looks at projects that have the greatest amount of carbon emission reduction and, therefore, operating savings for districts to use for classroom learning services.

S. Bond: I admit that I probably should have remembered those things, but sometimes on days like today, it's hard to remember what day it is, much less those details.

Madam Chair, I want to thank the minister for the opportunity to ask some questions about our school district. As I indicated, I'll come back when the critic gives me the opportunity to ask a few more general questions about some issues that are important to northern trustees and northern school districts. I appreciate the information and the time this afternoon.

B. Stewart: It's a pleasure to rise today during estimates of the Ministry of Education and the discussion around capital. I just want to inquire about the capital request put in by school district 23, Central Okanagan, for a secondary school in Glenrosa to help alleviate the pressures and problems, essentially, of a school that's called Mount Boucherie Senior Secondary School, which has reached capacity some time ago. It has been backfilled with portables, and there has been grade reconfiguration. I think, because of the distances to other secondary schools across Lake Okanagan, it only is feasible to look at a proposal that's been put forward.

Hon. R. Fleming: Thank you to the member for the question. I think this is a good example of where the ministry has been working closely with school district 23, Central Okanagan district, to support what has been their highest priority in their annual capital submission. The member is quite correct: Mount Boucherie Secondary is

overcrowded, and a new Westside secondary school is going to help alleviate those conditions tor students.

We have been working closely with the school district on securing a site as a first step for this project. I'm told that they're very close. They have a couple of options. Probably the less we talk about land in an open forum like this, the better. But SD 23 is securing a site. We support that. While they're securing a site, the ministry has given a green light to a concept plan. District 23 is working on that right now. They haven't submitted it back to the ministry, but we supported the request for that, and it's underway.

[3:20 p.m.]

B. Stewart: There were some challenges in evaluation of some of the sites, which maybe the minister or the staff are aware of. They had issues around three of the school sites that were identified as being in the agricultural land reserve, even though they'd predated the land reserve. Needless to say, there were some restrictions. I understand, from the superintendent and the chair, that they've worked through those. There are some options that they are working on, and I'm sure that they'll be expediting that plan back to you as soon as possible. I'm glad to report that you're anxious to do that.

Can you give an idea on the timeline, Minister? Once that plan, the conceptual plan, is returned to you, what type of timeline should be expected for school district 23 being able to move ahead with action on a conceptual plan and move ahead on construction of something?

Hon. R. Fleming: To the member: when we receive the concept plan from the district, we will get a draft. The ministry will probably go back and forth on some items in the concept plan. The concept plan is an idea, I think, that's important to the process, because it's going to be a large project, at least $75 million or more. It will probably be informed once we have clarity on the site as well.

Once that work is completed, then there will be a formal business development case, which will really get into costing what the project will look like. There are a few steps along the way. We did, in terms of taking the first and significant steps, work with SD 23 to meet that request and get us to where we are right now. I will advise the member, if he doesn't hear before I do, about any developments around the land and, certainly, get back to him about the concept plan as well.

There are a few steps along the way before the business case is developed, and then a supportable project would go forward to Treasury Board. I think, as a general comment, SD 23 is good at capital procurement. They're interested in working quickly. I think they have a good relationship with local government too. So we'll look forward to the presentation of that draft concept plan.

B. Stewart: I just want to recognize the trustees for their hard work. I know this great reconfiguration…. I know the minister goes through hard work every day. As trustees, they took a lot of public abuse — whether it was appropriate or not — but they were trying to work and fit into existing facilities they have. I just want to acknowledge their hard work.

I want to go and pivot to one other project which the minister and I have met on and discussed. I realize it's early stages. There is a First Nation band at the north end of Lake Okanagan called the Okanagan Indian Band, who have been working through a feasibility study with McFarland Marceau Architects. The feasibility study of this is to be complete later this month.

There have been public meetings in my area, Kelowna West, as a part of that. There are about 100 students from K to12 that travel by bus on a daily basis. It's a little over an hour and 15 minutes from end to end. So for some of those kindergarten or younger years, this is an important possibility for them. As well, there are a number, almost exceeding that — a couple of hundred — going to school district 23 in the North Okanagan.

[3:25 p.m.]

My question to the minister. This is a unique project that presents an opportunity to reduce transportation significantly, for both school districts 22 and 23. More importantly, I just wanted to know if the consultants had had any discussions with the minister's staff in terms of the feasibility. There are examples, although not many, where there have been provincial funds put into a provincial school where it's shared ability. I just wondered if there has been any further progress on this unique model or concept.

Hon. R. Fleming: Thank you to the member for the question. He happens to ask me, I think, a day after the Okanagan Indian Band met — yesterday, I believe — with both school districts 22 and 23. News travels fast. I do not have a debriefing from that meeting, but that's a good sign — that discussions of the concept are proceeding. What I understand, in terms of what the Okanagan Indian Band would like to see happen, is to have a band-owned and -operated school. It would be administered by them.

The concept is interesting, in terms of catchment students that are non-reserve, non-Indigenous kids forming a significant part of the school population. We do have a few examples, as the member mentioned, where we have kids attending schools in that manner. British Columbia's obligation — what we do in those situations — is to pay reciprocal tuition to the institution. We pay the operating costs, for kids that would otherwise be part of the B.C. public school system, to attend what's essentially an independent First Nations school that's on their reserve lands.

[3:30 p.m.]

We will certainly continue to engage Ottawa — the Department of Indigenous Services Canada, in particular — about this being a priority project. I think what I'll do is check in on districts 22 and 23, find out what the meeting

was like with the Okanagan Indian Band, talk to them as well and see where we're at.

I think it's fair to say there's good work happening between those three parties. We get updated on it. We haven't been updated as recently as maybe the member would like.

B. Stewart: Thanks for that update.

I had a brief visit with another First Nation that is in my riding. Westbank First Nation were here yesterday. And I just want to tell you about a recent equity signing agreement about two weeks ago that was signed in SƏN-SISYUSTƏN community centre with Westbank First Nation and school district 23.

What's significant about this is that this particular agreement has already been going on. But what has been very unique is that, as the Chief mentioned yesterday when we were meeting with the Minister of Advanced Education, they've had three years of significant numbers of First Nation graduates at a 100 percent graduation rate from school district 23.

It is an example of where they've really moved the ball forward. I know Councillor Coble, who was here yesterday, is a prime example of somebody that graduated through that.

Anyway, I do want to continue to encourage you to reach out and support First Nations and education as best you can. Thank you very much for your time today.

T. Shypitka: Thank you for the opportunity to ask a couple of questions. A couple of issues — and the minister probably knows which ones they'll probably be — but more of an update.

Last year the minister announced that funding was secure for Isabella Dicken secondary school and the expansion of that school to get rid of the eight portables. I think eight portables is one of the highest of secondary schools in the province to have that many portables. But at any rate, it was something that was well needed and well received, and we were happy to hear that funding was going to be on the way.

I believe a PDR was being requested of the school district to be completed by October of 2019. And the first question, I guess, to the minister: was that PDR received on October of 2019 or before that, and what kind of back-and-forth did they have in that process?

Hon. R. Fleming: Thank you to the member for the question. As soon as I saw him, I anticipated this. And he's correct. The Isabella Dicken Elementary School business case, or PDR report, has been ongoing for about a year now.

[3:35 p.m.]

We have provided a lot of feedback and talked to local officials, both at the school district and the town council level, about its alignment with the second project, a potential middle school in Fernie. The Fernie middle school needs a site, so they're working on a site identification for that.

If a middle school was secured, it would allow greater grade configuration flexibility there. That would make the elementary addition smaller, and the middle school would be able to cover additional grades of kids. Therefore, you're working towards the goal of portable reduction on the current elementary school from the point of view of two projects.

The secondary school, of course, is the third facility in Fernie and has room to grow for the foreseeable future. We need to get it right in terms of elementary and middle school. I know that the community briefly, and not very favourably, had looked at adding another grade to the high school, because, as I say, there was space there. Having a grade 6-to-12 high school there — I'm not aware of that existing in another community in B.C. It didn't pan very well. I think that all of those factors led to the middle school discussion.

I don't have an update on how close Fernie is around getting a site for the middle school, but I think that's a pretty exciting option for the community to have the capacity that middle school brings. You get things like larger gymnasiums. You get more diversity of programming. Sometimes you get early exposure to trades and equipment-type programming as well. We're working with the school district on both of those projects currently.

T. Shypitka: It's kind of going back and forth with aligning with a middle school or a high school, I guess. It may be adding additional grades and figuring out how this is going to work with Isabella Dicken School and limiting their portables. Was the PDR submitted by school district No. 5 in entirety to address that expansion? Or was it this back and forth of finding things out that the school district actually kind of opted out for the expansion of Isabella Dicken?

Hon. R. Fleming: Thank you to the member for the question. The short answer is no. We have not received the PDR yet for the Isabella Dicken Elementary School addition.

T. Shypitka: All right. Yeah, that's a bit of a…. I mean, it is what it is, right?

What are the negotiations, or what is the talk right now on timelines? I guess they're looking at different options with land purchases and things like that, perhaps, I'm getting. But are there any timelines on how we can bring this all together some time soon?

Hon. R. Fleming: I would say to the member that this spring we're expecting both some movement on the PDR, receiving the PDR, and possibly some more certainty and clarity over the site acquisition.

T. Shypitka: Is the PDR with any specific entity, any specific school? Or is it with Isabella Dicken, or is it with…? I just want to clarify that.

Hon. R. Fleming: The PDR we anticipate receiving shortly is for the elementary school addition project.

T. Shypitka: Well, we'll be looking forward to…. I'll be touching base with my folks back home to see how that's going. Appreciate the ongoing discussion around that. I know it's really much needed there.

I don't want to get into politics about it, but Mount Baker High School is obviously a big concern. I see a smirk from the minister there. Like I said, I don't want to get into the politics of it all, but Mount Baker High School was built in 1949 or somewhere around there. It's over 70 years old now.

Asbestos. It's been a priority with the school district for quite some time, since around 2008, I believe. It was right around that time that the seismic upgrade program came into place, I believe, with the B.C. Liberal government, the former government, and setting those priorities with seismic upgrading.

[3:40 p.m.]

We all understand, and the minister has recognized that from last year's discussion, that it is important to recognize seismic upgrades in the protection of children in the case of a seismic event.

At any rate, I'm just wondering: has the minister been to the school since the last time we discussed?

Hon. R. Fleming: I am aware that this has been the district's high-priority request since at least 2008, as you mentioned, so going on 12 years. We have not asked the district yet to go forward with the PDR on this. As he has mentioned, and we discussed this last year, we have two main programs around capital investment that have a high claim on the $2.8 billion that's in the service plan that we're discussing in the estimates for capital. Close to $1 billion of it is, as the member mentioned, seismic.

If Mount Baker had seismic issues, it may help it get closer to an investment decision. The other is around fast-growing communities. We've already talked a little bit, and I suspect we'll talk more, about districts that are experiencing significant overcrowding issues. Fernie, which is also the district's priority, is the one that we're working on with them right now. So I don't have an answer about the response to the district yet, but we continue to hear the district on Mount Baker.

We have not wanted to give them a false start though. We want to make sure that we're going to be ready to proceed with the project. I understand why this is a priority. This is a building that is getting on in age. It reminds me a little bit of Cowichan Secondary School here on the Island. In that case, it's the highest safety risk rating, structurally, that could cause significant loss of life should it be full when an earthquake strikes.

That building — I think 1949 as well — has been green-lit for replacement. We're working on that. For Mount Baker, we will have to continue to evaluate in light of requests that we receive from all over the province.

T. Shypitka: I'll take it from the answer the minister gave that he hasn't been to Mount Baker since the last time we met and hasn't been there since he's been minister, I believe, because he wasn't there last year. He said he tried to get there, but the doors were locked and it was after hours. But maybe the minister will take us up on the offer to come down.

If the minister would like to see the school virtually, there's actually a really good YouTube video on the state of disrepair of the school. The kids from the drama department put on somewhat of a musical montage of the disrepair of the school. It's actually quite good. That was in 2012, I believe, so it was eight years ago. It's significantly deteriorated since then.

[3:45 p.m.]

I guess the problem is funding priorities with the school district. Like I said before, Mount Baker was a high priority item for such a long time. Isabella Dicken — leapfrogged over that last year for whatever reason. I'm glad that we're starting to see, hopefully, some resolve to the issues in Fernie.

The problem exists where priorities on one hand override priorities on another hand. What I mean by that is the seismic upgrade program that was put in place in around 2008, somewhere around there. The former government had a plan to have those seismic upgrades done by 2025. That was their goal. And I believe the minister is on record saying that they would be ahead of that goal, ahead of that target. I've got a couple of quotes here. Is that still the case? Is seismic upgrading still going to be ahead of that 2025 target, or not?

Hon. R. Fleming: Just to go back to Mount Baker for a second, we will be informing the district very shortly about their grant request for school enhancement program funds — some of the issues around deferred maintenance they're wishing to address. So while they would like to have a replacement school, they're also looking at some of the mechanical issues and improvements that they can do to the school. So we'll have a reply to them very soon on that, and we'll let the member know about that as well. So there could be some investment into Baker that will improve the quality of that school.

In terms of seismic programs in general…. I expect the critic will ask a number of questions about this as well, but just to give him an idea about the progress we've been making, we have 41 seismic upgrade projects. Some of them are replacement schools. For some of them, there are significant upgrades underway right now. We're mov-

ing three times faster than the previous government on the seismic programs, so we have picked up the pace. We're doing that in communities like Richmond, for example, that had only had one seismic upgrade completed since 2002. We assumed office and got projects out the door beginning in September 2017, and we now have eight projects underway. There's an eightfold increase, if you will, in Richmond. So we're getting at the backlog of projects.

Just to give the member an idea of the scale of investment over the service plan that we're debating right now, it's close to $1 billion for seismic infrastructure. The last service plan of the previous government was about $300 million over the same time period. So more than triple the investment going into seismic upgrades. The 41 projects that I mentioned represent over $900 million of seismic approvals that we've done. Most importantly, it represents 25,000 safe student spaces. So about 25,000 students who are currently studying in seismically unsafe facilities are on their way to transitioning into new, seismically safe facilities.

T. Shypitka: Well, that is encouraging, to say the least — three times faster than the former government. So when the former government put out a goal, a target, for 2025 to have the seismic upgrading completed…. I believe it was 2025.

[3:50 p.m.]

I'll go back to my question that I asked the last time. I don't think I got a response on that. Is this government poised to be ahead of that target of 2025? Or are they on track to meet it? Or are they going to be behind it?

Hon. R. Fleming: Well, let me say this as gently as possible. I don't think anyone put any stock on…. Certainly, it was more of a political announcement around 2025 previously. We have changes to the building code that have been ongoing, as well, that have added projects to the list since that time.

I think that the most important thing for us, as a ministry, is to support projects as quickly as possible. We've demonstrated that in the last 2½ years. So before we produce a timeline that's…. In order to avoid a timeline that's completely unrealistic, we're just going to keep building the momentum on the seismic upgrades that we have right now.

I think what the member will find, in consulting districts that have considerable seismic issues, is that they appreciate that we have been able to support projects that they had asked for, for years and years, and get to them much quicker.

T. Shypitka: So I guess the answer is: 2025, there was no stock in that. Nobody really believed that to be true. This government is not believing it to be true. So I'm thinking that the timelines are beyond 2025, from the response. This becomes a problem, once again, for projects like Mount Baker, because they were sidelined because of the seismic upgrade initiative set by the previous government. Now we're hearing that those timelines may be beyond what the former government slated as their target end date, and so that pushes projects like Mount Baker further down the rung.

At some point, the life expiry date of a school is going to reach a certain melting point where the priority of seismic upgrades will have to come second. I guess the question to the minister is: where would that point be with Mount Baker where they would have to ignore the priorities of seismic upgrading and get to work on Mount Baker School?

To secure funding for a project like that is going to take some time; it'll take some years. We're looking at a simple expansion of an elementary school that last year we thought was going to be shovels in the ground by 2021 by the minister's own estimates. Now we're looking at a simple project like that being delayed.

For a project like Mount Baker…. It's reaching 75 years and a deteriorating state and the ongoing priority-setting of seismic upgrading. What would the minister think would be a rational expectation for when Mount Baker should be addressed?

Hon. R. Fleming: Thank you to the member for the question. There's a fair bit in it, but I think just in general, I want to reiterate that the seismic safety of kids is of paramount importance to the ministry and to government. We need to continue to focus considerable resources on making sure that kids and teachers and all those who work in a school building are going to be safe. It's a public building. It needs to withstand an earthquake.

[3:55 p.m.]

We work with our federal counterparts who have designed the building codes and continue to refine them. We benefit by having a lot of experienced people here in the engineering profession in British Columbia that do world-leading research on how to strengthen buildings. We have a huge number of projects underway, and we learn from them. So I think the experience in B.C. — getting good at seismic projects.

As I say, we've already announced and proceeded with 41. There will be more announced in the very near future. It helps us to get to the light at the end of the tunnel more quickly.

We also come up against some constraints around responding to growth. You look at a community like Fernie — a wonderful community, a burgeoning, diversified economy. Their ski industry is strong. Their ability to respond to the shifting demographics and the number of kids in that town was constrained by decisions that were not good decisions, quite frankly, in the early- and mid-2000s in Fernie. Two school sites were sold. Now we're looking for land to build additional capacity that's

needed in Fernie. So these are the kinds of conditions that we have inherited.

Unrealistic timelines. I think it was 2030, by the way, in Vancouver. It wasn't just strictly 2025. At the time when they were announced in 2012, maybe somebody sincerely believed it would be done in 13 years. But what we saw in terms of the rate of investment is that there's no way that it could have been. If they had been moving three times faster from 2012 onwards, as our government has, we'd be in a much, much better place today, to be sure.

I have to say that we have a significant capital budget here. It's been increased every year since we came to office. It was increased 65 percent in the first budget year. That allows us to deliver on more projects everywhere in British Columbia. We have in excess of 80 projects ongoing in British Columbia today. That is a huge renaissance of school construction and investment in British Columbia. It's creating jobs. It's building schools in fast-growing communities, and it's making schools safe in other communities in B.C.

T. Shypitka: Well, the minister mentioned something about a school enhancement fund for Mount Baker or some project. I'm not aware, but maybe the minister can tell me a little bit more about that. I know there was a $382,000 emergency request for Mount Baker for the music and drama room, which was denied, I believe, in 2018. Maybe that's where this enhancement fund is coming from or not, but maybe the minister can shed some light on that.

Hon. R. Fleming: I believe the request is for a mechanical upgrade of the mechanical systems in Mount Baker for the school enhancement program currently.

T. Shypitka: I've got no other questions other than just maybe extending an invitation to the minister to come down to Cranbrook to take a look at Mount Baker High School. I know that he doesn't want to look at the…. Well, I think he would be entertained by it. I'll send you the link. It's actually quite good. But come down and actually take a look at the state of disrepair. It really is…. The minister touched on health and safety, and that's a priority. That's exactly what I'm talking about.

Health and safety is a major issue at Mount Baker High School. He'll see it firsthand if he comes down. He'll have to cross those nice rainbow-coloured crosswalks that he went across last year that he made note of. The doors will be open. I will be there, and we'll welcome the minister. I hope that he takes us up on the offer.

S. Gibson: Good to see you again, Minister. I appreciate this opportunity.

These are three items that have come across my desk, and people have alerted me to them. Probably you and your staff already know about them, but it may be a way to kind of bring it to the top of your attention, if I may put it that way.

Abbotsford is really the beneficiary of the kind of push out from Metro, as you know — a big push into my riding of Abbotsford-Mission and, of course, beyond into Chilliwack. We have an Eagle Mountain area that I think is already in plan, but it's still a couple of years off.

The school, as I understand it, is to be built for a capacity of 300 students. I'm advised that if the school is built when it is planned, which I think is two years out, the population will be in excess of 450, which would be highly problematic given that the school is really in a tight residential area. There are no major arteries nearby, so you're going to see horrendous traffic issues.

[4:00 p.m.]

It would be nice to get that school up and running in a more accelerated basis, and I'm wondering if I could ask about how that is progressing.

Hon. R. Fleming: Thank you to the member for the question. Just by way of an update, Eagle Mountain elementary is under design procurement right now. The procurement is for a 460-seat elementary school, so room for growth there.

S. Gibson: Auguston is another area that is geographically discrete. If you care to look at the maps growing the development — again, in my riding, Abbotsford-Mission — it's an area that's kind of isolated from the urban area. It was approved some years ago. The housing is going in dramatically. My understanding is that for Auguston, the district would be pretty pleased to be allowed to add an extension to the school. I'm not sure whether that's hit your radar or not, Minister, but I'd be interested in if you or your staff have anything to say about Auguston Traditional School.

Hon. R. Fleming: Thank you to the member for the question. We're aware of the request from the district for an addition to Auguston School. We're reviewing that request now.

S. Gibson: The last item related to my colleague here asking about seismic. Always these huge, monstrous expenses to do seismic, and I'm aware of that. I was involved, with the previous government, looking at some of the huge plans. Minister, you've alerted us to that.

We have a traditional school modality in Abbotsford which creates feeder schools. We have three elementary schools, and they feed to a high school and a middle school — Abbotsford Traditional. It goes way back, even to a separate community called Clearbrook, which was a part of Matsqui — a little history lesson here. Today the seismic upgrade is actually affecting the parents' confidence in whether they want to send their kids to the school. This

is what I'm hearing from parents — that there are some issues there.

I'm wondering whether this is something that's come to your radar and whether this is in the long-term plan that you have mentioned, or preferably a short-term plan, for seismic upgrades for Abbotsford Middle and Secondary traditional schools.

[4:05 p.m.]

Hon. R. Fleming: Abbotsford Traditional Secondary School has the support of the ministry to go forward with the business case development, and they're doing that right now. We fully support that. We want to continue to see the district consulting with parents on what they'd like to see from that project. The funds for it will be under the seismic mitigation program. The business case will determine what the definition of that project looks like — how much of it is replaced or braced, those sorts of details in terms of the engineering specifications.

Yeah, our staff is working very closely with the district on this project. We'll look forward to getting the business case from Abbotsford district, and we'll have more to share with the member when we do.

S. Gibson: I just want to thank the minister. I appreciate the consideration, and on behalf of my residents of Abbotsford, thank you so much.

D. Ashton: Minister, just quickly, I come from the throbbing metropolis of Trout Creek, with a wonderful little school. And I would like to thank the minister and ministry again for ensuring, at this point in time, that it is able to continue to function the way it always has. After graduating from there, I got to move up to the high school in Summerland and had an opportunity to finish my academia, school, in Summerland. When I arrived in Summerland, I played basketball and gymnastics.

Minister, again I want to thank you for being incredibly receptive. I know, in our discussions about opportunities in Summerland in the future — not only with the school board but with the municipality and another entity of government — of an opportunity that's been presented of a chance to not only replace the gymnasium but also make a good centre for community use in a position close to the school.

Minister, it's more of an opportunity today just to say thank you — I know that you're aware of it — and to be here to reinforce that there is a lot of effort in the community, not only through the school district but also the municipality and another entity of government to try and create something there. I would just ask that, through yourself and through the ministry, you keep an eye on what's going on and, hopefully, be able to work with those entities. Everybody is going to have skin in the game, and I think it'll be a very, very good project not only for the community but also for your ministry to show that there are opportunities when various levels of government work together.

Hon. R. Fleming: Thank you to the member for the comments. I will give him a one-day scoop on something which is great. We were going to invite his school district to come forward with a business case for the new and expanded gymnasium that has been the number one priority for that district for a long time.

I also want to commend, on the record, the school district. I know that the member spends a lot of time with the school communities there. He's been a big supporter of francophone education, as well, in Penticton and has been helpful to us as a government in responding to some of our obligations under the Supreme Court decision, which went against the previous government, to find francophone school sites in communities across British Columbia to uphold their constitutional rights to school instruction in French.

[4:10 p.m.]

It was a pleasure to be in his community in January, a couple of months ago, and help, through the ministry, purchase for the francophone school district, the provincewide school district, a no-longer-in-use school from the majority district, from the Okanagan-Skaha district. In talking with the district chair and administrators of the district, I knew full well that the money we were using to purchase that school and transfer it to the francophone school district would be used for this project. They have a high degree of autonomy over the money that they've received, which is great.

We will, as of tomorrow, be able to instruct them to begin working on a business case for that project. I know it's going to be a fantastic thing for the community. I've talked to the mayor of Summerland. She's very interested in bringing other possibilities around child care, MCFD and community use to promote healthy living, mental wellness programming and all those sorts of things, if I'm not mistaken, and that sounds fantastic.

D. Ashton: I would just like to thank, at this point in time, the school superintendent, who's retiring. I would like to thank her for her efforts to ensure that the children, the kids who have come through under her auspices, are heading in the right direction. There's a new superintendent that has been hired. I know the gentleman, and I know that he will do an incredible job.

I would also like to thank Her Worship, Mayor Boot, for ensuring that these levels of government are all working together. Everybody, as I said earlier, will have some skin in the game and have an opportunity to really make a difference with what, hopefully, will be coming down the pipe in a construction phase once the business case is presented and is viable and ensures that it's going to work. It will make a huge difference in the community.

I would also, at this point in time, like to thank not only

the minister for his efforts in the past and being very supportive on what you had mentioned about, but Minister, also your staff. It's always nice to be so well received and to have the opportunity, as a representative from that area, to be able to discuss not only with yourself, but also with staff, to ensure that we can keep everything on an even keel and go in the right direction.

I'm leaving the politics, purposely, out of it. As I've said all the way along, this is always about the kids. I just want to say thank you to you and the ministry.

The Chair: Members, we will take a ten-minute recess.

The committee recessed from 4:12 p.m. to 4:24 p.m.

[M. Dean in the chair.]

N. Letnick: It's good to be back in estimates with the Minister of Education. I don't think it will be any surprise to the minister when I bring up a couple of specific topics.

[4:25 p.m.]

First of all, of course, I would like to reiterate a thank-you on behalf of the member for Kelowna-Mission and myself and, of course, the member for Kelowna West for the investments that the people of British Columbia have made in our Central Okanagan region: the schools in West Kelowna, in Kelowna, and, of course, the jewel that's being built right now in Lake Country. It's much appreciated, and I look forward to, potentially, a ribbon cutting of that school in Lake Country very soon. Should the minister see it fit to invite me to that, I'd be happy to attend and celebrate along with all the people in the district of Lake Country.

That being the past and the current, I am looking forward, along with the member for Kelowna-Mission, to, perhaps, some advance word — like the minister just recently gave to the member for Penticton — some good news on the issue of schools in his area. In particular, the francophone school. That's something the minister has been working on for some time, and I congratulate the minister and government for advancing that. I would say [French was spoken]. Congratulations, on behalf of all the people that speak French or want to speak French in the province of British Columbia, on that advancement.

Looking towards the future, I would like to bring the whole issue together of the area in the Central Okanagan in Glenmore as well as Rutland. If I can first ask the question on the Glenmore side. I'm seeing the minister wasn't ready for that one, because I didn't tell him in advance it was coming.

The road in Glenmore happens to be the boundary between the Kelowna West riding and the Kelowna–Lake Country riding. The school district has, for some time, been talking about schools — a high school, potentially, in the Glenmore area and also, perhaps, a new elementary or middle school there. Can the minister and his staff please take a moment to confer and then let me know what the situation is regarding those schools? Where are they in the progress?

[4:30 p.m.]

[R. Leonard in the chair.]

The Chair: Minister.

Hon. R. Fleming: Thank you, Chair. Welcome to our proceedings.

Thank you to the member for the question. One of his colleagues was in a little earlier this afternoon, and I was happy to update him on the new Westside Secondary School, which was school district 23's number one priority.

We are working actively with the district on a site acquisition. While we're acquiring land, though, we did approve the concept plan for that. We're anticipating the district will be completing that concept plan soon. This will obviously be a new secondary school at a price tag, typically, in excess of $75 million, so it'll be a significant project. It'll help alleviate overcrowding in Boucherie secondary and help students in that part of the school district.

Having said that, the Glenmore project, which is the district's number two priority, also a new secondary school project, is something that we recognize the need for. We have been in discussions with the school district about it, but at this point in time, what we're working with the district on is getting Westside to move forward. So the concept plan will become a business case, which will become a project thereafter, at which time, as I remind members when they ask about additional priorities in the district — and in this case, the case of Glenmore — the number two priority will become the number one priority. It remains in that order.

We're making progress on Westside, getting to an eventual investment — construction, tendering, all of those sorts of things. They're very excited about it. There is a little bit of work to do on the site, but the site isn't holding up the concept plan, which is good. We did…. I wouldn't say unusually, but we were in agreement that they should go ahead and do the detailed planning even in the absence of a confirmed site.

That is good news, though, I want to just say, in terms of getting at Glenmore. We understand the need for it, for sure, but I don't have much of an update for the member at this time beyond what I've just said.

N. Letnick: Thank you, Minister. It's indeed good news. I'm looking forward to another question and, hopefully, another set of even better news from the minister on the one that he knows is coming. That's Rutland Middle School.

Just as a reminder, because I have been reminding successive ministers over the years of the importance of

Rutland Middle School — this is on behalf of myself and the member for Kelowna-Mission, who also represents part of Rutland — the Rutland Middle School is over 72 years old. It has an operating capacity of 425 students. Last year it housed 570 students, with enrolment increasing every year.

Over some years, we've seen enrolment being more or less static, and growth in the community being more or less static, but Rutland is a wonderful community that more and more people are moving to. More and more housing is being built, and, therefore, there's more and more pressure on the facility. The facility, being 72 years old, has really been succumbing to that pressure, to the point that there are now 11 portables on the site, and 44 percent of students attend classes in those portables on a daily basis. Projections are showing that utilization will continue to increase over the next ten years.

My numbers from the school district indicate that they are paying somewhere around $850,000 a year in maintenance of Rutland Middle School, which they estimate, over five years, will be over an excess of $7 million in maintenance in this old school. The latest number that they've received was somewhere in the neighbourhood of $38 million to build a new Rutland middle school. As the minister would know, we have looked in the past at different options — replacing an old elementary school, changing it for a middle school — but that came in just about as close in price as building a new Rutland Middle School.

My question to the minister is: can he do the same thing for the people of Rutland that he just announced for the people of Penticton and announce today, here, that we can move to the next step in Rutland Middle School?

[4:35 p.m.]

Hon. R. Fleming: Thank you to the member for the question, anticipated as it was. He knows that I've been to this school. I have walked the halls. I've seen some of the deficiencies there as a product of age. I know that it has portables on it. And I know it's been a difficult, complicated site and project.

[4:40 p.m.]

Government has gone back and forth. The previous government was looking at an addition at one time. They had authorized a business case to be developed by the school district. I'm thinking it was about 2015. They put a cap on the price of $14 million, which I don't think led to a very successful business case development that anybody was particularly happy with.

They were really at square one when we came into government. They have continued to make this their number one priority. I want to acknowledge that. I think what we're trying to work with the district on and remain in regular communication with them about, in terms of what is the best way forward, is whether an additional site is needed.

It's very tight there. The secondary school that's on the same site will probably need an addition as well. Therefore, it's been an open question. Can you shoehorn a new building there? Would it be better to serve the Rutland area somewhere else? Of course, as the member knows, there's not very much contiguous land that can be assembled in that area, so do you build up? All sorts of questions.

I would say that we're not through those potential options yet. That's where the discussion is at. It's around having a preliminary look at what might be the best type of project there, whether we're back to an addition, which became the district's priority again recently. It's now back as a capital request for a full replacement. We have to get through those issues, for sure. But that's kind of where it remains at this point in time.

N. Letnick: Thank you to the minister for that. The minister has said that the replacement of the Rutland Middle School is now the school district's number one priority. At least, that's what I believe he said. It has been the school's number one priority on the list for many, many years. The question, of course, is: is it now considered the number one priority in a new build, or is it a number one priority on some other list that has no money in the fund?

The minister could answer: is it number one priority in a bucket that there's actually money for it to be funded?

Hon. R. Fleming: Maybe to clarify my own words, it's the district's number one addition request. It is a different bucket from the construction of a new school.

N. Letnick: So it is not in the seismic bucket, in which there's a lot of money for in Vancouver, and it's not in the new schools bucket, in which there is money as well. It is in an addition bucket. Is that a new category, and are there capital funds in that bucket? Or is that bucket really the additional schools bucket?

I'm confused. I thought there were maybe two major categories, which were new schools and seismic, and then not much for everything else. Is this part of the new schools area, or is this some other fund?

[4:45 p.m.]

Hon. R. Fleming: Thank you to the member for the question. He's asked about the seismic, and I think the member said that that only applies to Vancouver. Let's be clear, there are about 30 districts it applies to. It's all over the islands and many parts of the Lower Mainland and in other communities that are judged to be within the seismic risk zone.

What I would say to him, as well, is that, within buckets, new schools and additions are considered similarly. Our government has approved a number of condition-based replacement projects. I've been pleased to announce them. We do have those priorities around seismic. We do have a priority around meeting fast-growing districts where they need new schools.

We have done condition-based replacements for

72-year-old schools. A couple that come to mind are Walnut Park in Smithers, which will be a brand-new school. It was literally falling apart. A new Quesnel Junior Secondary School, which I announced last summer, is underway. We were talking with his colleague, the member from Prince George–Valemount, about Kelly Road Secondary, a replacement school for a school that had really gone beyond the end of its life in that district. There is some of that in the capital plan.

What I can't say for him today.... To be clear, what I mentioned to the member from Penticton is that we're supporting a business case. We didn't announce a project. That project, which flows ministry money from us to the francophone district to the Skaha district, will fund their own local priorities. In a sense, that district will end up paying using what was originally ministry money for the gym expansion. I just want to be clear about that. We didn't make a proper full announcement today.

In terms of the issue at hand around Rutland Middle School, we've still got to get through the complexities. I know that's probably a frustrating answer for the member to hear today. I do appreciate his advocacy over a long period of time. I know this has been a high-priority project for the district for many, many years, certainly a lot longer than the 2½ or so years that I've been here.

I would say that we are getting closer. We have done a little bit of going back and forth — both in the transition from one government to another, but also during our time — about what the best investment is and what's physically possible there. We're just not through those issues yet. When we do get to a project, though, to reference his accurate preamble about building it to the right capacity, it would probably involve a larger school, for certain, so that's an additional layer of complexity about the size of an eventual project there.

[4:50 p.m.]

I'll thank the member for his interest and, hopefully, that is helpful information to him at this time. I'm not sure I have any additional information, but I'll do my level best if he has a follow-up question.

N. Letnick: Thank you to the minister for that answer. I do have one last one then.

If the Rutland Middle School new school/replacement is the number one priority — and it would appear to be — and if that area is funded, which it does also appear to be, there are funds in the new school bucket, as we've been calling it. Does that mean that the replacement of Rutland Middle School would come before any other school in the school district, since they put that as their number one priority after, of course, the new high school in West Kelowna that the minister announced today?

In other words, before any other school in district 23, after West Kelowna, Rutland Middle School is the next one to be funded and built.

Hon. R. Fleming: We started by answering some questions around Glenmore, which was the number one priority project for the district in terms of new schools. In terms of Rutland, we're looking at somewhere between a replacement and an addition project, to be determined.

Generally speaking, the ministry will agree with a school district about what its number one priority is, but there are occasions, maybe, where we disagree a little bit. Or there's an opportunity to proceed more quickly on a project that's lower down on the list for reasons that are opportune at that time.

It's not simply striking off the list and moving down, I wouldn't say. It's based on a pretty careful evaluation and discussions back and forth between district staff and ministry staff about how we might proceed.

S. Sullivan: My question is about one of the most challenging situations in my riding, which is young parents who are not able to find schools for their children, at least schools in the area that they live. I've seen a map recently about the wait-listed schools, and it seems to be all focused on the downtown or areas right around the downtown.

Especially problematic is the lack of the Olympic Village school. We've had quite a few parents doing a lot of lobbying and a lot of media efforts, etc. I've visited and met with them several times. So I just thought I would ask the minister if there was any update.

I, first of all, would like to acknowledge that I think the minister did make a very valiant effort to try to solve the problem by offering to take that on in return for shutting down the Queen Elizabeth Annex. Unfortunately, the school board did not agree. I might note, all of the veterans on the school board voted in favour of it. They saw it as a very good solution. But they didn't have a majority.

I was hoping that the minister could give some kind of update or some sort of signal as to what he was thinking of doing with this very difficult problem.

[4:55 p.m.]

Hon. R. Fleming: Thank you to the member. I appreciate his interest in this project and his thoughtfulness on it, quite frankly. I listened with interest to his comments. I think he was responding to the throne speech the other day.

Of course, this is a constituency issue for him, and I think he expressed some ideas and some thoughts there that I certainly share. What I can say to him is, as recently as last Friday, I had a discussion with the board chair and one of the trustees about reconsidering how we might go forward with a potential new school project at Olympic Village.

Let me back up initially, because what I think his constituents are reacting to mostly is around the boundary catchment review, which can be a stressful time and not unique to Vancouver. In any district, you have growth within a school district or shifting populations, and dis-

tricts need to plan accordingly. There are lots of districts, not just Vancouver, where they won't be able to accommodate students being able to attend the nearest school to them. That's certainly the case here in school district 61.

What I would say, though, is that most districts get in the habit of more frequently adjusting boundary catchments than Vancouver. We don't have a record of the last time they did it, but I think it was at least over a decade ago. Therefore, it comes as a bit of a surprise and a shock to Vancouver, because they're suddenly adjusting a whole bunch of things at once instead of a more gradual boundary adjustment review that might have taken place as the city changed, added housing and densified.

Regardless, that's where Vancouver is at. But I think that's why this is landing as news to a lot of families who have, indeed, moved to apartment-style living in the False Creek area.

Similarly, one of the things that we're really encouraging the Vancouver school board to complete is a long range facilities plan. We sent out instructions last year to districts discouraging them from looking at school closures absolutely, because we didn't want to go through those battles. And we think that….

Vancouver has about 55,000 school seats, and 45,000 of them are currently used. That's a huge excess number of seats, but in a dynamic global city like Vancouver, I don't think any of us would say that in ten or 20 years, it would be impossible to have 55,000 students. They may well fill up those schools again, so you'd want to certainly not dispose of them hastily.

Having said that, we look forward to the LRFP, because the instructions we sent out were that…. The official community plan and all of the other planning documents that city hall produces are, unfortunately, largely done in isolation from the planning that we require of school districts. So we said we want districts to go away and use the LRFP for their own purposes, not just to tick a box as a mandatory thing you must give to the ministry but to make it their own document for use, a far-reaching, visionary document that aligns with planning, building, density trends — those kinds of shifts that are happening in Vancouver.

Otherwise, you have two local levels of government that are not necessarily working in tandem with each other, and that's problematic. So we'll look forward to the LRFP being delivered. Again, it has been at least ten, 12, maybe 15 years since the district has updated their LRFP. It's very much out of date to the urbanization trends of Vancouver, and that's unfortunate. We need something current and better.

What I did discuss…. Back to the discussion I had on Friday with the chair. She asked me if she could report out to her board, so I'm certainly not talking out of school, so to speak. It was very simply a discussion, whether we can look at the Vancouver school board helping us, the Ministry of Education, who has to respond to a Supreme Court lawsuit against the province.

[5:00 p.m.]

The judgment was rendered in 2016. We have to provide French-language instruction for B.C.'s francophone community as a constitutional right, section 23 under the Charter. We're doing that cooperatively with communities. His colleague the member for Penticton and I were discussing just that. We want to make the success we just had in Penticton something that's available in Vancouver as well.

We have spent a year looking at an ideal site for a francophone public school on the west side of Vancouver. That's what the court said our ministry must do. We worked for a year with the Vancouver school board, and the best site we could identify was Queen Elizabeth Annex. Why was it the best site? It was geographic location. It was cost. It's also a school that's underutilized. It has currently 68 students. It was only built for 150. It was an annex overflow school from years and years and years gone by, and it's a seismically unsafe school. So it became an ideal site to deconstruct that school and build a brand-new one.

We would compensate the school district for that, and those funds would be largely unrestricted for the district to invest in other priorities. Olympic Village would be their number one priority, I would presume, because they sent it to the ministry as their number one priority six months ago, in July 2019.

As I've said publicly in the media and to the Chair as recently as last week and I'm pleased to say to you as well, to relay to parents and your constituents, the door is open for that kind of agreement. I think it's good for public education, both French and English, in Vancouver, and I think it would be a way forward to finally get ahead of the densification that you're seeing in False Creek and provide better options for francophone students on the west side of Vancouver.

S. Sullivan: Yeah, it's truly tragic that that decision was made by the school board. It seemed like such a perfect answer to the problem. So I hope there's still some way to get through that.

Another issue that is coming up, in great interest to my constituents, is the Henry Hudson school. Something that has happened just very recently is the announcement of Seȟáḵw, the 11 highrises that will be built — 6,000 units right near Henry Hudson. Interestingly enough, because it's Squamish reserve land, they do not have to abide by any of the municipal processes or provincial laws on speculation tax and foreign buyer tax and that kind of thing, so they can move quickly. There is a concern…. You know, we've got a 100-year-old school that is leaking at high tide — a lot of challenges there.

The school seems to be…. There's worry that the school is being built for pre-Seȟáḵw calculations and also that there will be another major development down the street at Jericho with the Musqueam, Tsleil-Waututh and

Squamish development. I'm just wondering if the minister could reassure me and some of the constituents about the progress of Henry Hudson.

[5:05 p.m.]

Hon. R. Fleming: Thank you to the member for the question. A very good question because we're paying attention to the potential development there and that land transfer and that stated goal by the Squamish development. What I would say, though, today, because we're getting very close to proceeding on Henry Hudson, with the project there….

It started as a seismic upgrade. So we're going to have some good news for the community around that, but the answer isn't to build a 1,000-seat Henry Hudson in anticipation of highrises down the road. I think the answer is for us to monitor and work with and begin conversations with the proponent around their development plans. If they're going to put 11 highrises into that neighbourhood, that community, it seems to me that we have an opportunity to build a vertical school in one of those buildings. I think that's where we would want to move forward and have those kinds of discussions.

We have a real live example of where we're doing that now in Vancouver, around the Cole Harbour school, which is integrated with housing, child care and other services. It's going to be a tall school. It's a vertical school. It's integrated with community centres and other resources around there. So I think we already have a model in another dense part of Vancouver.

We'll certainly watch how development proceeds in the area that he's referencing, but I think the best thing is to keep proceeding with Henry Hudson. We're very close to completing a plan for that project. We'll, of course, advise the member when we get there.

S. Sullivan: I know we're getting a little crunched for time, so I'll just sort of mix a couple of questions into one, if you don't mind.

First of all, about Crosstown School. There was media notification by the former chief planner of the city of Vancouver, who I hired when I was mayor. He was so proud of this new neighbourhood. He moved himself and his family right in, and now he's been informed that his child cannot go to that school. This is just one example of a problem. That school also has issues around street disorder. It is literally blocks away from the Downtown Eastside. It is a real challenge for some of the parents, who are quite concerned. If the minister has any comments on what we could do there.

Also, I'll mention something that…. When I was on city council, we had a developer — actually, it was Concord — that offered to build a school for free and get reimbursed at some point. But the policy of the provincial government at that time, and probably still today, was that they don't work that way. You want to see the whites of their eyes before you start building schools. I know that was an issue we discussed at city council many years ago.

If the minister also has any update on the Cole Harbour school, because that has a big, big impact for my constituents, even though it is now not in my riding. It used to be, a few years ago.

Maybe I'll just leave that bundle of questions that the minister could respond to.

[5:10 p.m.]

Hon. R. Fleming: Thank you to the member. He has compressed a few questions in here. I'll try and answer each and every one of them. I think in relation to the planner that he hired, who has been in the media lately, I appreciate some of the comments he's made. I think he's genuinely concerned about his family but trying to figure out something in terms of a city like Vancouver, around changing our concepts of schools.

One of the suggestions I heard Mr. Toderian speak of was renting a commercial property that's vacant, of which there are some around the area, around Crosstown, which has now got a full kindergarten cohort. It has much smaller grades 3, 4 and 5. They have to cap the kindergarten because those kids will go through subsequent grades, and there'll be a new cohort of kindergarteners, obviously, the following school year. That school is only at 70 percent capacity, but it's moving towards 100. It's because there are fewer grade 3s, 4s and 5s, but that will fill up as the other kids get older.

What I heard him suggest was: "Why wouldn't the VSB look at a temporary lease, even a medium-term lease, at Tinseltown mall or at another area that might be suitable for classroom space and that has outdoor amenities nearby that are publicly owned?" My short response to the member would be: "That's not a ministry decision. That would be the Vancouver school board." We would think that if they want to be innovative and listen to parents who have viable ideas — in this case, Mr. Toderian's idea — by all means, they should look at doing that.

[5:15 p.m.]

We're going to continue to look for a solution at Olympic Village. I don't deny that that project is needed. We want the Vancouver school board to help us. Indeed, so-called majority anglophone school districts like Vancouver were referenced by the judge in the Supreme Court decision — that they had to help the Ministry of Education identify sites and fulfil the constitutional rights of French speakers. So we want to continue to work on that.

I'm not familiar with the Concord Pacific proposal around building a school and being reimbursed, but I think in light of our previous discussion about the Squamish development, we should look at air rights and schools-siting in a highrise and look at doing something different. We're certainly open to that.

The Vancouver Charter exempts the city of Vancouver, unfortunately, I think, from what is called the school site

acquisition charge. Districts that have growth, where they have new units of housing being sold, often have a school site acquisition charge tacked on to the unit price for sale. That accumulates to buy land to provide a school. Vancouver has no such thing. But given that land or, in dense parts of the city, air rights are needed for schools, it's something that Vancouver may want to review with its legal counsel and pursue. It would certainly be helpful in the provision of schools as populations begin to shift.

Finally, I would say about Coal Harbour, for the member's benefit, that we are in design stage for that school right now. Vancouver school board is working with architects, I believe, on that project. The school will be built by September 2023. I'm confident of that because they're in a contractual obligation with B.C. Hydro to have the school open for business and built by no later than September 2023.

It would be nice if it was earlier, and it's possible that it would earlier. That's 3½ years from now; it could be earlier. The city has an interest in the development, so they could certainly permit their own project more quickly. They're part of the housing and child care aspect of that project. But by September 2023, B.C. Hydro needs to begin constructing the substation underneath what will be the former Lord Roberts Annex. So those are tied — Coal Harbour and the decommissioning of Lord Roberts Annex to build the power supply for the West End peninsula.

S. Sullivan: I'm not sure if I have time for another question. Should I…? Okay.

I can't let this one go — the talk of the vertical school. That would be a challenge, would it not? It's reserve land, so that would be federal as well as provincial? Are we talking about a provincial school?

Hon. R. Fleming: I don't know a lot about that development, so I hesitate to hazard guesses about what might happen. But it would not be unprecedented for a lease-type configuration, perhaps, in a building on land like that. Again, I don't know enough about what kind of fee simple strata type of ownership there is. My understanding is that it's not reserve land. It's commercially developed land under the control of a development corporation.

I'm not sure. To be determined, I would say.

D. Davies: I'd like to thank my colleagues that came in. I think there are a few more yet that we'll probably bring in after the constituency break.

[5:20 p.m.]

In September — I think it was around September of 2019 — the Minister of Finance did, basically, an announcement of ministries to cut back. There were some rollbacks. I'm just curious. When that came out, did the Minister of Finance set any savings targets for the Ministry of Education?

Hon. R. Fleming: Thank you to the member for the question. Yes, our ministry, like other ministries, was directed by the Minister of Finance to find savings. We made the decision that we would only look, as a ministry, at discretionary spending. So it had zero impact on money we put into the field, which is the 99.4 percent of the Ministry of Education budget that goes to the 60 school districts and to independent schools. It is not retained in the Ministry of Education.

The types of savings that we found were in areas around ministry discretionary spending, things like reduction of travel, meeting with stakeholders by teleconference, business expense reductions, a reduction in the amount of contracts for professional services that would typically be done in a year. Those were the areas where we were able to find a savings under the direction of the Ministry of Finance.

D. Davies: What was the minister's target for savings for the Ministry of Education?

Hon. R. Fleming: The target was $7.4 million.

D. Davies: Just curious. Now, of course, we're into a new budget coming up that we're discussing here right now. Are there similar targets that are being looked at for this budget — to be looking at going ahead regarding savings?

Hon. R. Fleming: The member will know from the service plan that the $5 million that's targeted is coming from a reduction in the education and corporate services expenditures of the ministry. Again, I want to just repeat that none of it is coming from the field in terms of what we allocate to school districts.

[5:25 p.m.]

D. Davies: A final question around this. Did you hit your target for the last year?

Hon. R. Fleming: What I would say is that we've been successful in reducing costs in the areas that I reported to him — things like reduction of travel, business expenses and reduction in contracting. And then my answer would be that the year is not over yet. We're not at March 31 yet. But we have been successful in reducing the expenses in the manner I've described, in following the direction of the Minister of Finance.

D. Davies: A pretty straightforward question. We're looking at three and a bit weeks left of the fiscal. You're asked to save $7.4 million. Appreciating where it was coming from, you must be able to give us some sort of an idea of roughly where you're at within that target.

Hon. R. Fleming: I would just say to the member: we're

not concerned about missing the target. We're on track to meet it.

D. Davies: All right, I look forward to hearing that once everything's all done. Thank you.

Switching back to our favourite subject: Surrey portables. I started off with talking about them a little bit. I just want to go back. I know that you had talked about some of the commitments that you've made. I mentioned some of the commitments that we've talked about around the Premier and minister promising in 2017 to eliminate all of them in four years, then in 2018, the commitment of reducing 50 percent of them, and then, of course, having me judge you two years later, which is right now, on what you've done.

I just want to get some sort of…. The minister has talked about creating more seats — 7,800, roughly, I think is the number we had. I'm just trying to nail down a timeline that we can give to the residents of Surrey of when we might solidify this. And if the minister is still committed to…. Well, I think it's not going to happen in four years, obviously. But what kind of a commitment around eliminating portables can we give the residents of Surrey?

[5:30 p.m.]

Hon. R. Fleming: What I said earlier is that there are about 7,800 seats under development, under construction or in planning that…. We'll be able to deliver a majority of those seats by September 2022.

I have to say that we have moved incredibly fast in Surrey — in fact, three times faster than the previous government. As I mentioned earlier in the estimates debate with his colleague, if they had approved projects at the rate that our government has in the last 2½ years, we wouldn't even have been talking about portables this afternoon. There would be no portables in Surrey. But they never built the schools that were required.

We have. We have 14 projects underway and nine more in planning stages in Surrey. This is an unprecedented amount of construction activity going on. This is long overdue. Members on both sides of the House that represent Surrey constituencies have enjoyed coming out for ground-breakings, announcements and being in touch with families that have waited a long, long time in Surrey for good news about school construction.

We're going to go away for a break. We might have some more good news for Surrey. We'll come back and be happy to talk about it then.

I think it's really hard to take any instructions from the previous government when it comes to Surrey school construction. Portables doubled under their watch. They never got ahead of the need for schools there. They had lots of photo ops and very little follow through. They failed to get the job done in Surrey.

What we're seeing now is 7,800 student spaces underway there. That's the equivalent of more than 300 portable reduction capacity in Surrey. It's good news. It's why the Surrey Board of Trade, the school district, the mayor's office and some of the development community is applauding the work of this provincial government. Because there's substance behind the announcements we're making. There are actual shovels in the ground. You drive around Surrey today and it's pretty hard to avoid a construction site that is delivering either new schools or additions to schools and delivering thousands of seats along the way. It's great news for Surrey.

I'm sure we'll have an opportunity to canvass it when estimates resume. I move that the committee rise, report progress and ask leave to sit again.

Motion approved.

The committee rose at 5:32 p.m.

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