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3RD SESSION, 37TH PARLIAMENT

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THURSDAY, OCTOBER 31, 2002

The House met at 10:04 a.m.

Prayers.

[1005]

Orders of the Day

Hon. G. Plant: I call debate on Motion 44 standing in my name on the orders of the day.

Motions on Notice

RECOMMENDATIONS OF JUDICIAL JUSTICE COMPENSATION COMMITTEE REPORT

Hon. G. Plant: Mr. Speaker, I move Motion 44 and would like to say a few things about it, if I may.

[That the Legislative Assembly reject four of the recommendations of the Judicial Justice Compensation Committee 2002 report to the Attorney General, as laid before this Assembly May 13, 2002, for reasons outlined in the document entitled *Response to the Judicial Justice Compensation Committee 2002 Report to the Attorney General* filed in this House October 29, 2002, pursuant to section 32.1 (12) of the Provincial Court Act.

(1) The recommendation for a salary increase of 5.5%, which would have paid judicial justices a full-time salary of \$77,935 for the 2003 calendar year, is rejected as unreasonable and unfair. The substitute provision for the salary for judicial justices will be \$73,872 in 2003, a 0% increase over the salary for 2002.

(2) The recommendation for a salary increase of 9%, which would have paid judicial justices a full-time salary of \$84,949 for the 2004 calendar year, is rejected as unreasonable and unfair. The substitute provision for the salary for judicial justices will be \$73,872 in 2004, a 0% increase over the salary for 2003.

(3) The recommendation for a \$1000 Professional Allowance is rejected as unreasonable.

(4) The recommendation that the term of office for judicial justices be raised from 65 to 70 years is rejected as unreasonable.

That the Legislative Assembly accept the remaining recommendations contained in the Judicial Justice Compensation Committee 2002 report to the Attorney General.]

Mr. Speaker: Please proceed.

Hon. G. Plant: The motion is that the Legislative Assembly reject four of the recommendations in the Judicial Justice Compensation Committee 2002 report to the Attorney General, as laid before this assembly May 13, 2002, for reasons outlined in the document entitled *Response to the Judicial Justice Compensation Committee 2002 Report to the Attorney General*, filed in this House October 29, 2002, pursuant to section 32.1(12) of the Provincial Court Act. There are three enumerated subparagraphs of the motion. The response document is a document which I tabled in the House on October 29, and it contains a full explanation

of the reasons behind the government's proposed response, which is summarized, I guess, in the motion before the House.

There are some aspects of this issue that I think are worth giving attention to here now, although I have to say that what I am about to say is there in greater detail in the response document. I'm going to be placing emphasis on one or two points in particular, but I know that all members of the House will have had the opportunity to read the response document and will be taking the entire response document into account as they decide how to respond to the motion that I have made.

One of the aspects of the context of this issue that is particularly important is the independence of the judiciary. Let me say something about that. Judicial independence has been discussed here in this assembly many times, but I think it's worth going over some of the ground in summary again. First, we are talking about a fundamental constitutional principle. It is a fundamental constitutional principle that judges are independent from government, and this government, the government of British Columbia, wants here now to re-emphasize its respect for and its commitment to the principle of judicial independence, both in its substance and in its spirit.

The historical foundations and the fundamental sources of this principle have been examined at length in a number of important Supreme Court of Canada decisions. That examination has included an examination of the relationship between judicial independence and the question of judicial compensation. What we know is that the courts have established that the principle of judicial independence is part of this country's written constitution. We find sources for that in sections 96 to 100 of the Constitution Act, 1867 and also in provisions such as section 11(d) of the Charter of Rights and Freedoms, which guarantees any person charged with an offence the right to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal.

There is more to the jurisprudence of judicial independence. It's not just part of our country's written constitution. It is also an unwritten principle that runs throughout the constitution. It is an important part of who and what we are as a society here in Canada.

[1010]

The Supreme Court of Canada has talked about how judicial independence has three essential conditions. One of them is security of tenure. The second is financial security, and the third is administrative independence. Each of these three components has been the subject of careful analysis by that court.

In the case known as the Provincial Court judge's reference, the Supreme Court of Canada recognized as a constitutional requirement for financial security that judges' remuneration not become the subject of a negotiation process between the judiciary and the government. Instead, it must be established through the use of an independent, objective and effective judicial com-

pensation process. It is just such a process, in this case applied to justices of the peace who perform judicial functions, which has resulted in the committee report we are here considering today.

The people who are the subject of this report — that is to say, justices of the peace who perform judicial functions — are now referred to as judicial justices. Historically, there have been many different groups of justices of the peace. They're all appointed under the Provincial Court Act. The current process is concerned with the people that we now call judicial justices. It's important to understand that these people perform functions that are judicial in nature.

The issue of the extent to which they are entitled to the same extent of independence has itself been the subject of judicial scrutiny in at least one important decision in British Columbia, in October 2000. The result of that decision in October 2000 was that there was a redefinition of the position of JPs to create and define this position we now call a judicial justice position. That was created by amendments to the Provincial Court Act. The intention there was to provide judicial independence to those officials to enable them to perform some of the functions they perform that are, in nature and substance, judicial.

The legislation ensured security of tenure by providing that judicial justices would hold office during good behaviour. Financial security, which is really the issue engaged by the motion before the House today, was ensured by providing for a committee process to set an appropriate level of compensation for this new judicial justice position. Government, therefore, does not determine internally and unilaterally how much judicial justices of the peace are to be paid. Rather, there is a process that must be followed and, in this case, has been followed, which leads to recommendations for what their compensation should be. It is those recommendations from the compensation committee that are before the House here this morning.

There are currently 30 full-time, two part-time and six ad hoc judicial justices in British Columbia, and they do a variety of tasks. We are talking about such things as the issuance of search warrants and the performance of judicial interim release duties, what the public still probably commonly think about as granting or refusing bail. Those two functions in particular are functions that engage the issues of independence that are the reason for the process that leads to the recommendations with respect to compensation as a way to guarantee their financial independence.

[1015]

The Provincial Court Act, which establishes the process that leads to the appointment of a committee, sets out a requirement that the committee consider several factors before making recommendations. These are set out, I believe, in section 32.1(9) of the act, which says this: "In preparing its report and making its recommendations, the committee must consider all of the following: (a) the current financial position of the government; (b) the need to provide reasonable compensation to judicial justices; (c) the need to attract qualified ap-

plicants; (d) the nature of the duties and functions of judicial justices; (e) the laws of British Columbia; (f) any other matter the committee considers relevant."

In accordance with the act, a Judicial Justice Compensation Committee was established on January 1, 2002, to make recommendations with respect to remuneration, benefits and allowances for the three-year period from 2002 to 2004 and, in addition, for the year 2001, the year in which the judicial justice position was created.

It was this report that was tabled for review in the Legislative Assembly on May 13 of this year. The process is this. The Legislative Assembly may, by a resolution passed within 21 sitting days after the date on which the report and recommendations are laid before the Legislative Assembly, do this: (1) resolve to reject one or more of the recommendations made in the report as being unfair or unreasonable; and (2) set the remuneration, allowances or benefits that are to be substituted for the remunerations, allowances or benefits proposed by the rejected recommendations.

The operation of these provisions means that this resolution — that is, the resolution I have brought forward — must be passed by November 5, 2002, as that is the twenty-first sitting day after May 13, 2002. The act also provides that if a recommendation is not rejected by the Legislative Assembly within the time limit, judicial justices are entitled to receive the remuneration, allowances and benefits recommended by the committee beginning on January 1 for the year in respect of which the recommendation was made.

If the Legislative Assembly does resolve to reject a recommendation, then the substituted remuneration, allowance or benefit goes into effect commencing January 1 of the year in respect of which the recommendation was made. In effect, if we do not pass a resolution, then the recommendations take effect by operation of law. However, in this case, I am bringing forward a recommendation that seeks this House to determine to reject one or more of the recommendations made in the report as being unfair or unreasonable and to set remuneration and so on.

There were 13 recommendations of the Judicial Justice Compensation Committee. They are as follows:

1. The salary for 2001 to be increased by 2.5 percent to \$72,070.
2. The salary for 2002 to be increased by 2.5 percent to \$73,872.
3. The salary for 2003 to be increased by 5.5 percent to \$77,935.
4. The salary for 2004 to be increased by 9 percent to \$84,949.
5. No change in the existing pension arrangement for judicial justices.
6. Judicial justices currently receiving 22 days vacation entitlement are to receive 25 days after ten years of service in their position.
7. Ad hoc judicial justices are to be paid according to the formula: annual salary divided by the number of working days, multiplied by 0.8, equals a per-diem allowance.

8. An injury reimbursement program is to be developed for judicial justices.

9. No change in medical, extended health, dental, group, life and air travel insurance for judicial justices.

10. No recommendation respecting travel expenses and chamber days.

11. A professional allowance for judicial justices in the amount of \$1,000 annually on the same terms as the Provincial Court judges' professional allowance.

12. The statutory retirement for judicial justices be raised from 65 to 70 years. That's the retirement age, as it is for judges.

13. The Judicial Justice of the Peace Association — that is, the organization that makes a presentation and recommendations on behalf of the JJPs — be reimbursed in the amount of \$7,377.21 for expenses incurred in the development and presentation of its submission to the committee.

[1020]

Those were the 13 recommendations. The motion before this House proposes that nine of the 13 recommendations be accepted, specifically recommendations Nos. 1 and 2, 5, 6, 7, 8, 9, 10 and 13.

The motion sets out the resolution, the position of government that the recommended salary increase of 5.5 percent for the 2003 calendar year is rejected as unreasonable and unfair. The recommendation for a salary increase of 9 percent, which would have paid judicial justices a full-time salary of \$84,949 for the 2004 calendar year, is rejected as unreasonable and unfair, and there are substitute provisions for salary included and set out in the motion.

In addition, the recommendation for a \$1,000 professional allowance is rejected as unreasonable.

Finally, the recommendation that the term of office for judicial justices be raised from 65 to 70 years is rejected as unreasonable.

The analysis that lies behind the rationale for the position I have just summarized is set out at some length in the response document, and I do not propose to read it all. What I do want to say, in general terms, is this: government values the work of judicial justices of the peace. These people are important actors within a complex justice system. They perform functions that are essential to the smooth operation of a functioning justice system. It is, however, important that government examine the issue of compensation from the perspective of all of the considerations identified in section 32.1 of the act, and as we have read the committee report, we have examined the recommendations of the committee from the perspective of each of those considerations. That is to say we have examined those recommendations from the perspective of the current fiscal situation of government. We have taken into account the need to provide reasonable compensation to judicial justices. We have examined the circumstances, statistics and evidence with respect to the need to attract qualified applicants. We have looked closely at the nature and duties — nature of the functions and duties of judicial justices — and we have also taken

into account the laws of British Columbia more generally.

We think that the net result represented by the resolution which is before the House today is a result that takes those considerations into account and gives appropriate weight to each of them. It's important to point out that while the constitution and the decisions I have briefly referred to — of the Supreme Court of Canada and other courts — have ensured that we have in place a process to determine the compensation for judicial justices of the peace, that process results in the making of recommendations. It is not a process by which a party outside government makes the decision about how much judicial justices of the peace are to be paid.

[1025]

This process, for example, is not binding arbitration. It's not conciliation, it's not mediation, and it's not negotiation. It is a process whereby people independent of government in a committee that is composed in a way that is set out in the statute look at their mandate, look at the issues, look at the evidence and the arguments that are presented, and make recommendations. But at the end of the day, it is the task of this assembly representing the public interest of all British Columbians to do the best it can to understand and reflect upon those recommendations, decide whether or not to accept them and, if not, whether to reject them on the basis that is expressly permitted by the statute and, if so, to substitute additional or different recommendations. That is the process we have followed.

I think it would probably be unwise to attempt to isolate any particular factor as lying behind the rationale that we have as government for recommending the motion that is before the House. We have looked carefully at each of the factors. Each of them has a role to play in the decision we have brought for consideration of the House today. I know members will have read the response document and the committee report and given consideration to these issues, and I am hopeful that having given that considered attention to these issues, the Legislature will support this motion.

Motion approved.

Hon. C. Clark: I call committee stage of Bill 67.

Committee of the Whole House

TRANSPORTATION INVESTMENT ACT (continued)

The House in Committee of the Whole (Section B) on Bill 67; J. Weisbeck in the chair.

The committee met at 10:27 a.m.

The Chair: I call committee on Bill 67, the Transportation Investment Act. When we concluded last day, we had dealt with the entire bill except for section 8, which we stood down.

On section 8 (*continued*).

Hon. J. Reid: There are a number of questions regarding some legal definitions that were asked yesterday. I stated that I would be quite willing to read them into the record, and that's what I'm going to be proceeding to do. I have accumulated the questions from yesterday and have the response, and I will proceed to read that into the record.

There were the questions around the liability between the concessionaire and the government. To add the further clarification that was asked for, if the concessionaire is negligent, the concessionaire bears the liability. If the government is negligent or has been negligent, the government bears the liability.

Government will have a contract with a concessionaire, with standards for everything from construction to maintenance. This will include clear standards requiring that the concessionaire carry liability insurance. Government will be responsible for ensuring that the standards are clear, that the concessionaire is competent, that the concessionaire is complying with the standards and that the insurance is in place. Government should not and will not be responsible for events that are outside of its control. In other words, government will not be another insurer on top of adequate concessionaires' liability insurance.

Examples of the types of government liability are that government would be liable for anything done or omitted by government before a concession agreement — for example, if a preconcession design was negligent. Government would be liable if a concessionaire is not performing an obligation, and the government steps in and performs the obligation negligently. There's liability if government is negligent in the administration of the concession agreement or the act. The key is that the liability must be based on a negligent act or omission by government.

Government will have the ability to intervene but not the obligation to intervene. These are decisions that will be made in each case on the circumstances of the situation.

[1030]

I was asked about definitions and the description of "nuisance." Private nuisance occurs where one owner's land is being used in a way that unreasonably interferes with the use and enjoyment of another's land. In a private setting where this happens, it is open to the impacted landowner to allege nuisance and seek relief. In the case of a concession highway, the Transportation Investment Act provides that from and after the time the highway becomes a concession highway, the government is not liable for nuisance.

With respect to highways, the government is already generally not liable for nuisance. This section is provided to make it clear that in the case of a concession highway, the government is still not liable for nuisance.

A brief description of the rule in *Rylands v. Fletcher*. The rule in *Rylands v. Fletcher* developed from a case in 1868. Mr. Fletcher had coalmines on his property. Mr. Rylands built a reservoir on his property for storing water to use for their mill. Although they used competent

engineers and contractors to construct the reservoir, they inadvertently built it over the old mine shafts. When the reservoir was completed and filled with water, the supports for the old mine shaft gave way and water flowed into the mine.

The rule provides that the person who brings and keeps on his land anything that is likely to do mischief if it escapes must keep it at his peril and is answerable for all damage, which is a natural consequence of its escape. The Transportation Investment Act provides that anything brought on land by the concessionaire is a responsibility of the concessionaire if it escapes, not of the government. For anything that has been stored by the government on any land, including a concession highway, the government remains liable.

With regards to the non-delegable duty, this refers to circumstances where government delegates responsibility, but the legislation is not clear that the liability goes with the responsibility. The concept of non-delegable duty has arisen in the context of contracted maintenance for highways.

In a recent case one of the judges of the B.C. Court of Appeal talked about the law related to highway maintenance in British Columbia. One of the comments was that in the matters of this kind, legislation is better than litigation. In the case of a concession highway, control of the highway, including maintenance and the duty of care, is assigned to the concessionaire.

In keeping with the principle that the government and the concessionaire should each be responsible for their own negligent acts and omissions, the Transportation Investment Act provides that the government is not liable for a non-delegable duty of care for concession highways. In other words, the liability goes with the duty of care to the concessionaire. The concessionaire must discharge that duty or bear the liability. It is the concessionaire or the concessionaire's insurance that must then pay the cost, rather than the taxpayers.

In Ontario the Legislature has a similar provision for Highway 407. It provides that despite any other act or regulation, the Crown in right of Ontario, a minister of the Crown or any ministry shall not have any duty to maintain or keep Highway 407 in repair.

Further to this, there were questions on record with regard to the civil liability review. I'm going to ask that the Attorney General give the response.

Hon. G. Plant: I read with interest the transcript of the debate on these provisions yesterday, and I know there was some reference to the civil liability review. The civil liability review is a project undertaken by my ministry, which is looking — broadly speaking — at the question of whether or not the existing common and statutory law with respect to some matters of civil liability should be reformed. That is a process that has been underway for some time. That review has been underway for some time, and it continues.

[1035]

In relation to some of the issues the minister has referred to in the course of the remarks she's just made, one of those issues is, in fact, the subject of considera-

tion in the context of the civil liability review. That is the issue of non-delegable duty.

The project, the civil liability review project, is a general project. It's not a project that is intended to prevent government from making decisions on a case-by-case basis on particular issues. That is particularly so in the case of this issue, where the government is embarking upon a new policy framework to permit the construction and maintenance of public highways, and in the context of developing that policy framework thinks it is in the public interest to ensure that there is a clear statement in the legislation about respective authorities and responsibilities. Among other things, I think it's helpful for prospective concession applicants or holders to see, in legislation, a clear statement of government's expectations with respect to issues of liability. That allows them, of course, to make decisions about how they intend to organize their affairs to ensure they can manage the risks associated with those liabilities — including, for example, getting insurance in place that will allow them to make good on any claims that arise from the assumption of these risks.

The key point, though, is that the civil liability project is not related to this issue in any specific way. While I'm grateful that the members of the opposition are interested in the civil liability review, I don't think it speaks to the section that's before the House. I think I have to point out that the Transportation Investment Act does not eliminate any liability. It just transfers liability to the person who has authority and control over a concession highway. The liabilities it transfers are those that arise by law and are duties that are placed upon people who have that authority and control. As a member of government, I think it's quite appropriate that if government is seeking to create a policy framework where we are assigning the responsibility for something called a concession highway to the people who will be operating it, we also transfer some of the burden that goes along with that responsibility to operate a concession highway.

I think that's an answer to the issue as it was raised yesterday.

J. MacPhail: Despite the Attorney General's protests that this particular legislation with which the government is proceeding has nothing to do with the civil liability project, it is directly related to the civil liability project that the Attorney General introduced last February. He not only introduced it on line, he made a speech on law reform on February 8 of this year. I will quote from that speech in a moment.

Let me just say that the issues of liability that government faced, as I recall them, often dealt with the Ministry of Transportation and Highways. It is a major part of the liability issues that any government faces. There are other areas where the government faces issues of liability, and those are the areas of the care of children, transportation and forests. As I recall, those are the three major areas of liability, but I'm not a lawyer.

Somehow for the government to stand up and say that their civil liability reform project should not inter-

fere with the specifics of any ministry moving forward on their actions is really to undermine the civil liability reform project. I'm adding the word "reform." There may not be reforms — civil liability project.

[1040]

My point yesterday was and continues to be — and I'll make it from another angle in a moment — that this government is changing the rules around government's liability in the area of non-delegable duty, and they're doing it before completion of the review. People out there who are in the legal business understand that. They understand that the government's moving forward on a major area without completion of the review.

Let me just read from the Attorney General's speech. I'd be happy, Mr. Speaker, to read the entire speech into the record again, but I think I'll just read parts of it. I'm quoting directly from the Attorney General's speech. The date is February 8 of this year. It was a speech that the Attorney General gave on the matter of the law of civil liability.

He said: "In general terms I wish to speak today about the need to revitalize British Columbia's oncestrong tradition respecting law reform. British Columbia has, in the past, been a leader in law reform, but in recent years there has been a loss of focus."

The Attorney General goes on to quote from Mr. Justice Kirby, who was the former chairman of the Australian Law Reform Commission. He says: "Mr. Justice Kirby, former chairman of the Australian Law Reform Commission, expressed the point this way in 1979. 'The business of law reform is not just a technical exercise. It is the business of improving society by improving its laws, practices and procedures. This involves consideration of competing values.'"

The Attorney General then goes on to address the civil liability project directly. "I said that the principles of liability must also take into account three factors that seldom appear in the academic writings or reasons for judgment: predictability, certainty and practicality."

He then goes on to say:

"I tried to make it clear then, and want to make it clear again today, that government does not have a predetermined view on these questions. However, I am convinced that the questions need to be asked and that the time to do so is now.

"To that end, I can advise you today that a discussion paper on possible reforms will be published and circulated to the legal profession and other interested groups within the next month. The Ministry of Attorney General will be actively seeking input on these reforms. We will be inviting the public to review and respond to the discussion paper on our website. The British Columbia bar will be consulted through presentations to and discussions with the Law Society, the B.C. branch of the Canadian Bar Association and some of its subsections and the Trial Lawyers Association.

"Other key stakeholders will also be invited to hear a presentation and discuss the proposals with us. We expect to incorporate some of these proposals into legislation in the spring of 2003. The public discussion and response to these proposals will be critical in

informing the legislative reform process. I earnestly seek your input with respect to potential reforms."

It was from that input that I read yesterday.

When I questioned the Minister of Transportation on who now holds liability, she made it quite clear that there was a huge shift. The government was getting out of the business of liability and was transferring it on to the concessionaire. When I asked the minister, if the concessionaire fails, bankrupts — and there is lots of very recent evidence that that occurs in privatization — who steps up to the plate to be liable, the answer was: "Not the government." So there's a huge shift in liability here on the issues of — just as the Attorney General asked for input — predictability, certainty and practicality.

My point is that this legislation in a key area of liability in this province pre-empts the civil liability project of the Attorney General.

Hon. G. Plant: I am appreciative of the time taken by the member opposite to read into the record some small extracts from a speech I gave. I think probably that was a speech I gave last November, but I know I did speak, also, earlier this year.

[1045]

Let's see if I can just cite the issue a little bit more in an appropriate context. The status quo in British Columbia today is that public highways, speaking colloquially, are maintained and operated by the province of British Columbia. There are, of course, many exceptions to that. The general rule is that the highway system as we know it is maintained and operated by the government of British Columbia. The minister, who is the sponsoring minister for this bill, is the minister who has that responsibility. Because of that responsibility and because the Crown owns these roads, over time the courts have developed a body of law around what particular duties arise following from those responsibilities. As the member herself knows, as is clear from her statement, those duties and obligations do in fact lead to litigation. The Ministry of Transportation is one of the ministries of the Crown that has a significant number of claims that lead to settlements or judgments under the Crown Proceeding Act on a year-by-year basis.

None of that will change as a result of this legislation. That is a pretty important point. In British Columbia today there are no concession highways. The entirety of the highway system as we know it today is subject to that body of law that includes this particular area of the law known as the doctrine of non-delegable duty. Nothing in this bill proposes to change that. It is my interest in that issue generally which has led to including it in the civil liability review.

That's the status quo. What government is seeking to do is create a new kind of highway in British Columbia. This is a new policy venture and a new policy framework. Within that new policy framework government is looking at all of the issues that arise, including the issue of the appropriate allocation of risk around the operation and maintenance of a highway

by a private sector operator or someone who becomes a concessionaire. In that context government has made a policy decision with respect to where that risk should be allocated. That particular decision has nothing to do with the civil liability project, because the civil liability project is concerned with public highways. The civil liability project is about the vast, overwhelming majority of public highways that I believe are, in all likelihood, going to continue to be public highways, no matter how successful the minister is in her desire to create a framework that will encourage private sector participation in highway construction, maintenance and operation.

I don't know how many miles of highway there are in British Columbia, but I suspect the number is a pretty big one. I wish the minister well in her endeavours, but no matter how successful she is, I suspect there will be thousands upon thousands of miles of highway in British Columbia that will — next week, next year, five years or ten years from now — still be under the basic domain of the government of British Columbia and subject to all of the general principles of law and liability that exist now and are going to be developed and shaped over time. It is those principles in that context and in any other context that we're looking at.

[1050]

To make the point again, because I think it's important, this is a new policy initiative. It is a new idea for building roads in British Columbia. It's an idea that engages questions around who should be responsible for those roads and for the safety of those roads. Government is of the view that there should be someone responsible for the safety of those roads. Government is of the view that there should be a clear statement of responsibility that in fact engages the operation of some important principles of the common law, and the government is of the view that we should state clearly, so everyone knows, that concession holders will have those responsibilities. They will be responsible for making sure that our highways are safe. That's not just a political or non-binding responsibility. That is a responsibility that these people will have to the citizens of the province, to everyone who drives on these roads.

We're taking that body of law that imposes liability on people and saying to the world that the people who operate concession highways will have those responsibilities. It's actually an interesting question — whether or not we should do a different thing, which is, say, that the doctrine of non-delegable duty should be repealed in its application to the operation of concession highways. I suspect that the member opposite might be concerned about that, but that is the question in the civil liability review.

If the member wants to pursue that question on this floor today by introducing an amendment to subsection (2)(c) of section 8, that would be an interesting discussion. But for now the status quo is that there are circumstances where duties are assumed by people, particularly in the case of governments, where the courts have said that those duties cannot, as a matter of

private law, be delegated away. We're not getting rid of that.

We're saying that the people who operate concession highways should assume those duties, just as they should assume responsibility or liability that might arise by reason of the law of nuisance or the rule in *Rylands v. Fletcher* or other aspects of the law that have developed over time to ensure that people who own or have control over property have a responsibility to those that may suffer injury as a result of something that occurs on that property. There is, in fact, no reform being undertaken to the doctrine of non-delegable duty in the section that is before the House now. All that is being done is that there is a clear statement that those obligations will be the obligations that the concession holder has.

I know the member opposite has an interest in or perhaps an excitement for the prospect of the insolvency of concession operators. She, I think legitimately, is interested to ensure that if we get in this business and go down this road, we do our job as government to make sure that the people who undertake these responsibilities are people who are solvent, who are people of substance, who have the ability to discharge these responsibilities to operate and maintain highways and to make good on claims that may be made against them by reason of their negligence or by reason of their commission of any other number of torts.

[1055]

That's a good question. I think it's a good question to government. It's good that the Minister of Transportation and Highways be required to defend our view about that and to make clear our commitment to ensuring that people who get the right to operate highways under these agreements are, in fact, people who will be able to discharge these obligations. I have every confidence that the minister will be able to do that and do that successfully.

These are not unusual risks, though. I mean, I do think that from time to time, as we dodge the bits of the sky that are apparently falling on our heads as we speak, it's appropriate that we put some of this in context. The larger context is that we live in a world where in fact many people have responsibilities, and we as government contract with people who on a day-to-day basis do things that assume liability for themselves. This is part of the day-to-day business of government.

I think it's an exciting idea to see if we can extend this principle to the operation and maintenance of highways by finding some private sector people who can help us build, reform, improve, construct and maintain the transportation infrastructure of the province. In this context, I think it's also appropriate that we set out clearly, in language that I accept looks pretty legalistic but I think is also quite effective, the scope of the responsibilities that will be undertaken by the people who may want to become concessionaires.

We're not reforming the law of civil liability in this act. There's nothing in this that reforms or changes the law of civil liability. All this does is state clearly an effective assignment of those obligations from govern-

ment to a concession holder. I am grateful for the member's interest in the civil liability review, but in my respectful view, this review is not a part of the issue raised by section 8.

J. MacPhail: The Attorney General's sincerity in his civil liability project will be judged by his colleagues, so I leave that up to the people with whom he promised consultation and whom he promised that he wouldn't pre-empt the discussion around civil liability in this province. It was interesting to note that the Attorney General tried to say that the changes we're discussing here today are ideas, that they're new initiatives, that they're ideas that will be interesting and are.... He didn't say this, but he was intimating that we are breaking new ground by the method by which we are going to build highways and who is going to be responsible for that and who is responsible for the liability in the building, operating and tolling of those highways.

Well, it isn't an idea. We're passing legislation. In a couple of minutes 76 MLAs will stand up and say aye, aye, sir, for this change in civil liability — the government getting out of the business of civil liability — and two people will stand up and say: "No. We object to this on various levels." It's not an idea. It's not an interesting intellectual discussion we're having here. It's a major change by government that's enforced by law. So have at it.

The civil liability project will be judged on the sincerity based on this legislation proceeding without final discussion around the civil liability project. The new law does change liability in this province. It's not an interesting concept. It's a legal change.

Let me give one other example of where such changes have occurred. That is where the then mayor of Vancouver, now the Premier, changed the liability around the Building Code as it applies to leaky condos. In fact, liability was changed completely, by law, and people with leaky condos in Vancouver were out of luck. Why were they out of luck? Because the builders — that sort of responsible group that were insured, bonded and had liability — went out of business. Substitute condo builders with concessionaires, and you have exactly the same situation where people are out of luck.

So it isn't an interesting discussion. It's certainly esoteric from the point of view of the government to somehow suggest that we're just having a debate here. We're not having a debate. We're passing legislation. My colleague and I will be voting against this, but before we do, we also need to have a question answered by the minister about the Occupiers Liability Act that I put to the minister yesterday.

[1100]

Hon. J. Reid: I believe I did address this last night, but just in review, the ombudsman raised a concern with us with regard to the consultation we did around this act regarding the Occupiers Liability Act. The change to the wording was in response to the comments received by the ombudsman. The Occupiers Liability Act exemption has been interpreted by the

courts, very narrowly, for government. The ombudsman was concerned that the courts may interpret the exemption more generously for concessionaires. We have therefore redrafted the section to make it clear that the narrower exemption applies to concessionaires on concession highways.

J. MacPhail: How does that jibe with section 8(1) of the Occupiers Liability Act?

Hon. J. Reid: The concessionaire will stand in the same position as the Crown.

[1105]

Section 8 approved on the following division:

YEAS — 59

Falcon	Coell	Hogg
L. Reid	Halsey-Brandt	Hawkins
Whittred	J. Reid	Bruce
van Dongen	Barisoff	Nettleton
Roddick	Wilson	Lee
Thorpe	Murray	Plant
Collins	Clark	Bond
de Jong	Abbott	Neufeld
Coleman	Chong	Penner
Jarvis	Anderson	Orr
Harris	Nuraney	Belsey
Bell	Long	Mayencourt
Johnston	Bennett	Hayer
Christensen	Krueger	McMahon
Bray	Les	Nijjar
Bhullar	Wong	Bloy
MacKay	Cobb	K. Stewart
Visser	Brice	Sultan
Hamilton	Sahota	Hawes
Manhas		Hunter

NAYS — 2

MacPhail	Kwan
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The Chair: Just to reaffirm, sections 9 through 42 have passed.

[1110]

Title approved.

Hon. J. Reid: Mr. Chair, I rise and report the bill complete without amendment.

Motion approved.

The committee rose at 11:10 a.m.

The House resumed; Mr. Speaker in the chair.

Report and Third Reading of Bills

J. Weisbeck: The committee reports Bill 67 complete without amendment.

Mr. Speaker: When shall the bill be read a third time?

Hon. J. Reid: Now, Mr. Speaker.

Mr. Speaker: The Leader of the Opposition on third reading.

J. MacPhail: You need to call a vote, do you, Mr. Speaker?

Mr. Speaker: We'll call the vote, and then you wish to speak.

You've heard the motion. The question is third reading of Bill 67.

J. MacPhail: I'd like to make an amendment to the motion. I'll table that with the Speaker now.

Mr. Speaker: Please proceed.

J. MacPhail: The amendment to the motion moved by me and seconded by the member for Vancouver-Mount Pleasant is: "I move that the motion for third reading of Bill 67 be amended by deleting the word 'now' and substituting therefore the words 'six months hence.'"

Mr. Speaker: The amendment is in order. Please proceed.

On the amendment.

J. MacPhail: From the debate we've had on this bill, it is clear that there's absolutely no pressing need for this legislation now. In fact, the Attorney General tried to turn it into that it was an interesting concept that we were debating right now. He made it clear that this is going to be action the government will be taking in the future. He spent quite a bit of time trying to ease our concerns — that we should not worry at all because this is just an idea the government's proceeding with and that we should all just take a pill and relax. I am paraphrasing, of course.

The Minister of Transportation, in releasing her consultation paper called *Creating Opportunities for Expanding Transportation Infrastructure*, stated that the discussion paper, the draft document, would be updated this fall and that public input to this document would be summarized and made public. None of that has happened to date. In fact, there's no prospect, in regular phone calls to her ministry, that that's about to come in the near future. The Minister of Transportation has been unable to provide this House with any evidence or documentation of the public consultation process.

The Minister of Transportation has also been unable to substantiate her claim to wide consultation and to listening to those who have concerns about the expansion of toll highways and privatization of those toll highways. For the record, when she travels the province and delivers speeches about how much money has been sucked out of her ministry to pay for tax cuts, I would expect that that doesn't qualify as consultation.

For those who may think it's just a bunch of naysayers who are concerned about this, the Business Council of British Columbia has put forward a very thoughtful document about the government's initiative in this area, with a whole bunch of red flags in the area. With these changes in liability that off-load all responsibility for liability onto the concessionaires, I expect the potential concessionaires have huge concerns as well.

[1115]

The bill was not substantively changed from the bill introduced in the spring, and this gives further evidence to the fact that public consultation was not considered when the bill was reintroduced last week. The research we have been able to glean in terms of those actually making presentations to the consultation was, at best, advising the government to proceed extremely cautiously and to do more consultation before proceeding. That was what we could glean from those who tabled their documents publicly, as well as to the minister.

The bill that we now have just passed but have an opportunity to reconsider and to allow for further consultation dramatically changes the government's liability when it comes to privately built and operated toll highways. It does so in sections 6 and 8, and in spite of the fact that the Attorney General says those sections have nothing to do with this civil liability project, he's...

Interjection.

J. MacPhail: Well, I said I would let others judge that, Mr. Speaker, and I'm sure they'll judge him accordingly.

The Attorney General has yet to complete his review of civil liability law in British Columbia, and the result is that this bill changes the nature of civil liability law and does so on an ad hoc basis. Not only was there no meaningful consultation with this bill, but now there is no apparent need for the Attorney General to conclude his consultations.

The Minister of Transportation, with the passage of this bill — if it goes through — is redefining the very basis of tort law in British Columbia. As such, the bill does not fit in with the overarching goal as articulated by the Attorney General in relation to civil liability. This legislation, once passed, presupposes the actions the Attorney General may take at a future date in relation to civil liability and, in so doing, creates two classes of litigants: those who can seek damage against the Crown for its actions or inactions and those who cannot. It is a very, very important issue facing this government right now. Two classes of litigants are being created by this legislation.

This bill also challenges the decisions of the Supreme Court of Canada in relation to the non-delegable duty doctrine and does so without legal certainty, without consultation with the provincial bar and in the absence of any policy articulated by the Attorney General.

Further, the minister has been unable or unwilling to provide real examples of private highway projects that would be facilitated by this act. As such, it seems premature to pass the bill now when there has been no discussion of the projects which should be built, let alone what projects should be designed, built and operated by a private corporation. That is the public debate that must be had and that was promised by the Minister of Transportation.

For these reasons, the most appropriate time to pass the bill would be after the minister has completed and released her public consultation on private toll highways, after the Attorney General has completed and released his consultations and review of civil liability law in this province, and once the government has moved from its wish list to concrete and very real proposals for private toll highways in this province. It does seem that this motion gives the opportunity for Liberal MLAs who will be directly affected by this legislation to go back to their constituents and complete the duty, the process, of real public consultation around these very, very substantial changes in not only liability law but also the way we pay for our highway infrastructure.

Mr. Speaker: Further debate on the amendment before us? The Minister of Transportation.

Hon. J. Reid: It's been clear from the beginning that this is a piece of enabling legislation. The government does have intentions to move forward and develop its transportation plan, and all the issues that the member raised have been well canvassed in the committee stage debate. For these reasons, I won't be supporting this amendment.

[1120]

Mr. Speaker: The question before us is the amendment, as put forward by the Leader of the Opposition, which reads: "I move that the motion for third reading of Bill 67 be amended by deleting the word 'now' and substituting therefore the words 'six months hence.'"

Amendment negatived on the following division:

[1125]

YEAS — 2

MacPhail

Kwan

NAYS — 58

Falcon

Coell

Hogg

L. Reid

Halsey-Brandt

Hawkins

Whittred	J. Reid	Bruce
van Dongen	Barisoff	Nettleton
Roddick	Wilson	Lee
Thorpe	Murray	Plant
Collins	Clark	Bond
de Jong	Stephens	Abbott
Neufeld	Coleman	Chong
Penner	Jarvis	Anderson
Orr	Harris	Nuraney
Belsey	Bell	Long
Mayencourt	Johnston	Bennett
Hayer	Christensen	Krueger
Bray	Les	Nijjar
Wong	Bloy	MacKay
Cobb	K. Stewart	Visser
Brice	Sultan	Hamilton
Sahota	Hawes	Manhas
	Hunter	

Bill 67, Transportation Investment Act, read a third time and passed on division.

Hon. G. Collins: I call second reading of Bill 70.

Second Reading of Bills

RESIDENTIAL TENANCY ACT

Hon. R. Coleman: A year and a half ago when this government was elected, we had a new-era commitment to modernize the Residential Tenancy Act to protect renters and landlords in plain language that everyone can understand. The act prior to this was a complex act that, after years of amendments and repeals, made even lawyers have difficulty understanding the procedures and processes in and around the act.

In opposition I debated this act in estimates a number of times. I recall a visit with the then Attorney General of British Columbia in 1997 when I bumped into him in the dining room of the Legislative Assembly prior to estimates debates. He said to me: "How long will you be questioning and discussing the Residential Tenancy Act today?" I said: "Probably two to three hours. There are a number of issues in and around it and how things are applied, etc." He said: "Good. I never understood that act when I was in law school, and I don't understand it today."

[1130]

The minister responsible of the day actually didn't understand the piece of legislation that his office was responsible for, and that was not necessarily his fault. The act had morphed over a number of years, with regulatory changes, to the point where people didn't understand it. It created an adversarial relationship between landlord and tenant when it should be a relationship between a landlord and a tenant, a business-like relationship, that benefits both the landlord and

the tenant and stabilizes the investment in the marketplace, so people would be interested in building new residential tenancies.

One of my issues when I used to debate this act was that you had to make it so people felt like there was a decent relationship between the two parties. Without that, you wouldn't get reinvestment in the sector. My concern in 1997 was the concern I have today, which was that we're not building rental housing in British Columbia. That therefore takes us down the road to having a shortage of rental housing, which eventually creates a housing crisis in residential tenancies.

If a crisis like that occurs, it puts pressure on everyone. Government can't build all residential tenancies. Government can't manage all residential tenancies, so the relationship of the marketplace has to be taking place. Last year, when I got elected and was appointed the Solicitor General of the province and given this file, I started the process by holding a number of public consultations with people. I had a consultant go meet with members of the industry.

In addition to that, we put up a plain-language rewrite draft on the Internet so people could give us their input with regard to the act. We received close to 1,500 submissions. Those submissions varied — everything from the issue of pets to the level of damage deposit, and whether there should be any type of formula to decide the base rent, whether there should be no rent control of any kind, whether there should be a different way to handle the arbitration system, whether there should be accountability in the arbitration system — on all the issues in and around tenancies.

We had a consultant meet with landlord and tenant groups, who obtained and brought back those views on how to modernize the act. We compiled the information carefully. We spent time reviewing it and began redrafting an act, which you see before you today. The changes we made tended to do a number of things: (1) provide balance and fairness in what should be a compatible relationship between a landlord and a tenant, balance and fairness so that the tenancy is good and people are happy, so that they're comfortable in their residence and have a relationship with their landlord that makes sense; (2) clearly outline the responsibility and obligations of both landlords and tenants so that we can reduce the number of arbitrations, which is currently around 20,000 arbitrations a year, in arguments between the two parties in residential tenancy.

We wanted to strengthen the protection for both landlords and tenants in that relationship, streamline the regulations and help revitalize the investment in the rental housing market in British Columbia. It's a pretty tall order. I'm going to discuss in second reading a number of changes that are taking place in this act. The first one, of course, is the fact that it's in language most people can actually understand. Most people can pick up the Residential Tenancy Act off the Internet today and read it and understand the language it is written in.

As I move forward, I want to acknowledge the work of the Government Caucus Committee on Communities and Safety, who worked with me on this particular piece of legislation through a number of policy discussions and work that was done so that we can bring the act to you today. This is a completion of a new-era commitment, but it's also the completion of the commitment by the Premier in the throne speech that we would introduce a new residential tenancy act in this session of the Legislative Assembly.

The first thing that will take place is that.... In this province, there's been a rent review system, and that rent review system was a system of people we used to refer to as soft rent controls — difficult and onerous as far as the landlord getting the information he had to provide in order to increase the rent in a tenancy. The relationship got to the point where people were always in arbitration over any little dollar, particularly in a couple of forms of tenancy in this province.

The issue we had to deal with was this. Do you not have a system at all of rent fairness and go straight to the market, where you would have an open market to establish rents, or do you have a rent fairness system? That could be where a certain percentage of rent is allowable on an annual basis for landlords to be able to take, if the market permits and if it's necessary to operate the facility; and if they take that, that it not be subject to arbitration so we don't put everybody into this adversarial relationship every time somebody wants to operate their business.

[1135]

We struggled with that. We came to the conclusion — after consulting with the landlord groups, frankly, and with tenant groups — that there had to be some form of rent fairness. We've come up with a formula that we will put into regulation, which will be a percentage of increase that will be allowable to a landlord plus the consumer price index on the basis of a rent increase on an annual basis. Anything above that will have to go if the landlord wants it to. If it's disputed, it can be disputed by arbitration to justify a substantial rent increase over and above that.

As we dealt with that discussion, we also recognized that, at times, the market can be soft or the market can be vibrant, and landlords shouldn't have to be forced in a market to protect their increases in their rents to automatically doing it every year depending on the market. We've allowed that they don't have to take it as they go forward from 2003. They can go forward to 2004 and 2005 and not take it, but they do have the ability to go back a maximum of three years on rent increases without arbitration.

The important part of this is that the carry-forward can only be taken in the three years previous, and anything above that in exceptional circumstances has to go to arbitration. This is good news for both parties, because it takes them both out of a system of conflict. It also puts them into a system where they know what the maximums would be in any given period of time. It also puts them in a system where people can actually plan their lives.

We're confident that the new system will protect renters from high rent increases while allowing landlords, frankly, to realize a return on investment that's sufficient to maintain and enhance rental stock. At the same time — make no mistake — we need new investment in rental housing in British Columbia. We need people to take the risk. We want them to know that when they take the risk, there is a formula that makes sense for them to take that risk. People have to recognize that when somebody takes a risk in housing, they have a mortgage, they have costs, and they have taxes and utilities to pay. They have to be able to manage that product. If they can't, they won't build it, or they will vacate the market, which is good for no one in residential tenancy. Government can't provide all housing. It is not possible. It is expensive, and a relationship with the marketplace is absolutely integral to a long-term housing plan for the province.

There was another issue that was at the top of the list, second to the issue on how we would create an environment of rent fairness and an environment to encourage investment. We heard from a great number of landlords and tenants with regard to the issue of pets in residential tenancies. This is an issue that no one has the right answer to. The challenge for people in residential tenancy is that some people do like pets in their tenancies; others do not. Some people have allergies; others do not. Some people have an aversion to pets and actually want to live in a pet-free building.

In a lengthy discussion with both the landlord and tenant groups, frankly, on both sides there was a level of intransigence. One side said, "It's all pets or not. We don't have a discussion to go into any further there," and on the other side: "We're not taking any pets whatsoever." That's an intransigence over there. So we said: "How can we actually encourage the marketplace?"

After some discussion through the government caucus committee and with people in the industry, we felt that if we could allow for a pet deposit that would encourage landlords to make the decision whether they wanted pets in their residential tenancy — to allow them to have some incentive to maybe take pets if they wanted into their buildings if they hadn't thought about it — that would be a good first step. It's something we could measure a year after the regulations are in place to see what the uptake is in the market and go back and find out whether this is a step that actually brought the issue to the fore so people could understand. At the same time, it would allow the industry time to develop the rules in and around pets in their tenancies, if they choose to take them, so that they could be comfortable.

Now, we also should understand that there are a number of landlords in British Columbia that do allow pets in their tenancies. They have rules around them, and their rules work for them. Through consultation between the groups, I think we'll get to the point where people have an uptake on the allowance of pets in residential tenancies, but at the same time, I think it's impossible for government to dictate the occupancy rela-

tionship of a pet in a residential tenancy to the marketplace.

[1140]

We can't get into a definition of what a pet is. We can't get into a definition of the size of an animal versus not the size of an animal, or into the whole issue in and around the management of that particular form of industry. I think that's a relationship that should be established through a rental agreement between the landlord and tenant. All we can provide, I believe, is that incentive to give them the right to decide and the right to make the decision and to collect the extra half a month if they so wish.

The one thing we've done in this legislation with regards to that incentive is that we're not saying you have to take a deposit for a pet. We're saying you can, and that is to give an incentive to make people wake up and talk about the issue with regards to pet-friendly housing for tenants. At the same time, we have to have the choice available to those who don't want to be in residential tenancies that involve pets.

We left something alone in this particular piece of legislation that one side of the industry would have liked to have seen increased and another side of the industry probably did not, and that is the damage deposit. We've left the damage deposit in this legislation at half a month's rent. We did that for a number of reasons. One, we think some of the changes we've made to the act on inspection and discipline are going to start to have people understand that they're actually in a different relationship than they've been in residential tenancy for the last 15 or 20 years.

What we've done in this legislation is said this: the landlord and the tenant are in a relationship that should be compatible. That relationship of compatibility is: "I want to rent your premises to live in. You own the premises, you pay the mortgage, and you have the costs because you're taking a risk, but you are entitled to have a relationship with me on a rental." But one thing that has been missing in that relationship is the understanding of the responsibility of both parties to the relationship, what fair wear and tear is and how to discipline the marketplace.

This legislation puts in place the requirement for a move-in inspection by the landlord and tenant when they go in and a move-out inspection between the landlord and tenant when they move out. We are going to design the condition report and regulations so they're standard. That inspection report will give the condition of the unit. It sets out a different relationship and allows for actual information as to the state of the unit on move-in and move-out that will take a whole number of arguments, which are always or sometimes editorialized in our arbitration system as to the state of the unit and the relationship on move-in.

I think it's a fundamental change that's important within residential tenancies, having debated this act for five years in opposition and now as the minister. I also know that in jurisdictions where it's been done, they've had some success with it. So I think it's time we tried it here.

In addition, I said that security deposits stay at half a month's rent, but what the industry said to us, and different groups agreed with, was this: in some tenancies there are costs associated with the access and security of the building that should be allowed to take an additional small deposit. So for up to \$100, a tenancy will be allowed to take a deposit for things like garage door openers and specialized keys. If somebody moves out and does not return those things, they can go get them rekeyed and maintain the security of the premises.

In addition to that, when we get into the whole issue in and around damage deposits, there's always been a discussion about: when do I get it back? You can get it back at the time of the inspection, if you come to an agreement with the landlord. But we're asking tenants to do one thing if they want to receive it. We're not asking them to tell us where they're moving to in case there's a situation where they may not want to have public notification of their address, because they may be in an abusive situation or whatever the case may be. We're asking for a forwarding address, because we're saying to landlords: "Within 15 days you have to send the damage deposit back, unless you're going into arbitration. Failure to do that, Mr. Landlord, and you're paying double the damage deposit to the tenant." That's the discipline on the damage deposit side for the landlord. But we're asking the tenants to give us a place so the landlord can send the cheque. It's fair. It's reasonable and, frankly, does not compromise people's other activities in their lives.

[1145]

This response is to the number of tenants who have expressed concern about not having security deposits returned and the lack of enforcement of the Residential Tenancy Act. Landlords have also encouraged us to provide for better and more effective enforcement in the act. That goes both ways, but it's actually the industry that has said to us: "There were disciplines within the previous act, but nobody can find a time when somebody actually charged somebody for breaching the act." Sure, there were arbitrations and discussions, but there were penalties available for unconscionable behaviour within the system, and we intend to make sure we're going to enforce those.

In our consultations we also heard from communities about the difficulties they have evicting tenants who are using rental property for marijuana grow operations, drug labs and other illegal activity. This act allows landlords to evict tenants for illegal activities that have caused or are likely to cause damage to the rental property or affect the safety and well-being of the landlord and other tenants. This is very important. It's a municipal issue from the standpoint of the difficulty that these units can cause within municipalities. It's a safety issue because grow ops, especially, bypass power. They actually steal power from B.C. Hydro, but when they do that, they actually put the entire building at risk. They are tied to organized crime. They affect the whole infrastructure of law enforcement and the ability for us to know that an activity shouldn't be taking place and the residential tenancy should be upheld.

There's another switch in this act, which actually identifies that a landlord can inspect his or her premises once a month with proper notice, 24 hours' notice. They will be allowed to do that inspection without having to get into the argument about an arbitration that they are allowed access or not. That's important because, frankly, the way it's worked in the past, there have been some difficulties with the inspections. Then unconscionable behaviour can take place in the relationship, and illegal activity, and that's just not acceptable to anybody in our society — landlord or tenant. Tenants in buildings don't want to be put at risk by illegal activity. Tenants want a safe, secure home to live in, and they should be entitled to that. The landlord should be entitled to be able to make sure he can provide that housing and have the ability to go and check and make sure that's happening.

The new legislation also requires a tenancy agreement to be in writing and to have standard terms. Terms of a tenancy agreed upon by the landlord and tenant will be enforceable unless the terms are contrary to the act or unconscionable. In other words, you can't go and write a tenancy agreement that has clauses in it that are actually impossible to fulfil or that are unconscionable in the behaviour you're being asked to have in relationship to your residential tenancy. This will make the new Residential Tenancy Act similar to other consumer protection legislation, which is important, I think, as the minister responsible for the consumer transactions in the province.

The terms of the contract agreed to by the parties should be abided by and be enforceable. The new legislation will enhance the enforceability of tenancy agreements, but it goes one step further. If a landlord fails to provide a written tenancy agreement to a tenant upon occupancy of a residential tenancy, there will be a standard-form residential tenancy agreement in regulation, and that will deem to be the residential tenancy agreement if none is signed.

The critical side of this is a movement to understand that there's a number of residential tenancies in the province that haven't been governed or disciplined, and people have been taken advantage of with regards to their tenancies. That's in things like illegal suites, basement suites in residential properties and that sort of thing. Because of the fact that it was an illegal suite, everybody thought: "There is no tenancy agreement. I can sort of deal with you as I see fit." Any tenancy will be deemed to have an agreement of residential tenancy and will be dealt with by the residential tenancy office in the manner of the standard forms of agreement. I think this is important, because it allows for protection of renters and protection of landlords in tenancies where they don't understand their actual responsibilities.

[1150]

This bill also streamlines and shortens the process for eviction on non-payment of rent. It doesn't get into discussions about anything other than that the non-payment of rent is allowed by a tenant in a case where the landlord owes them something. They haven't done something or paid for something, or whatever the case

may be. If the arbitration is just that "I don't want to pay it," there is no arbitration. The tenant is due to pay the rent when the rent is due.

The time limit to apply for review of an arbitrator's decision regarding an eviction for non-payment of rent has also been shortened. Repeated late payment of rent has been added as one of the grounds for landlords to be able to end a tenancy. There's a reason for that. People have to understand that they're in a relationship that's a compatible relationship. The landlord has bills to pay, has mortgages to pay and should be entitled to the rent on the day the rent is due. At the same time, the tenant has to recognize they have that responsibility and that relationship. It's important for both parties to know that and to follow through on that.

The landlord will no longer have to make a separate application for an order of possession. When a tenancy is ended in dispute and goes through an arbitrator, the landlord will be able to request the order of possession at the same time, orally, at the hearing of the tenant's application, and the arbitrator must grant the order.

Rules for service of an order of possession or application for an early-ended tenancy have been changed to make it easier to deal with the service of these documents.

Bill 70 allows for the requirement of post-dated cheques so that the relationship between tenant and landlord can be streamlined. It will require a receipt for any rent paid in cash, and...will be prohibited from charging tenants application and screening fees, from the landlord's perspective. In this province, some people actually use this practice. They have one vacant unit and a tight rental market. They take 15 to 20 applications for one unit, and they charge up to \$50 per application. They give the tenancy to one of the 15 or 20 people who apply, and they keep the \$50 from the rest. That is going to end. When this act and regulations come into force, there will be no screening fees, because they are no longer permitted to charge.

At the same time, they will not be allowed to charge for overnight guests in single-occupancy-room hotels.

Lastly, this bill maintains and improves the arbitration process. A large debate among all of us — landlords, tenants, committees, people in and out of government — about how the arbitration process was or was not working.... Arbitrators will be appointed to term appointments and will be required to comply with rules of procedure, policy guidelines and time limits for decision-making. This, coupled with some other changes contained in this bill, will increase the consistency of decision-making and the quality of the arbitration system. Performance standards will be established with arbitrators. Decisions will be published. The public will gain a knowledge as to how this system works and how they can expect to be treated with regard to this. We will tweak this system to improve it as we go along.

We're confident that this modernized Residential Tenancy Act will improve the residential system and

will make the system more effective, fair and balanced for both landlords and tenants. We're going to continue to work with our stakeholder groups as we develop the regulations and implement this new legislation to ensure that the residential tenancy system in this province serves the needs of both landlords and tenants.

I am proud to be able to bring this legislation to the House, because this is a process that's been ongoing for way too long. The previous government — whether it be legislative pressures or whatever the case may be — promised a plain-language rewrite of this act in 1997. It is now 2002. By the spring of 2003 regulations will be in place, and we will have a new, more balanced, compatible relationship in place between landlords and tenants in this province, which will allow us to move forward to develop new housing stock, to have good relations in landlord and tenancy and to take away the adversarial relationship that exists in this marketplace and should not.

People want secure, safe housing. They want a relationship in that housing that both can understand, one that encourages people to respect each other's rights and respect each other's relationships with regard to their tenancies. I think this is a substantial move forward towards that relationship.

Noting the time, I move adjournment of the debate until the next sitting of the House.

Mr. Speaker: Hon. member, if we could hold that motion for a moment, the member for Bulkley Valley-Stikine seeks the floor.

Point of Order

D. MacKay: I rise on a point of order. I believe I have a conflict of interest in relation to Bill 70. Accordingly, I will withdraw from any debate or any vote on Bill 70.

[1155]

P. Wong: I also rise to declare an interest in the matter before the House. I will absent myself from the debate while Bill 70 is under discussion and from any votes on the bill.

Mr. Speaker: Thank you. The motion on the floor is adjournment of the debate till the next sitting.

Motion approved.

Hon. R. Coleman moved adjournment of the House.

Motion approved.

The House adjourned at 11:56 a.m.