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LIEUTENANT-GOVERNOR  
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**3RD SESSION, 37TH PARLIAMENT**

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Afternoon Sitting

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MONDAY, NOVEMBER 4, 2002

The House met at 2:04 p.m.

### Introductions by Members

**J. MacPhail:** I have two introductions to make. One is that we're joined today by a group of, I think, mostly women, who are the heart and soul of our government. They're the administrative services component representatives of all the people who do the hard, behind-the-scenes work in government. Let me name them, please: Sandi McLean from Victoria, Lori Joaquin from Quesnel, Katie Scott from Victoria, Elaine Bubrick from Coquitlam, Dorothy Barker from Courtenay, Dolly Zawaduk from Kelowna, Russell Katzer from Victoria, Terrence McKenny from Victoria, Peg Orcherton from Victoria, Leslye Nixon from Coquitlam, Joanne Harder from Kamloops, Louise Dunn from Cranbrook, Sue Wilkie from Nelson, Rhonda O'Toole from Fort St. John, Susy Veld from Prince George, Marnie Grafton from Prince George and Rusty Blanes from Terrace. Please say thank you and welcome.

[1405]

My second introduction is from farther away but is still a representative of the public service. Steven Miles from the Queensland Public Sector Union in Australia joins us here today. Would the House please make him welcome. He's accompanied by Bill Harper.

**Hon. G. Halsey-Brandt:** Today in the members' gallery, I would like to acknowledge 11 second- and third-year political science students from Linfield College in McMinnville, Oregon, which is just south of Portland and one of the oldest colleges on the Pacific coast. They're here with their professor, Dr. Dawn Nowacki. I'm very pleased to be meeting them this afternoon as they further their study on British Columbia's political system. Of course, with tomorrow's mid-term elections in the United States, this will certainly give them the opportunity to compare and contrast the two systems. Would the House please make them feel welcome.

**J. Les:** I would like to welcome two people to the House today. The first is Sarah Bonner, who is the managing director of the government caucus. With her is her mother, Sydnie Bonner, joining us in the House today and celebrating her birthday. I'm reliably informed it's her thirty-ninth. Would the House please make them both welcome.

**S. Orr:** I am very pleased today to introduce a person by the name of Marc Owen-Flood. If you recognize the name, his father is the Hon. Dermot Owen-Flood. Marc was the past president of the Victoria Real Estate Board, and he's now the chairman of the government liaison committee. He's also an absolutely fabulous

realtor, and I would like this House to please make him very welcome.

**M. Hunter:** As we approach that important national holiday Remembrance Day, a week from now, it's appropriate that today in the precinct are approximately 50 air cadets from 205 Collishaw Air Cadets in Nanaimo. These are young people who are carrying on a proud military tradition. Will the House please make them welcome.

**J. Kwan:** Visiting us today are two guests from the Tenants Rights Action Coalition, Kris Anderson and Linda Mix. They are strong community advocates for tenants rights and strong advocates for housing rights. They've come to the Legislature today to scrutinize the debate on the Residential Tenancy Act changes and to also, hopefully, express their concern to the minister with respect to the bill.

**D. Chutter:** I would like to introduce to the House today a fellow rancher and the president of the B.C. Cattlemen's Association, Agnes Jackson. Would the House please make her welcome.

[1410]

**Hon. M. de Jong:** The government has embarked on a project over the last year, and I'm pleased today that a number of the individuals who have been involved in that project and made valuable contributions to it are here in the House. I hope the House will indulge me as I list some of them that are present: from Prince George, Mayor Colin Kinsley; Port McNeill, Mayor Gerry Furney; from the Truck Loggers Association, president Rick Jeffery; from the B.C. Chamber of Commerce, president John Winter; from Weldwood of Canada, president and CEO Jeff Hearn; from the B.C. Institute of Agrologists, president Larry Bomford; from Slocan, president and CEO Jim Shepherd; from the Association of Professional Biologists, president Mel Kotyk and executive director Linda Michaluk; from Lignum, chairman Jake Kerr; from the B.C. Cattlemen's Association, president Agnes Jackson; from International Forest Products, president and CEO Duncan Davies and chief forester Ric Slaco; from the Association of B.C. Professional Foresters, president Bill Warner, executive director Van Scofield; from Weyerhaeuser, the VP of B.C. operations, Craig Neeser; from the Federation of B.C. Woodlot Associations, president Chris Cunningham and Brian McNaughton; from Flavelle sawmill, executive vice-president David Gray; from the Western Silviculture Contractors Association, president Chris Akehurst; from Aspen Planers, president Surinder Ghog; from the B.C. Lumber Trade Council, president John Allan; from Mill and Timber Products Ltd., resource manager Hans de Visser; from Canfor, chief forester Ken Higginbotham; from the Council of Forest Industries, president and CEO Ron MacDonald; and from TimberWest Forest Ltd., president

and CEO Paul McElligott. I hope all members will make all of these individuals feel welcome here today.

**Introduction and  
First Reading of Bills**

COMMUNITY CARE  
AND ASSISTED LIVING ACT

Hon. K. Whittred presented a message from Her Honour the Lieutenant-Governor: a bill intituled Community Care and Assisted Living Act.

**Hon. K. Whittred:** I move that Bill 73 be read a first time now.

Motion approved.

**Hon. K. Whittred:** I am pleased today to introduce the Community Care and Assisted Living Act. This legislation replaces Bill 16, which was introduced last April, as part of a consultation process with facility operators, client groups and individuals.

Consultation took place via 11 sessions in six communities, website consultations and written submissions. We listened to British Columbians and heard, first of all, that the current Community Care Facility Act, which dates back to 1969, is outdated, overly prescriptive and complex.

We also heard that the way we are doing things today does not meet the needs of children receiving care in child care settings and of persons in residential care.

We listened to British Columbians about how to make things better. With their input we have a strong bill that streamlines, updates and modernizes the governance of British Columbians' community care and child care, including the significant addition of a new section to address assisted living.

This bill establishes clear distinctions between community care facilities and assisted living residences, and will ensure that the health and safety of those in care is not compromised.

Assisted living is an important element of this government's new-era commitment to meet the needs of B.C.'s growing and aging population by providing an additional 5,000 home and community care spaces by 2006. With this bill we are making a solid step towards meeting those goals.

I now move that Bill 73 be placed on orders of the day for second reading at the next sitting of the House after today.

Bill 73 introduced, read a first time and ordered to be placed on orders of the day for second reading at the next sitting of the House after today.

FOREST AND RANGE PRACTICES ACT

Hon. M. de Jong presented a message from Her Honour the Lieutenant Governor: a bill intituled Forest and Range Practices Act.

**Hon. M. de Jong:** I move that Bill 74 be read a first time now.

Motion approved.

[1415]

**Hon. M. de Jong:** This government was elected on a promise to establish a workable, results-based Forest Practices Code with tough penalties for non-compliance. Today the introduction of Bill 74, the Forest and Range Practices Act, fulfils that promise.

This legislation will enable government to create a forest management system for British Columbia that is light on bureaucracy and focuses on environmental protection. It fulfils our commitment to cut regulation without compromising environmental standards. The act is called the Forest and Range Practices Act. That's because it impacts not only those large licensees. Thanks to the input we received, we've addressed the distinct needs of many smaller operators who work in our forests, including people like ranchers and woodlot licence holders.

B.C.'s forest industry has long laboured under a system that seemed to have more to do with processing paperwork than protecting forest values. This bill changes that. It will set clear standards. Forest licensees, woodlot owners, ranchers and the resource professionals that work with them will decide the best way to achieve those results. They will be accountable for delivering those results, and there will be tough penalties for any that fail.

I'm pleased to advise that the accountability of resource professionals involved in forest and range management will also be enhanced. Subsequent legislation will create a new college of applied biology act. There will be amendments to the Foresters Act and the Agrologists Act.

This legislation is the product of valuable advice that we received through an extensive consultation process earlier this year. In particular, I want to thank Prof. George Hoberg, from the University of British Columbia, and the member for North Island and the members of his committee who took submissions from over 400 individuals and agencies.

We have no intention of turning back the clock. Rather, we are looking to the future, where British Columbia's forest industry is given the opportunity to do what it does best, and that is to find innovative ways to practise sustainable forest management.

Mr. Speaker, I move that the bill be placed on orders of the day for second reading at the next sitting after today.

Bill 74 introduced, read a first time and ordered to be placed on orders of the day for second reading at the next sitting of the House after today.

**Statements  
(Standing Order 25b)**

CONFERENCE ON MENTAL ILLNESS  
AND THE WORKPLACE

**R. Stewart:** Mr. Speaker, last Thursday I was pleased to join the Minister of State for Mental Health at an important conference on clinical depression and anxiety in the workplace. Anxiety disorders and clinical depression combined will affect some 350,000 British Columbians in their lifetimes. Mental illness is the fastest-growing cause of workplace disability. This year it will account for more than 60 percent of all short-term disability claims.

Certainly, one of the most vocal and effective public advocates for this issue is talk-show host Rafe Mair, who spoke eloquently of his own personal fight with clinical depression. Another media personality, Kevin Evans, also added tremendously to the discussion with his personal experience. The Premier, a longtime advocate of mental health issues, spoke passionately about the challenges we face in pushing for greater acceptance of this important workplace health issue and the consequences of not addressing it.

One of the real shames of this outstanding conference, though, was that the president of the BCGEU was a no-show for political reasons. George Heyman had committed to playing an important role as a presenter but apparently cancelled out because of the Premier's presence at the conference. It's truly a shame that politics would be a barrier to working on an important conference such as this, a conference whose main purpose is the welfare of employees, the workers of our community.

[1420]

I want to congratulate the B.C. division of the Canadian Mental Health Association, all of the conference organizers and all the attendees who spent an important day addressing a very important issue. We have to improve the way we deal with mental illness in the workplace and elsewhere in our society. According to some studies, less than 7 percent of the workforce currently living with mental health problems receives adequate treatment. That's a sobering fact. This isn't a political issue — or it shouldn't be. It's a health issue, and we must address it.

ADOPTION AWARENESS

**B. Locke:** November is Adoption Awareness Month. It's a great honour to celebrate with all the families that have been touched by adoption. My family is one of those that has been blessed by adoption. There is no greater joy in anyone's life than their children, and adoption has given my husband and me that incredible gift.

Over 700 older children and young adults in our province are in desperate need of a devoted and stable family, and the Ministry of Children and Family Development is placing its emphasis on the adoption of

these precious children. Each child's situation is unique. Some birth parents make the difficult and unselfish decision to give up their child for adoption, while other children are taken into custody by the Ministry of Children and Family Development.

Many of the children currently waiting for permanent families have suffered abuse and have serious challenges. The Minister of Children and Family Development makes every effort to ensure that the specific needs of each child are complemented by their adoptive family.

You don't have to be wealthy or married or childless to adopt. Adoption is one of the very important ways to support and encourage the healthy development of children. Adoption is about giving, sharing, caring and nurturing and, as I can personally attest to, is a most rewarding experience. During the month of November I encourage everyone to participate in adoption recruitment and awareness events in their communities.

SAFETY OF INTERNATIONAL  
STUDENTS IN B.C.

**L. Mayencourt:** My interest in international student safety has been driven by the senseless attack against Ji-Won Park, a young Korean student who resided in my riding. This talented and outgoing young person is undergoing treatment here in British Columbia, but she will face a lifetime of challenges resulting from this attack. My concern has heightened with other incidents, most recently the murder of Amanda Zhao.

There are currently 60,000 international students in British Columbia. They're here as our guests. They're living here while they access our education system, and they bring much-needed revenue to our private language schools around the province.

As host we have a duty to protect these young people, and no aspect of that duty is more important than their physical safety. British Columbia has a well-deserved reputation as a safe, clean and desirable place to be. Unfortunately, the attacks on Ji-Won and others have brought that excellent reputation into question.

We have a duty to protect these students, to safeguard the safety of these guests to our province, at the same level we provide to everyone else. International students likewise have a duty to protect themselves, as well, and to develop lines of communications with their schools, police authorities and family and friends.

Language schools and the agencies that match them up with students must communicate more effectively with students in their home countries to ensure their safety. The community at large can also help. Over the past few months I have been meeting with multicultural agencies like the Korean Society, English language schools, law enforcement personnel, civic leaders and others committed to addressing these complex challenges. Many of these have had great success in getting messages about safety to international students, but much more must be done. Together, we must all

work to make B.C. a safe, desirable place to live and learn.

[1425]

### Oral Questions

#### ENFORCEMENT OF ENVIRONMENTAL STANDARDS IN FOREST INDUSTRY

**J. Kwan:** Big forest companies gave the Liberals over \$2.5 million in campaign donations. Ainsworth Lumber is one of those companies. It has one of the worst environmental records in B.C. Recently it pleaded guilty to dumping harmful substances into the Seton River. According to leaked Ministry of Water, Land and Air Protection documents, Ainsworth Lumber would now receive automatic approval for construction projects it wants to undertake near B.C. streams and rivers. Can the Minister of Water, Land and Air Protection explain why a company with a long environmental rap sheet will now be given automatic approval to proceed with construction projects in B.C.'s watersheds and streams?

**Hon. M. de Jong:** Well, happily, the member is going to have an opportunity to discuss in detail in the days ahead the regime we are putting in place to ensure there actually are appropriate environmental safeguards in place that properly balance the absolute need to ensure there is adequate protection, to ensure that we maintain the highest possible environmental standards but do so in a way that makes common sense, as well, and doesn't drive investment from this province.

I'm looking forward to the debate that I know is about to unfold. As we have that debate, let us keep in mind that it was this member and the government that she was a member of that had a different sense of balance. That balance was: "We'll promise to create 38,000 jobs and instead lose thousands upon thousands of jobs in the forest sector." Those days are over.

**Mr. Speaker:** The member for Vancouver–Mount Pleasant has a supplementary question.

**J. Kwan:** Let's be clear. It's the leaked document of the Minister of Water, Land and Air Protection's ministry which shows she's not doing her job. Rather than stopping pollution before it happens, the Minister of Water, Land and Air Protection is moving to a system where polluters are being punished after damage has already been done. The only problem is that the minister has fired most of the people who do the monitoring. It is akin to installing fire alarms in a house after the house has been burned down.

Again, to the Minister of Water, Land and Air Protection: can she explain how her kid-glove approach to polluters is supposed to work with forest companies that are logging in the same — and some of British Columbia's most sensitive — ecosystems?

**Hon. J. Murray:** Under our approach, my ministry will be focused where it should be, which is on setting standards and making sure they are enforced. Over the years the Forest Practices Board has complained again and again that the former Ministry of Environment did not enforce the Forest Practices Code. Why? Because they were tied up in their offices doing plan after plan and....

Interjections.

**Mr. Speaker:** Order, please. Order, please.

**Hon. J. Murray:** I am very pleased to say that I have been part, from the beginning, of a new approach to the Forest Practices Code, a results-based code that will have my ministry staff actually in the field where they can do the most good: protecting the environment.

Interjections.

**Mr. Speaker:** The member for Vancouver–Mount Pleasant has a further supplementary. Let us hear the question, please.

**J. Kwan:** If the minister's approach to enforcement is the example of Ainsworth Lumber, where she actually approves automatically construction approvals for this company, which has a long history of environmental violations.... You know, no one believes the minister is serious about protecting the environment, and they have good reason to suspect her motives. Thirty-two of B.C.'s biggest polluters gave the Liberals more than \$1.9 million to fight the last election. In return, she took these companies off the government's environmental non-compliance report. In fact, she stopped publishing the report altogether.

Can the Minister of Water, Land and Air Protection explain to British Columbians how they are to have any faith in her when she's fired one-third of her employees, when she's granting automatic approvals to companies who want to construct in B.C. streams and watersheds and when she's shielding B.C.'s biggest polluters from public scrutiny?

[1430]

**Hon. J. Murray:** The non-compliance list that the member opposite is talking about had taken 18 months to publish under her government's watch and was a document that reflected a compliance system in disarray. I've actually asked my staff to come forward with a strategy for compliance reporting that will be systematic...

Interjection.

**Mr. Speaker:** Order, please.

**Hon. J. Murray:** ...will be provincewide...

Interjection.

**Mr. Speaker:** Order, please. Order.

**Hon. J. Murray:** ...and will make sure that we know who is in compliance and who is not.

CONSULTATION PROCESS  
ON FOREST PRACTICES CODE

**J. MacPhail:** No wonder that when this government is faced with doing some hard work around environmental protection, this minister just does away with it, gives up and says: "Oh, we won't bother publishing a non-compliance list." The last non-compliance list was August of 2001. No wonder people are concerned about the process that leads up to this legislation that was tabled today.

Let's talk process today. The list of people who are here today are a fine group, a fine group of opinion leaders, but there are many people missing from the list. The Minister of Forests invoked the name of Dr. Hoberg, who did do a review of the consultation process. Let's see what Dr. Hoberg actually said. The report made it clear. He told the government it should conduct additional discussions with first nations prior to finalizing the results-based code.

Can the Minister of Forests say if he missed people from first nations from his list of introductions today, or did he ignore Dr. Hoberg's recommendation? Has he shut first nations out of the development of a new code?

**Hon. M. de Jong:** I know times are tough, but I'm going to speak to the Minister of Finance. We've got to find some money for the research staff over on the other side of the House.

We engaged in an unprecedented degree of consultation. Two committees: an MLA committee that met publicly in 13 communities, Professor Hoberg.... They entertained submissions in excess of 400 submissions. Following that, we embarked on a second round to consult with people. We involved first nations, upwards of 21 submissions from first nations.

Look, let's face the facts. There's a group over there — and I guess this member is one of them — who likes to paint cattlemen, woodlot owners and actually members of the IWA as being hostile to the environment. We're not amongst that group. We're for environmental practices, but we're for putting people back to work in B.C. as well.

**Mr. Speaker:** The Leader of the Opposition has a supplementary.

**J. MacPhail:** It's interesting that when I talk about first nations, the minister talks about environmentalists and completely ignores the issues I raised around first nations. No wonder the Carrier-Sekani tribal council had to write to this minister just last week. Here's what the Carrier-Sekani tribal council put to the government. Everyone here in this chamber knows that land use certainty is key to investment here. Everyone knows this, and first nations are key to that.

Here's what the Carrier-Sekani tribal council did last week. On October 22 they put the government on notice that they are exploring the full range of legal options to defend their aboriginal title and rights against this government's infringements through the new Forest Practices Code.

[1435]

Interjection.

**J. MacPhail:** The Minister of Finance says: "What a surprise." Well, they've taken this action because the government is ignoring its obligations to consult first nations as defined by the courts and as recommended by Dr. Hoberg.

Again to the minister: can he tell this House how much the government has put aside to spend on litigation defending the new Forest Practices Code?

**Hon. M. de Jong:** All the research dollars in the world won't help this member if she doesn't listen to the answer or read the documents, and that's the fact of the matter.

I'm uncharacteristically going to try and keep this brief. The irony is this. The Carrier Sekani and the government are indeed having a discussion, but here is the irony. They have withdrawn from an agreement that this government is endeavouring to uphold, which that member's government entered into. Isn't that ironic? And this just in. Isn't it ironic that this member stands up and criticizes this government for enforcing an agreement her government entered? That's the height of irony.

KYOTO ACCORD

**R. Nijjar:** My question is to the Minister of Energy and Mines. Recently my constituents were alarmed to learn of the federal government's suggestion that nuclear-generated electricity should be considered as a means of meeting Kyoto targets. Reducing greenhouse gas emissions is a laudable goal but not at any cost. My constituents of Vancouver-Kingsway do not support nuclear power plants, nor should the construction of nuclear power plants be considered as an environmental step forward.

Will the Minister of Energy and Mines tell us if, under the federal government's current plans, nuclear power would have to be considered?

**Hon. R. Neufeld:** The use of nuclear energy is not in the current plan that was put forward by the federal government, but it has been talked about quite widely by the minister responsible, Mr. Dhaliwal, in recent news articles about the use of nuclear energy to deal with the Kyoto protocol. We in British Columbia are totally opposed to nuclear energy in the province and will work to that end.

**Mr. Speaker:** The member for Vancouver-Kingsway has a supplementary question.

**R. Nijjar:** The majority of British Columbia's power is produced emission-free by B.C.'s large dams.

Clearly, B.C.'s dams reduce the overall emissions released in this province. If the purpose of Kyoto is to reduce the overall emissions released in Canada, will the Minister of Energy and Mines tell us why the federal government will not give British Columbia credit for the large steps it has taken with investments in hydro and forestry?

**Hon. R. Neufeld:** Yes, the British Columbia government, my colleague the Minister of Water, Land and Air and myself lobbied hard on the fact that we should be credited for our forestry sinks. We should have credit for our agricultural sinks. We should have credit for clean energy exports, and we should have credit for the industries that have actually reduced greenhouse gases in the province. After all, British Columbia on a per-capita basis is the second-lowest emitter of greenhouse gases in all of Canada.

Through all that arguing, we were not able to convince the federal government that (a) they should give us our forestry and agricultural sinks or (b) that they should give us any credit for clean energy exports. In fact, COP-7.... Just understand that the minister responsible, Mr. Anderson, says it's off the table altogether. We will not accept a plan that does not address those items for the people of British Columbia.

[1440]

#### MEMORANDUM OF UNDERSTANDING ON SERVICES FOR ABORIGINAL CHILDREN

**S. Brice:** My question is for the Minister of Children and Family Development. Recently the Premier signed a historic memorandum of understanding with the aboriginal groups across this province. This agreement marks the first time that first nations and the government have reached an understanding that puts the interests of children first. Can the minister explain what the MOU means for the first nations children of British Columbia?

**Hon. G. Hogg:** Unfortunately, aboriginal children and youth are seven times more likely to be in the care of the state than non-aboriginal children and five times more likely to be involved in a justice facility of the state than non-aboriginal children. This memorandum of understanding allows us to work in cooperation with the aboriginal communities to move forward and respond to their needs at the local level. It means fewer children will be in the care of the state because we'll develop safe care plans for them within the context of their home and communities.

Just last week the provincial medical health officer issued his report on the health of aboriginal children. In that, he said that aboriginal children who are not in the care of their own communities are more likely to be committing suicide. The rates are higher. This means we're going to have services and responses at the community level, and we'll see a reduction in the suicide rates.

I think, most importantly, this represents a better future for aboriginal children in care. It means they're going to be more likely to graduate, more likely to be employed and more likely to have a healthy future. It means that, because those services are provided at the local level. Their opportunities are going to be much better, because we know research and practice tell us that when services are provided in that context, they have a better future. We're looking forward to that.

[End of question period.]

#### Tabling Documents

**Hon. Gary Collins:** I have the honour to present the guarantees and indemnities authorized and issued report for the fiscal year ended March 31, 2002, in accordance with the Financial Administration Act, section 72(8).

I call committee stage debate of Bill 70.

#### Committee of the Whole House

#### RESIDENTIAL TENANCY ACT

The House in Committee of the Whole (Section B) on Bill 70; J. Weisbeck in the chair.

The committee met at 2:44 p.m.

On section 1.

**J. Kwan:** I wonder if, before we begin, the minister could introduce his staff.

**Hon. R. Coleman:** It's Karen Ayers, senior policy analyst for the ministry.

[1445]

**J. Kwan:** Under the definitions section, section 1, the implication of adding, under "security deposits," postdated cheques for rent.... Is it the intention of the bill to allow for landlords to demand postdated cheques for rent? This seems to be consistent with the minister's remarks in the House. In many cases, tenants want to pay by postdated cheques, but it should be on the basis of mutual agreement. In fact, many agencies and advocates who deal with tenants, particularly the Tenants Rights Action Coalition, have heard from tenants that landlords have moved to requiring that postdated cheques be given to them. Of course, this can potentially put tenants at risk.

Tenants ought to enter into giving postdated cheques to the landlords if it is on the basis of mutual agreement. The problem lies in this: when postdated cheques are given, if the tenant moved out, as an example, it's not always the case that the landlord actually gives back or tears up the postdated cheques in some instances. The tenant then has to go and cancel the cheques. In some cases it actually costs them

money, depending on the banking agency with which they deal.

In adding this new definition, "postdated cheques for rent," is it the intent of the government to allow landlords to require postdated cheques?

**Hon. R. Coleman:** The present act prohibits postdated cheques. This is to allow the landlord to take postdated cheques and make it part of the agreement with the tenant to do so.

**J. Kwan:** I don't believe it's the case that the previous act — actually, the current act — prohibits postdated cheques. It doesn't actually stipulate it by providing for postdated cheques. There seems to be some discrepancy around that issue.

Can the minister then state clearly that by adding this definition, it does not allow the landlords to require tenants to provide postdated cheques? Postdated cheques could be provided if it is mutually agreed upon between the two parties.

**Hon. R. Coleman:** My understanding is that this does not allow them to require it but allows them to do it, which they couldn't do before.

For the member with regards to postdated cheques not being allowed in the previous act, it was in the definition under "security deposit."

**J. Kwan:** Just to be clear then, a landlord cannot demand postdated cheques from a tenant at any point in time.

**Hon. R. Coleman:** It can be set out in a tenancy agreement and agreed to by the parties.

**J. Kwan:** Can the landlord make it into a condition of tenancy?

**Hon. R. Coleman:** The tenancy agreement is probably a condition of tenancy, so if it's in the tenancy agreement a particular landlord has, it would be a mutual agreement between the tenant and the landlord when they enter into the tenancy.

**J. Kwan:** Could the landlord refuse tenancy to a prospective tenant if the tenant is not prepared to provide postdated cheques?

**Hon. R. Coleman:** Theoretically, yes, because that would mean they wouldn't have come to an agreement on the tenancy agreement.

**J. Kwan:** In other words, adding this definition into the act actually allows for a landlord to require postdated cheques as a form of tenancy, as a right to tenancy by the tenant, and if the tenant refuses, the tenant may well not have access to the rental accommodation. It has the same effect that is now being experienced by some of the tenants where landlords are requiring postdated cheques and don't give them back once the

person vacates. It puts the onus on the tenant to go cancel the postdated cheques and, of course, incur extra costs.

[1450]

It makes no sense to put in such a requirement so heavily biased against a tenant in favour of the landlord. The landlord has all of the control to decide who to rent to already. To add in a provision to say, "Unless you give me postdated cheques as a condition of tenancy..." simply further heightens the landlord's control of the situation. It makes absolutely no sense. I don't know how this is advantageous for tenants. How is this advantageous for tenants?

**Hon. R. Coleman:** This is actually normal business practice in a lot of areas of consumer relationships between two parties, and I don't see that this is.... This isn't set out to make it adversarial. It's just to have an option that wasn't contained in the previous act for the landlords with regards to their business relationship with their tenants.

In actual fact, in discussing it with different people in the industry, both sides have felt that they needed a seamless relationship in the ability to pay as possible. There actually is, I guess, the ability to also do automatic debits, as there are in some strata corporations with regards to that, but we haven't dealt with that in detail.

Tenancy agreements are going to be there for people to enter into a business relationship with regards to a tenancy, and this can be part of the tenancy agreement.

**J. Kwan:** The only problem is that by providing this requirement, if it is not mutually agreed upon, the prospective tenant actually suffers a consequence; that is, the landlord could refuse to rent to this tenant. That has huge implications, especially when rental accommodations in British Columbia, particularly in the lower mainland, are scarce. In the area of Vancouver-Burrard, as an example, the vacancy rate is something like less than 4 percent. I think it's 2 percent, to be more precise. That really puts a lot of stress on tenants.

This change in the legislation allows the landlord to penalize tenants for not agreeing to provide postdated cheques, and then there's a consequence which the tenant may be faced with. I fail to see how that is helpful.

In terms of business practice that the minister talks about, as far as I can see, the previous act does not preclude you from providing postdated cheques. If the tenant wants to do it and if the landlord wants to accept it — if it's mutually agreed upon — I think that they can. Where does it say in the act that it prohibits postdated cheques?

**Hon. R. Coleman:** Under "security deposit" in the previous Residential Tenancy Act subsection (e): "a prepayment of rent for other than the first month of a tenancy agreement."

**J. Kwan:** The way I read that, it doesn't actually preclude you from providing postdated cheques. It just

says that security deposit "means money or property advanced or deposited, or a right given, by or on behalf of a tenant or prospective tenant, to be held or enforced by or on behalf of a landlord...a prepayment of rent for other than the first month of a tenancy agreement." So a person is required to prepay rent for other than the first month. That is what it says in the act. It doesn't say that if you do end up, through mutual agreement with the landlord and a tenant, giving postdated cheques, you've somehow violated the act. It doesn't actually say that. I don't believe it says that.

[1455]

Quite frankly, having been a tenant before, I myself gave postdated cheques on mutual agreement with the landlord, especially when I rented an apartment here in Victoria. Sometimes on the first of the month I'm not in Victoria, and it was actually a lot more beneficial for me to give my building manager postdated cheques just in case I happened not to be here that week, so I wouldn't end up not having paid my rent and then being evicted from the building. But now the difference in this act is that by adding the postdated-cheque provision for rent, it does more than allow for mutual agreement for postdated cheques to be used. It can be utilized as a penalty against tenants by the landlord, if the landlord puts it into the tenancy agreement.

Why doesn't the minister then, if the intent is simply to facilitate — if he thinks that the old act precludes you from using postdated cheques — just simply provide it as an option and say that postdated cheques for rent can be utilized as an option if it's mutually agreed to by both the landlord and the tenants so the landlord understands very clearly that the landlord cannot put into the tenancy agreement a requirement that postdated cheques be given? That way, you're not penalizing anybody. You're simply facilitating the process, if the minister thinks that the old act does not allow for this facilitation.

**Hon. R. Coleman:** Let me see if I can get this explanation for the member so that we can both understand it.

If you take postdated cheques today, under the definition of a security deposit.... If you were to take postdated cheques for, let's say, six months of a tenancy in advance as part of the rental agreement, you're technically taking more than a half month's damage deposit, because you're taking those cheques in advance. The feeling is that under the definition of this section, that had to be cleared up. You can still only take a half month's damage deposit, but the extension over was that it was a problem with regard to the ability to do one versus the definition of the other.

**J. Kwan:** But if the minister suggests that the current act disallows postdated cheques under section 1(e), that's one thing. But the remedy that the minister has brought forward under this act does not fix that problem. It does not. It goes further to allow for penalties to be put in place — I hope inadvertently. From the way it sounds from the minister, it's not so.

Somehow if a landlord chooses to put in the tenancy agreement that you're required to provide postdated cheques under the definition of the act, then if you don't provide them, I can refuse tenancy to you. If that's not the intent of the government, then it should state that clearly in the legislation. But the minister just rose up minutes ago to say that yes, a landlord could do that. They could reject someone's tenancy if they didn't provide postdated cheques. They could make that a requirement of the tenancy.

There's something wrong with that process. It does not remedy the issue that's been raised by the minister. It actually goes to penalize tenants in a very negative way, to the point that they would actually, potentially, lose their tenancy if they were not prepared to provide postdated cheques.

**Hon. R. Coleman:** It's no different than if you said: "I'm going to allow pets in my tenancy, and this is the description of pet that I'm going to allow. And you're going to agree to that as part of the tenancy agreement." This is also part of the discussion and negotiation of a tenancy agreement with a landlord. The landlord and tenant have to come to that agreement. I don't see that as a problem.

**J. Kwan:** We'll get to the pets issue in due time. There's a huge section here that also penalizes tenants when it comes to pets. We will have a lot of questions and debate on that section — make no mistake about it.

[1500]

This is not the same as facilitating in many ways, as the minister would like to make it sound. The minister is providing provisions within the act right off the top in section 1 to potentially deny tenants the right to access rental accommodation. They're to be penalized for it, to put all of that onus on the negative side onto the tenants. The landlord could absolutely have control in every way, shape or form.

You know, why doesn't the act add in a definition to say that landlords are required to give postdated cheques back to the tenants when they vacate the building? The reality is that this doesn't always happen, and sometimes landlords have gone as far as to cash postdated cheques when the tenants have already vacated the premises. The onus, then, again is on the tenant to go and cancel these postdated cheques, which costs them an additional financial burden. Why is it so lopsided towards the landlord's benefit and not towards an equal benefit for both the tenant and the landlord?

**Hon. R. Coleman:** I think it is equally beneficial to both landlord and tenant. It just makes the relationship as to how the funds are collected or how they have to be delivered on a monthly basis to the landlord. Obviously, it would be irresponsible and unconscionable for a landlord to cash cheques when the tenant is no longer there. There are provisions, obviously, within law and small claims and what have you, but I can't see a land-

lord going out and saying: "I'm going to continue to charge rent for an empty thing."

In the tenancy agreement there should be a relationship with regards to the postdated cheques. When the tenancy agreement is ended, there should be a clause in there that says the cheques are returned to the tenant. Frankly, we could probably do that in the design of the tenancy agreement that we'll do in regulation.

**J. Kwan:** With the exception that it's not the minister who puts out the tenancy agreement; it's the landlord who puts out the tenancy agreement. He said so himself. Tenancy agreements will not be put out by regulation. It's designed by the landlord. There is a substantive difference here.

What about tenants who are on fixed incomes, many of them? Let's just take somebody who's on income assistance, as an example. In fact, in my own riding there is a huge number of people who are renters. Many of them actually don't have access to banking services. They don't, so they don't have cheques. There is no capacity for them to get cheques, because they don't have banking services. That is a reality in my riding right now.

In that instance, tenants in my own riding could be refused accommodation, because they're not able to provide postdated cheques because they don't have a chequing account. Does that not amount to discrimination?

**Hon. R. Coleman:** This doesn't make it absolute that you have to take postdated cheques. It's part of the relationship between a landlord and tenant. I know the situation in the member's riding. I also know there are different forms of the way that they pay their rents in particular areas of the province with regards to the business relationship between a landlord and tenant. This is just one more area. In the standard terms of the tenancy agreement that we will form in regulation, we will make sure that your concern with regards to return of postdated cheques is part of the standard terms of the tenancy agreement that will apply.

**J. Kwan:** To prevent discrimination, for someone to actually refuse tenancy to someone on the basis of their ability to provide postdated cheques.... Really, it relates to individuals who live in poverty. A lot of the people who live in poverty, as I mentioned, may not have access to banking services, may not actually have cheques available to them. They could lose their tenancy.

Why not put in the regulation, then, that the landlord shall not penalize a tenant if it is not mutually agreed upon that postdated cheques be made available? Why not put that in? It just protects both the tenants and the landlord. It doesn't penalize the landlord in any way, shape or form. It protects both sides. "If it's mutually agreed upon, here's the way that you can do it. If it's not an option for you, for whatever reason, that's okay too. On that basis you will not be penalized

for your access to accommodation from a rental point of view."

**Hon. R. Coleman:** We don't think that's necessary, because the terms of a tenancy agreement are agreed to by both parties prior to them entering into a tenancy agreement. They have a mutual relationship going in. I don't think it's.... To try and go that way, the next thing you would be wanting to "shall not" this and "shall not" that. Frankly, that's the way we've designed the act, and that's the way we'll proceed.

[1505]

**J. Kwan:** With all due respect to the minister, I disagree. Simply suggesting that a tenancy agreement will fix that is not true. It's simply not true.

Interjection.

**J. Kwan:** If members actually have something to say in this chamber, I wish they would get up and say it. If they think the opposition should not ask questions in this chamber and they just want to move forward and ram this legislation through, they need to understand the rules of the House — that members can actually engage in questions. I would appreciate that opportunity as the only opposition member, so far, who is asking questions of the minister about some of these changes that will be hurtful and, in my view, discriminatory to the tenants.

When a tenancy agreement is put forward by the landlord with the stipulation that says the landlord could actually refuse tenancy to a prospective tenant if they don't meet the conditions — and one of those conditions is that you're required to provide postdated cheques — then there's discrimination against the tenants, particularly those who don't have the ability or the capacity to provide postdated cheques. There are many people who are in those circumstances.

It astounds me for the minister to simply say: "Hey, don't worry; be happy." Perhaps he's not in a situation where he would have to rent accommodation, where his home would be dependent on that and where he may not have access to banking facilities to actually get a cheque. The answer the minister has given on this issue is very disappointing from the opposition's perspective. I was hoping he would assure me that unless it's mutually agreed upon, there would not be a requirement that tenants give postdated cheques to the landlords.

On another question. With respect to the definition, where it states under the tenancy agreement definition that it includes a licence to occupy a rental unit, could the minister please explain where it reads "...includes a licence to occupy"? Is the intent to expand the coverage of their Residential Tenancy Act to licensees — i.e., roommates — within the rental accommodation?

**Hon. R. Coleman:** We can probably deal with this a bit more in section 4, but this act is actually.... As I understand it, the reason this is in the act — when we

went through this — is so that we're not going to be moderating disputes between roommates with regards to their relationship in their own tenancy. This is a landlord-to-tenant relationship, so it's not exclusive. It basically, by definition, tells you who is covered by the act in section 4 by telling you who it doesn't apply to. Therefore, that takes care of the member's concern.

**J. Kwan:** It's not the intent of this addition to expand to include roommates?

**Hon. R. Coleman:** That's correct.

**J. Kwan:** Pardon me. I'm suffering from a cold, so from time to time my voice may give. My apologies.

[1510]

Under the definition section, the terminology "tenant" is included. But under (b) it states that a tenant includes "...when the context requires, a former tenant." The definition does not include the notion of a prospective tenant — that is to say, someone who may become a tenant, someone who signed a tenancy agreement and who has not yet moved in but will soon become a tenant in accordance to the act. Because this section actually has relevance to other sections of the act, particularly section 15, why would the minister not include the words "prospective tenant" as well?

**Hon. R. Coleman:** In actual fact, that question did come up in the drafting of the act, as I understand it. By allowing that, it would have meant it would be open to anybody in the province — that type of thing. When we're dealing with legislative drafting, as the member knows, they look at those sorts of things, and it was found that that wouldn't be appropriate to be in the act. Basically, the context of subsection (b) of "tenant" is so that a person who is no longer a tenant can still go after, in the landlord and tenant relationship, things like their damage deposit or damages that are owed to them by a landlord.

**J. Kwan:** I'm sorry, Mr. Chair. I'm having a little bit of trouble actually hearing the minister, especially towards the end. It just sort of becomes one big mumble. It could be that because of my cold, my hearing is being affected. Could the minister please repeat the last bit of his answer, and could he perhaps speak into the mike a little bit more? I'm having just a little bit of difficulty hearing the minister.

**Hon. R. Coleman:** Subsection (b) of "tenant," which is under the definitions section, states: "...when the context requires, a former tenant." It is basically about a tenant that is no longer a tenant who has a dispute with the landlord. It would allow them to continue to be able to go after a process, whether it be with regard to damages owed to them or to go after the damage deposit.

**J. Kwan:** Okay, that addresses one thing. However, for someone who is a prospective tenant, section 15

actually allows for recoveries of application fees, but this section does not include a prospective tenant. Therefore, the recovery of application fees.... If a landlord illegally collects one under section 15, it would not be possible, then, for the prospective tenant to bring the matter to the Residential Tenancy Office for dispute resolution. That is another aspect on which concerns have been raised. Could the minister please address that?

**Hon. R. Coleman:** Maybe we can canvass this in more detail when we get to section 15, but I think section 15 is actually good news for tenants, not bad news for tenants. It actually prohibits a landlord from taking application fees and those types of fees that have been in this industry before. It was something that the tenants rights groups certainly identified for us as a concern of theirs with regards to the act, and of course we do have enforcement and penalty provisions within the act.

[1515]

I guess the one challenge the member is questioning is if it's in advance of a tenancy agreement, because we haven't put them in the definition section, the arbitration issue might not apply to them. Maybe by the time we get to that section, I can clarify that answer for you. But I think you may be right that they would have to seek it in a small claims court, and/or they would make a complaint to us, and we would follow through on a landlord that's in breach of the act.

**J. Kwan:** I'm not disputing that section 15 is good by putting this in to say that here are certain things that a landlord cannot do — i.e., accept an application for a tenancy, etc., which we'll engage in further discussion on under section 15. The problem is that I don't see the enforceability of it. Especially, it makes no reference in terms of who is a tenant under the definitions of the act. If you stipulate very clearly that a tenant is somebody who may be a former tenant, someone who has left a tenancy — but a damage deposit, among other things.... A person can actually have recourse to go through to ensure that their rights are being protected through the residential tenancy office. That is being addressed in the definition for the purposes of who is a tenant.

Yet for someone who is a prospective tenant — that is to say, someone who has not yet moved in but is looking into moving into a particular accommodation.... If the landlord at that point illegally collects an application fee, as an example, under section 15 the person then has no recourse under the Residential Tenancy Act, because that person is not deemed to be a tenant under this definition. In my view, it could be easily fixed if the intent is to say, you know, collecting application fees is inappropriate for people who are looking for tenancies. If at the end of the day, as an example, a person makes an application, and then the tenancy agreement....

Just using the example we're discussing now, if the tenants are required to provide postdated cheques and,

for whatever reason, the tenants are not able to, the application fee that was applied to them should be null and void and the person should be returned the moneys. Notwithstanding that this is actually against the law under section 15, that person right then and there has no protection under section 15, has no protection under the act, because that person's not deemed to be a tenant as of yet. People could be faced with tremendous disadvantages and abuses by the landlord in that regard.

This could be easily prevented by simply adding the words "or prospective" after the word "former" and before the word "tenant," so that you can actually say to people very clearly that former tenants as well as prospective tenants should have protection, and the application of the act applies to them. To that end, I have an amendment to make to section 1, to add in the words "or prospective" after subsection (b) so that it would read as follows. "Tenant includes...(b) when the context requires, a former..." and then adding the words "or prospective" tenant into this definition.

Here is a copy of.... Oh, you've got....

**The Chair:** We have a copy.

**J. Kwan:** Okay. Maybe I can ask: do you have copies for all of...?

**The Chair:** We have copies of all your amendments.

**J. Kwan:** Fantastic. Okay. I brought three copies up. If everybody's got copies....

[Section 1 is amended by adding the text highlighted by underline:

"tenant" includes

- (a) the estate of a deceased tenant, and
- (b) when the context requires, a former or prospective tenant.]

On the amendment.

**J. Kwan:** I hope the minister will support this amendment. It's, I think, a friendly amendment to simply state clearly and give protection for tenants who are both former tenants under the definition of a tenant as well as individuals who would become prospective tenants, so they have protection under the Residency Tenancy Act.

**The Chair:** Are you speaking to the amendment?

**J. Kwan:** Yes, Mr. Chair. I'm just also seeking the minister's thoughts on this. Perhaps he may actually accept this as a friendly amendment. I would like to hear the minister's response on that.

**Hon. R. Coleman:** We actually feel we can accept this amendment with regards to this section. We had some discussion during leg review with regards to this. We would like to just sort of get a quick opinion on it with regards to it, but if we could just sort of stand it

down for a bit, we could bring this amendment back so we can have a bit of input on it.

It is a concern identified. One of the concerns is that these fees are pretty low, and with regards to.... If somebody actually goes to arbitration, their cost of arbitration is about \$40, and the fees have been \$25 to \$40. It's illegal. We're expecting some discipline in the marketplace to make sure they follow the law of the act. If it meets within what we think it does, then I think we could probably accept the amendment. If we could just sort of move off this definition for now and come back to the amendment, is that possible to deal with?

[1520]

**The Chair:** Member, we could stand down the amendment, but that would mean we would have to stand down the section. If that is the wish of the committee....

**Hon. R. Coleman:** I think that's appropriate. Then we could move on to a couple of other sections, and by that time we should be able to deal with it. Okay?

**The Chair:** Is it the wish of the committee to stand down this amendment and the section?

**J. Kwan:** I'm fine about that. Perhaps before we stand it down, I could just make one final comment, then. I note the minister made a comment that the fees may well be low, that illegal charges of fees may well be low. That may well be the case, and therefore, by going to the residential tenancy office to file a complaint, a person may actually end up having to pay more. The other side of it, of course, is that if you're required to go to small claims, you also have to pay a fee. It kind of equalizes it. Perhaps this will just send a strong signal to people of what "tenant" means and therefore, I think, is better protection for the tenants.

I am prepared to accept the standing-down of section 1 until the minister further investigates the proposed amendment, and then we can deal with that at a later time.

**The Chair:** Member, section 1 is stood down.

On section 2.

**J. Kwan:** Section 2 deals with what is included in terms of the types of properties or, if you will, rental accommodations for the purposes of this act. For a long time the community has advocated for residential hotels or rooming houses, if you will, to be included under the provision of the Residential Tenancy Act. Yet under this revision of the act, I don't see the addition of residential hotels or rooming houses. Could the minister please explain why?

From my own perspective, there are some 7,000 units of what we call SRO — single-room occupancy — housing in my riding. These are all tenants. In fact, they are tenants who pay the highest rent on a per-square-

foot basis. They are essentially rooms that are about 10 by 10. If you're very lucky, you will have a hotplate in your room. If you're triply lucky, you might even have a bathroom. For the most part you don't, and it's all shared facilities.

It's definitely accommodations. The landlords for a lot of these hotels are particularly unscrupulous and mistreat the tenants in a variety of ways. When we were changing this act, I was hoping that we would include this class of tenants so that they, too, can enjoy residential tenancy protection.

**Hon. R. Coleman:** Actually, the reason we put the definition that's in "tenancy agreement" under section 1 was to include "a licence to occupy a rental unit." It was put in that specifically to cover off that definition within the relationship in residential tenancies. Then in section 4 the act identifies what it doesn't apply to. That basically takes care of the member's concern.

If the member wants more questioning of that section, fine. Otherwise, I think we're prepared to move ahead with the amendment. If you want to go back to section 1, we can move ahead with the amendment and then move on.

**J. Kwan:** I'm prepared to just stop for the moment and deal with section 1, and then we can come back to section 2 on the amendment.

**The Chair:** We'll refer back to section 1.

On section 1 (*continued*).

Amendment approved.

Section 1 as amended approved.

On section 2 (*continued*).

**J. Kwan:** If under section 2 the intent is to actually cover off residential hotels or rooming houses under the definitions section.... I'm sorry. I have to sort of refer back, because it does kind of jump all over the place in terms of where each section relates. If the words "includes a licence to occupy a rental unit" include rooming houses and residential hotels, and as the minister referenced under section 4, it's also the intent under section 4 to do that, then why...?

[1525]

I mean, it's just to sort of make it explicit, make it clear? Part of the rewrite of the Residential Tenancy Act is exactly as the minister suggested in second reading stage, and that is to put it in plain language so everybody understands who is included, who is not included and what it all means. In that respect, when I read it, it wasn't clear to me that rooming houses, as an example, would be included as a class of tenants. Why not simply state very clearly under section 2 that it includes residential hotels or rooming houses? If the minister is amenable, I actually have an amendment to that effect that states this. It would clarify and put into

plain language very clearly who is included and who is not.

The amendment under section 2 would read as follows, Mr. Chair. It is underlined on the amendment sheet. It says:

[Section 2 is amended by adding the text highlighted by underline:

What this Act applies to

2(1) Despite any other enactment but subject to section 4, this Act applies to tenancy agreements, rental units and other residential property, including residential hotels or rooming houses.]

Comments from the minister.

On the amendment.

**Hon. R. Coleman:** Well, you win one and you lose one. I think we're fine in this definition. We outline what it doesn't apply to in section 4, and we're not in favour of the amendment.

**J. Kwan:** I hadn't realized this was meant to be more of a game, where a person would win one or lose one. I was simply trying to advance these amendments in such a way that would clarify the act and make it very clear, so people would understand who is included and who isn't. I don't think it's contradictory to the intent of the act, so I don't think it does any harm, and it is important from my perspective. Why is that? A lot of people in my riding, as I've mentioned — some 7,000 people — live in what we call SROs, in these rooming houses or hotel rooms, if you will. Many of them don't know what their rights are a lot of times. A lot of them are, in fact, denied a lot of these rights, and it's unfortunate that this has to be the case. They ought not to be denied these rights.

For the purposes of clarity in the act, it would be useful — advantageous, I think — for both the landlord and the tenants so that they know who falls under the act and who doesn't and who has access to the protection of the Residential Tenancy Act.

I move the amendment in my name that has been passed around, and we'll have a vote on it.

Amendment negated on division.

Sections 2 and 3 approved.

On section 4.

**J. Kwan:** Section 4 could also potentially have this ramification. When a person reads this section of the act, the concern is that students who are in student housing may be exempted from the Residential Tenancy Act. In the past only dorm-style housing was exempted. The question to the minister, of course, is why self-contained apartments and townhouses should be exempted solely because they are run by a college or university.

[1530]

If the reason is to limit time to allow for the student to live in a particular building, then one could use the

option of a fixed-term tenancy agreement. There could be those kinds of limitations if, in fact, that's the intent. If it isn't, then I see no reason at all why student housing should be exempted from the Residential Tenancy Act.

**Hon. R. Coleman:** This is something that the colleges and universities have identified to us as being a problem in the past with residential tenancy. Fixed-term tenancies don't actually work in this situation, because sometimes the relationship is applied back to other levels of government funding or applied to how long it's going to take to finish, whether it be a thesis or a degree or whatever the case may be. It doesn't fit within the boxes of how you would manage a normal tenancy.

There's student representation on the boards of these tenancies, as I understand it. There's an appeal mechanism, and there are rules and regs put in place on the university side. This is something they felt would allow them to manage their housing for their students in a better way.

**The Chair:** Member for Vancouver–Mount Pleasant. Member, I've just had a request by some members of the House. They're having difficulty hearing you. If you could just speak up a tiny bit.

**J. Kwan:** Okay.

Well, it doesn't make sense to me that you would simply exempt an entire class of tenants from accessing rights prescribed under the Residential Tenancy Act, if the issue is about the term of the tenancy. If the issue is such that the educational institution needs to somehow work out with the students what the term of the tenancy is, then there's got to be some other capacity to do that, other than simply saying to the entire class of students who access rental housing through student housing: "In this instance you have no residential tenancy rights. You're exempted from its application to you by law." It simply doesn't make sense to go that far.

The minister suggests that fixed-term tenancy doesn't work for the university. I'm not quite sure what it means when it comes to issues around funding, and so on and so forth. Fixed-term tenancies could be agreed to and entered into by both parties — the provider of the housing as well as the student who is accessing it — and the terms of the fixed-term tenancy could be defined in the act under "tenancy agreement."

If you just decide it doesn't work because of a term issue, you now have no rights afforded to you under the Residential Tenancy Act. It certainly would seem to me like an overkill. Where's the protection, then, for this class of tenants, given that the act does not apply to them?

**Hon. R. Coleman:** The protection is through the university and the institutions with regards to the relations that they have. You should understand that the majority of students are and were already exempt with regards to dormitory-style residences at university. This is actually a very small portion of it. To have the universities having to deal with two sets of rules and two sets of processes with relationship to the tenancies

that they have on their properties.... It's just felt that this will work better for them. They feel they can discipline it and make it work. If we find out down the road that it doesn't work, I guess we would address it.

**J. Kwan:** The minister says that from the institutions' point of view, they said it doesn't work for them. Has the minister spoken with the students, from their perspective, on what their thoughts are on this?

[1535]

**Hon. R. Coleman:** We have had some input from students, yes, and they would actually like to see it reversed — that residential tenancy be applied to every dormitory relationship in the province. For a long period of time there have been some contractual relationships that seemed to work within dormitories in universities and within the relationship in the tenancies at universities. That's why this definition is in there.

**J. Kwan:** I would suggest that it is important when we're talking about the application of law, and in this instance as we relate it to residential tenancy rights, that that application be utilized for this class of tenants — namely, students. It doesn't make sense to me that if the issue, from the institution's point of view, is around terms of tenancy — the period in which a student can stay in student housing — that the approach in addressing the issue is to deny students who happen to be tenants living in student housing all of their rights as tenants. It makes no sense to me at all. I think one could get around that by simply providing a special provision around terms in these situations through discussion with the institution or whatever the case may be.

Simply saying that we have a concern from the institution on this side so therefore none of the tenancy rights now apply to you is, I think, overkill. I think students who happen to be tenants would be faced with twice the barriers of regular tenants. It doesn't seem fair or appropriate to put in place where the government is now saying that we can choose who has access to the application of this particular law and who doesn't apply.

I have particular problems with this section, section 4(b).

Casting that aside for a moment, I want to ask the minister a question around section 4(g)(v). This section appears to be clearly targeted at supportive or assisted-living situations. If these facilities are exempted from this act, then is it the case that...? Where would this class of seniors or people who live in health facilities have their access rights? Would that be covered under the new bill that was introduced by the Minister of State for Intermediate, Long Term and Home Care? Is that the intent, so that's why they're excluded? Is it looked at as a health issue, so therefore it's under a different act?

**Hon. R. Coleman:** For the most part, these types of tenancies weren't included in the previous act either.

That is why there's some other legislation coming with regard to definitions of contractual relationships in things like assisted living. There's always the argument about what is the rent, what is the service, what is the GST applicable and what is the PST applicable. We just felt that within the Residential Tenancy Act, this is something that doesn't apply to this particular form of legislation. That's why we've done that within this act. It's basically been that way by a lot of people's different definitions over the years — the same way.

**The Chair:** Members, we're going to have a five-minute recess.

The House recessed from 3:40 p.m. to 3:43 p.m.

[J. Weisbeck in the chair.]

[1545]

**J. Kwan:** This class of tenants, if you will, would be protected under a different bill, as I understand it from the minister's response. Could the minister please advise what description the minister has adopted in classifying health facilities? I know in this section of the act it says: "...health facility that provides hospitality support services and personal health care...." It's not very prescriptive in terms of what falls into the definition of health facilities. I wonder if the minister could expand on this definition of health facilities a little bit further than what is now in the act.

**Hon. R. Coleman:** Excuse me; I have the same problem as the hon. member.

It's not clear what form the assisted-living definitions...or how it will be dealt with in the future. That's why there's some consultation going on now with regards to the definition of assisted living — whether it's going to require legislation, standards, licensing, what form of consumer protection, etc.

What we do know is that that is the consultation and work being done by the Ministry of Health and the ministry responsible for housing, which is Community, Aboriginal and Women's Services, who will be dealing with this portion of this form of housing. It is not something we would include in a residential tenancy relationship.

**J. Kwan:** Supportive living or supportive housing is not included under the Residential Tenancy Act, under this section of the bill. Is that the only class of health facilities, then, in the definition of this section of the act that this would apply to? Are there other health facilities to which this section of the act would also apply?

We now know that supportive housing is excluded. That's being addressed and looked into by the Minister of Health and the Minister of Community, Aboriginal and Women's Services. Is there any other class of health services that this would include?

**Hon. R. Coleman:** All of section 4(g) — sub-sections (i) to (vi) — identifies those that are not

included in the act. That includes things like Community Care Facility Act, Continuing Care Act, the Hospital Act, the Mental Health Act, a housing-based health facility that provides hospitality services and personal health care, and "that is made available in the course of providing rehabilitative or therapeutic" services. That's the combination.

As the member knows, there are probably a plethora of definitions and titles that can be given to those forms of housing. That's why those definitions will be dealt with in legislation with regards to that and the consultation process ongoing by the members. It's not the intent that this act will be responsible for that type of facility.

**J. Kwan:** I'm just trying to determine from this section of the act which other facilities would not be included. I know that sub-sections (i) to (iv) indicate a variety of health facilities that would be excluded, and it's spelled out clearly in the act. But in sub-section (v) it simply states: "...health facility that provides hospitality support services and personal health care." That, to me, is not necessarily clear for one to understand to which health facilities this does apply.

The one answer that I did get from the minister is that supportive housing, supportive living or assisted living would not apply. Is that the only other class, then, that would apply?

I understand when the minister says sometimes people use different terminology to describe different things; I understand that. The intent behind it in describing what supportive or assisted living is.... One becomes very clear in terms of what those provisions are for one to be eligible for supportive and assisted living in the new guidelines. That's easy to define. You might not call it supportive or assisted living. You can call it whatever else you want, but under the qualifications for a person to fit into that category, it is clearly being identified — same thing with those who are under the Mental Health Act, as an example, continuing care, etc.

One becomes clear. When you look at the conditions of those settings, you know what they mean even though you may have a different word for it. The question then becomes: is there any other class that we're missing, or does this encompass all of it, under the current intent of this act from the minister?

**Hon. R. Coleman:** I'll stay away from titles. I think that basically, under subsection (g), this sets it out about as clearly as you possibly can, pending any consultation on housing names or definitions or what have you with regards to.... When it says "in a housing-based health facility that provides hospitality support services and personal health care," I think that's the definition that we need to go back to rather than just a title.

[1550]

**J. Kwan:** From the way it sounds, there are no other classes, then, which health facilities would fall under

with the exception of assisted living or supportive housing. The conditions that apply to this category are clearly stipulated through the other two ministries, so one knows even if someone else calls it a different name. Am I right to understand that? I just want to know if we are missing any other groups of tenants that may not be included or would be involved or have their rights protected through some other act. I just want to clarify who is included and who is not included.

**Hon. R. Coleman:** Again, through to the member, I think it's as clear as we can get it. This definition was provided to us with consultation with Health and with regards to residential tenancy.

I think you have to remember that the residential tenancy agreement is really aimed at a consumer relationship between a landlord and a tenant in the provision to housing and not for the provision of additional services, add-on services or other facilities within that realm. The Residential Tenancy Act is covering the people that are in a relationship where they rent an apartment, a condo, a townhouse or a home from a landlord with regards to their relationship and how that relationship should be managed.

**J. Kwan:** I'm not sure. The minister keeps saying it is clear, but when I ask for just a simple answer, it's just exhaustive. In other words, do we understand this covers all the groups of tenants that would be excluded from this act under this section? The minister actually hasn't said what the answer is. I suspect he's not going to say any more than what he has already said, but it is unclear. It's unacceptable — I have to say this, Mr. Chair — when the minister likes to get up and say that this is meant to be in plain language. People are supposed to read it and understand what it all means, but yet there's vague language within the act that doesn't tell you very clearly who is included, who is excluded and who is covered. You think that's a basic premise of plain language, so you know whether or not this act applies to you. If not, where else would it be covered? That's the purpose of this debate under committee stage: to get the answers.

So far, I must admit, Mr. Chair, I haven't got the answer from the minister. He likes to say it's clear, but it isn't. It simply isn't. He says: "Oh well, too bad." Maybe that's the attitude the minister would like to take: "Too bad. Sorry for all of you out there who are concerned about whether or not this act applies to you. If it's unclear to you, well, that's just too bad." Yet somehow the minister likes to claim that he's bringing forward legislation in plain language and that somehow when people read it, they'll understand very clearly what it all means.

You know, maybe it's just me, but it seems to me there's a bit of an attitudinal problem. Maybe the minister's just going through this because it's pro forma, but maybe it doesn't really mean anything at the end of the day. If the attitude is just like, "Hey, if it's not clear to you, too bad," there's something wrong with that.

Interjection.

**J. Kwan:** It's not an issue about being nice or about being not nice. This is a serious issue. Over a million people in British Columbia are renters, and they need to be able to know what applies to them and what doesn't. Maybe this government doesn't care and doesn't care to know because of attitudes like: "If you don't get it, too bad. Let's just get on with it, move forward."

The Minister of Community, Aboriginal and Women's Services is saying: "Let's get on and not ask questions anymore." Maybe that's the attitude of this government. Yet, you know what? A lot of people in British Columbia care about this act. They need to know what this act means and how it impacts them. That's what this debate is about.

I assume we're not going to get an answer, any further clarification, from the minister, because his attitude is: "Too bad. You don't need to know. If it's not clear to you, that's just too bad."

[1555]

Section 4(k) of this act is problematic as well. It's a brand-new subsection to the act. It simply says "prescribed tenancy agreements, rental units or residential property." Reading this together under section 4.... Section 4 begins, "This act does not apply to" subsections (a) to (k). Under (k) it simply says "prescribed tenancy agreements, rental units or residential property." Who is this supposed to apply to — anybody? Everybody, as long as there's some sort of tenancy agreement that applies, some sort of rental units that apply, some sort of residential property that applies? How is that clear for the public, for them to know whether or not they are exempted from this act or they have protection from this act? Subsection (k) is a big, wide-open net to say all kinds of people could be exempted. Why isn't it more defined so that people know exactly who is covered and who is not covered?

**Hon. R. Coleman:** Subsection (k) basically gives us the ability to add to this list if there are licences or something out there we're not aware of that shouldn't be in this act and that we could add to this list of regulation. It really is the ability for us to.... Just in case there's something in here that really doesn't belong and isn't on the list in section 4 and needs to be added, it's basically enabling for regulation to deal with that. That is just something that's put in to allow us to do that if it's necessary.

**J. Kwan:** If the intent is to allow for the minister to add other classes of tenants to be excluded from protection of the Residential Tenancy Act, instead of simply sort of putting a broad statement out there that says the act could not apply to prescribed tenancy agreements, rental units or residential properties, why doesn't the minister put it through actually appropriate amendments in the House so that people know who is being exempted as new classes come up or if the need arises? We sit in the House every year; this happens every year. This now simply allows for a potentially

very broad use of exclusion of basic rights for tenants, and nobody knows who they might be under this clause of the bill.

**Hon. R. Coleman:** This is actually doing what's already in the existing act, exempting a landlord or tenant or class of landlord or tenant from the provision of this act, which is in section 90(c) of the previous act. Basically, it's in that act for the same reason that it's in this act.

**J. Kwan:** It's all very well and fine to say that it was in the previous act, but the minister actually went through a process of consulting with the public supposedly. He supposedly went through the process of wanting to clarify the act to make it more clear. The previous act by no means was perfect. That's what this exercise is about: actually addressing some of the concerns that surfaced from the previous act and then making sure clarification is brought about and then making sure rights.... One would hope residential tenancy rights are applied more fairly and broadly for people who are involved, whether it be tenants or landlords — and for a balanced approach to be taken.

It's simply not a good enough answer to say: "Well, it was there before, so we just left it." If it was a flaw in the previous act, it should be taken out. I would say that it was a flaw in the previous act and that it should be taken out. To that end, I have an amendment to make to amend section (4) to delete subsection (k).

[Section 4 is amended by deleting the text highlighted by strikethrough:

~~(k) prescribed tenancy agreements, rental units or residential property.]~~

If there are new classes the minister wants to add to this in terms of exemption for residential tenancy support, bring the amendments forward in the House.

Interjection.

[1600]

**J. Kwan:** Yes, deleting sub (k). That's the amendment I would like to move at this time. Copies are being passed to the minister.

Amendment negated on division.

**J. Kwan:** I just wanted to be clear and on the record that I'm not going to support section 4. Most notably, the issue is around student housing. There's a large class of people who would be exempted from access to this particular law, and that is the right to have the protection of the Residential Tenancy Act. I don't think the answers the minister has given so far are sufficient reasons to exclude students from having access to the protection of the Residential Tenancy Act. For that reason particularly, I'm going to vote against section 4.

Also, as a result of the subsection (k) amendment having failed, the broad allowance for exclusion of tenants in the future — we don't even know who they might be — I think is very problematic. I don't think that

government should take easily the stance in actually excluding various citizens of British Columbia from accessing fundamental, basic rights. One would think that residential tenancy rights are one of those fundamental, basic things that people should have access to.

Section 4 approved on division.

On section 5.

**J. Kwan:** Section 5 is a positive change. We touched on this briefly, but I want to ask the minister this question: how does the enforcement take place for section 5? Where does it apply?

I should state very clearly, because section 5 states: "This act cannot be avoided." Under 5(1), "Landlords and tenants may not avoid or contract out of this act or the regulations," and subsection (2): "Any attempt to avoid or contract out of this Act or the regulations is of no effect." This is a positive change in terms of amendments to the Residential Tenancy Act, to disallow for contracting out of the application of this act. But how does one go about enforcing it? That's the question to the minister.

**Hon. R. Coleman:** First of all, this is so people can't decide they're going to go outside this act and increase the damage deposit higher than what should be allowed. It clearly states that. The enforcement side of that, if somebody decides they're going to be outside the act, is the arbitration process.

**J. Kwan:** Given the amendment earlier to, say, prospective tenants.... With the amendment change, previous, former and existing tenants would have the residential tenancy office to file their complaint to and have their issues and concerns addressed. Is that the intent?

Section 5 approved.

On section 6.

[1605]

**J. Kwan:** While it may appear that under this section there are no substantive changes, there is one word that is being changed under section 6(3)(b). It is very concerning in terms of the change in the one word. Section 6 reads as follows: "The rights, obligations and prohibitions established by or under this act are enforceable between a landlord and tenant under a tenancy agreement." Then section 6(3) goes on to say a term is not enforceable under 6(3)(b), if "the term is unconscionable."

The change here is this. What used to be in the previous act is the term "unreasonable." Now the term "unconscionable" is being used. When I looked up the term unconscionable in the legal dictionary, it actually provides for a more heightened, if you will, and narrow...in defining what is reasonable versus what is unconscionable. Why would the minister change the

word unreasonable to the word unconscionable? And what does unconscionable mean in this context?

**Hon. R. Coleman:** Basically, it raises the standard. First of all, we have to understand there's going to be a standard-form tenancy agreement as determined by regulation. Then there will be the ability for landlords and tenants to negotiate other areas within their tenancy agreement, whether it be pets or whatever the issue is for them. It is the same standard that is applied in other consumer contracts that we deal with in government, and we feel that term is applicable in this particular case.

**J. Kwan:** Yes, there's no doubt for me that the word unconscionable implies a much more narrow approach than the word unreasonable. In this instance it has and can have huge ramifications for both the landlord and the tenant.

Take as an example what is deemed to be unconscionable. I would assume that if the landlord requires the tenants to provide sexual favours to them for them to continue to have access to the rental accommodation, that is unconscionable. I would imagine that. Yet in another situation if, let's say, on Sundays laundry facilities would not be open for tenants' use, for whatever reason, I would assume that might not fall into the category of unconscionable, but it would seem to me as a tenant that it's unreasonable. Yet the definition of that with the new terminology of unconscionable makes it, perhaps, much more narrow for one to establish the case as to what is reasonable and what is not reasonable, and what's conscionable and what's not conscionable. Again, tenants may well be disadvantaged as a result of this narrower description of unconscionable versus unreasonable.

Could the minister advise then: in the case around someone who might be denied access to the laundry facilities on a Sunday, is that unconscionable or is that unreasonable?

**Hon. R. Coleman:** First of all, let's make something clear. If somebody's out there asking for sexual favours for a tenancy in the province of British Columbia, I would expect that we're going to deal with it as a criminal matter, not just through a residential tenancy agreement, to draw that parallel. That is unconscionable, it's criminal, and it's unacceptable to anybody in any society. We should be clear about that. To draw those comparisons, when we're dealing with an act that deals with a consumer relationship between a landlord and tenant, is not appropriate in this context.

With regards to laundry on a Sunday. If it's in the tenancy agreement that's agreed to between a landlord and tenant, that's a reasonable situation, because the two have agreed to it in a tenancy agreement. So it's obviously not unconscionable.

[1610]

**J. Kwan:** Well, you know, it might shock the minister in cases where people are demanded for sexual fa-

vours in a tenancy situation. It might shock the minister. It's absolutely unacceptable; there's no doubt about that. It's absolutely criminal. There's no doubt about it. I want to say that very clearly. But the reality is also, particularly in my riding, that many people are put in the situation. They're hugely compromised and abused by unconscionable and unreasonable landlords. That's the reality of it.

I hear from my constituents. There are lots of issues, and some of it is criminal — absolutely. It's unacceptable that this kind of practice goes on, but it does. People look for the broadest and widest ways in which they can address these issues. Part of the issue is, of course, under the Residential Tenancy Act, where these kinds of things happen, so you want to ensure there's allowance for people to take recourse. That is the purpose of this debate here.

I'll give another example — again, in my own riding I know this happens regularly — where people have to actually perform a variety of services in order for them to maintain their tenancy, whether it be housekeeping for the landlord's apartment or buying alcoholic beverages downstairs at the pub — as a lot of people live in these buildings where there are pubs, for example. Those, to me, quite frankly, are unreasonable and unconscionable — those kinds of favours that are demanded of tenants.

The reality is that people are faced with these situations. When you're so very marginalized and you have very few options and choices before you, people find it difficult to cope, and often they are faced with the abuses of the landlord. That's the reality of it. I know this happens, having been a residential tenancy advocate prior to this time. I know it happens even though it may be illegal.

Recourse is important. To heighten and narrow the provision for what tenancy terms are unreasonable to the term "unconscionable," to make it even harder to establish the tenant's case, I don't think is acceptable. It's not acceptable. It's not within a reasonable rationale in the broader public's mind. One would expect that terms that are put forward that are unreasonable should not be allowed under a tenancy situation. It is reasonable, I would think, to expect that you could do your laundry on a Sunday, as an example. You would think that's a reasonable thing to ask for as a tenant, but if it's in the tenancy agreement to say, "Well, you're not allowed to do laundry on a Sunday, even though that may be your only day off," can you then establish that as unconscionable? Can you establish that as unconscionable, and who gets to decide what is unconscionable? What is the definition of unconscionable in the case of tenancy disputes?

**Hon. R. Coleman:** This particular piece of legislation puts in place by regulation a standard-form tenancy agreement that's deemed to be in place if there isn't one signed by a landlord and tenant. It is going to lay out the basic rules of a relationship of a tenancy between a landlord and a tenant. I think that's an important shift, because it actually identifies a relation-

ship with much more clarity than there has been in the past.

[1615]

The second thing is that the member talks about somebody cleaning someone's apartment or whatever the case may be. I don't know in those situations whether it is part of an agreement for tenancy, and that is a consideration for the reduction of the cost of rent in a particular tenancy or whatever the case may be, so I don't think I could comment on individual situations that the member wishes to pick up on as unconscionable.

I think that when you put the standard form out there — you have an agreement between landlord and tenant, and those that you don't have an agreement between, you've identified within that tenancy agreement what the standard relationship should be — you actually protect landlords and tenants, in particular, in a much better way than they have been in the past — whether they be in a situation like the member describes in her riding or whether they be in what we would refer to as an illegal suite in the province. They will also be protected by having a standard form of tenancy agreement. We will develop that tenancy agreement in consultation, as we move the regulations forward, to make sure that it is clear on what that relationship is between landlord and tenant.

**J. Kwan:** Given that the act is before us, the substantive change here under section 6 is to replace the word "unreasonable" with the word "unconscionable." The minister has yet to describe what unconscionable is. What he's said so far is that it's narrower in its application than what was previously in place — the word "unreasonable" — so we know that it's going to be stricter in terms of application to establish one's case. It's going to be harder for tenants to establish their cases when the landlord is treating them unreasonably, because the test now is not just unreasonableness; it's unconscionableness.

Could the minister please define "unconscionable" for this House? Give me an example — any example — of what is deemed to be unconscionable under a residential tenancy setting. What is the enforcement provision? Who gets to decide what is unconscionable, given that the act doesn't describe what is unconscionable?

**Hon. R. Coleman:** I'm comfortable with this being in the act, frankly, because of the common-law applications that have been applied to through the courts. Also, to me, unconscionable is when no two parties would reasonably enter into something within an agreement that puts one party significantly at risk, I guess you would say. How you would define that in a relationship between a landlord and tenant is that you have a tenancy agreement. The tenancy agreement is agreed to by both parties. If there is something outside of that, that's why we have an arbitration system and arbitrators.

**J. Kwan:** What are the common-law cases that establish clearly what unconscionable means?

**Hon. R. Coleman:** Just so that the member doesn't misunderstand, it's a term that's been around for a long time. That's what I meant by that comment. Frankly, the tightening-up of the relationship in a standard-form tenancy agreement, so people understand what the relationship is between landlord and tenant, is probably one of the most significant shifts of this legislation, because it's very, very important for both parties.

**J. Kwan:** I spoke with some of the representatives on behalf of tenants just today. They have a lot of concern about this. The minister likes to say that people are happy with this and that it's going to be good for both parties — not so.

Under section 6, let's be clear. Here's what section 6 deals with: "The rights, obligations and prohibitions established by or under this Act are enforceable between a landlord and tenant under a tenancy agreement." Under subsection (3): "A term of a tenancy agreement is not enforceable if...the term is unconscionable."

That's what we're talking about: if the term is unconscionable, then it is not applicable.

Interjection.

**J. Kwan:** Let's be clear. The minister says to read subsection (a) — sure. "The term is inconsistent with this act or the regulations."

There is one set which you can apply, in terms of what is enforceable and what is not enforceable. If it is not consistent with the act or the regulations, then it is not enforceable. That's one thing.

[1620]

Then the second test that the minister has put forward is the term "unconscionable." It used to read "unreasonable." A reasonable test is a legal test. It is a legal test in many circumstances. There's ample case law to establish what is reasonable, and courts have defined that. Unconscionable, on the other hand, is a different test and is not a legal term. It is not a legal term, as far as I could see. The definition is much more heightened for the tenant and the landlord to establish what is unconscionable. It has, in my view, a moral overtone to it. Who gets to play God and define what is conscionable and what's not conscionable?

I thought that the "reasonable man" test should be the test that's applied. At least as far as I can remember — I am not a lawyer by any stretch of the imagination, but I have gone to university and taken some of the courses relative to legalities and issues — the reasonable test is a critical test that is always, always being applied in the courts. In the case of the Residential Tenancy Act, that was also the term that had always been used. Now all of a sudden that's changed. Somehow a thing cannot be enforced if — if — it is unconscionable.

You know, the heightening of this approach, I think, limits access to protection of rights for tenants and potentially for the landlords as well, although it is

a somewhat unequal balance of power, if you will, between landlords and tenants. Landlords tend to have greater power and control over things, and the tenants tend not to, because they're dependent on the tenants' approval to get access to their accommodation.

This section of the act with this change in this term is extremely problematic in my view, so I'd like to move an amendment to section 6(3) to, first, delete the word "unconscionable" and replace it with "unreasonable." I think the test that should apply should be a reasonableness test and not this heightened, more narrow, restrictive test that this minister is putting forward.

Section 6(3) would be amended as follows:

[Section 6 (3) is amended by deleting the text highlighted by strikethrough and adding the text highlighted by underline:

- (3) A term of a tenancy agreement is not enforceable if
- (a) the term is inconsistent with this Act or the regulations,
  - (b) the term is ~~unconscionable~~ unreasonable, or]

On the amendment.

**Hon. R. Coleman:** I'm speaking against the amendment. The definition in section 6(3), I think, covers it. It says: "A term of a tenancy agreement is not enforceable if (a) the term is inconsistent with this Act or the regulations, (b) the term is unconscionable, or (c) the term is not expressed in a manner that clearly communicates the rights and obligations under it."

That actually raises a landlord's communication with a tenant to a higher standard than it was in the past, and I think this section more than aptly covers the concerns of the member.

**J. Kwan:** With all due respect, I disagree with the minister. The minister acknowledged at the outset that he is actually putting forward the provision of unconscionableness to make the issue a lot narrower in terms of enforceability and what is deemed to be not enforceable. The intent here in this act is very clear — that is, to make it more strict and harder to apply under section 6(3) of the act, for a tenancy agreement to be not enforceable. When a tenancy agreement is not enforceable, one should apply the test of reasonableness, not unconscionableness. To make such strict and narrow restrictions, to actually overrule the tenancy agreement, places extreme hardship on particularly vulnerable tenants, I would say. Marginalized individuals, people who are desperate for housing, may well be subject to unreasonable means in application of tenancy agreements.

[1625]

I would even go as far as to argue that the previously passed definition of the requirement for providing postdated cheques as a condition, if a landlord chooses to put that in there, for tenancy is unreasonable. I think it is unreasonable to say to people that they must provide for postdated cheques, and if they don't, they can be turned down for this rental accom-

modation. To me, that's unreasonable. But is it unconscionable? I suppose that's the debate.

That's the debate, and it's not clear from this act whether or not that would be deemed to be unconscionable. To me, it is unreasonable. If a person brought that to the residential tenancy branch for dispute, a person would actually have a chance to win the case to establish that. But here, with a narrower, stricter application of what is enforceable and what is not enforceable, the minister is making it very hard for tenants, especially those who are marginalized and who are in great need of affordable housing.

**J. MacPhail:** On the amendment, my question to the Solicitor General is: will there have to be a whole new body of law built up now around the term "unconscionable"?

**Hon. R. Coleman:** No, we don't believe that will be the case. This term has been used in many consumer relationships. Frankly, we think we cover it under the section quite clearly, and we're quite comfortable with it.

**J. MacPhail:** I confess I have just come to this debate. I was following it on the TV, but I missed a section of it. I was questioning my colleague on this word. It's a brand-new term to me in terms of a legal context or legislation. I've never seen it before, so if we're not starting from scratch, perhaps the minister could use this opportunity to advise tenants and landlords of where they could look in consumer relations and consumer law, or in the law, to find out what this word means in a legal context. Perhaps we could have that advice.

**Hon. R. Coleman:** I guess we're debating the amendment, and I don't know what the process is here with regard to the amendment. Obviously, I said I don't support the amendment, but we will create a policy guideline and a fact sheet before the legislation comes into force, as we develop the regulations, so people have a clear understanding of the definition.

**J. MacPhail:** I know my colleague's amendment will be defeated. But I think the Solicitor General's answer goes to the point raised by my colleague, which is that there is nothing anyone can turn to except a policy, of which we know nothing to date, that will now be developed by the Solicitor General.

The reason why I think this is of particular concern is because, once again, British Columbia is breaking new ground in terms of the application of law. I expect that this breaking of new ground will be controversial, and I don't think it will in any way assist in the streamlining of residential tenancy issues. We'll mark this down as maybe an unintended consequence, but I expect this will bring trouble to the waters of residential tenancy, because nobody knows what it means on either side.

Amendment negated on division.

[1630]

**J. Kwan:** Let me try it another way. The minister says: "Don't worry. Unconscionable would be clearly defined." We already know that in many cases, unreasonable is defined by law, so I want to make this suggestion. At the minimum, I think we should add in the word "unreasonable." If the minister wants to apply the word "unconscionable" as one means of the test for enforcement, then I think we should also add in what is clearly established, and that is to say what is unreasonable so that a tenancy agreement ought not be enforced.

I have a second amendment. The amendment should read as follows.

[Section 6 (3) is amended by adding the text highlighted by underline:

- (3) A term of a tenancy agreement is not enforceable if
- (a) the term is inconsistent with this Act or the regulations,
  - (b) the term is unconscionable or unreasonable, or]

Then I think that tenants and landlords should have a right to know, as we're debating this bill, what some of the applications would be. Part of that application would include a test of unreasonableness. I've tabled and I move my amendment to section 6(3).

Amendment negatived on division.

On the main motion.

**J. Kwan:** The opposition will be voting against section 6. I think it is unconscionable of the government to put in such a test of unconscionableness to rule that tenancy agreements should not be enforceable. It's really quite stunning when the government says they've brought in legislation that provides for a balance in terms of rights and protections for tenants and landlords. What we've seen so far is that the tests and changes the minister has brought about have been ones that, in my view, prevent access to the application of the law. It has heightened and narrowed the tests that should be applied for the application of the law, I think, to the detriment of both the landlord and the tenant. To that end, the opposition will not be supporting section 6 of this bill.

Section 6 approved on division.

Sections 7 and 8 inclusive approved.

On section 9.

**J. Kwan:** Section 9(4) reads that "the director may do one or more of the following: (a) provide information to the landlords and tenants about their rights and obligations under this act; (b) help landlords and tenants resolve any dispute that can be or has been referred to arbitration; (c) publish, or otherwise make available to the public, arbitration decisions or summaries of them."

Is the intention of the act to make sure that information is shared and provided by the landlords to the tenants?

**Hon. R. Coleman:** This is the same provision that exists in the present act. The intention would be that the director would continue in the process they're employing now. The director has from time to time published a binder of decisions, as I understand it. The intent is so people will understand what decisions are taking place. We would have that process continue to some degree.

[1635]

**J. Kwan:** I understand that. And I know that this government is fond of saying: "Well, it says that in the previous bill, so why bother changing it?" The whole purpose of why this bill is before us is that it's supposed to advance, in legislation, changes that would be positive in terms of providing a balance to the application of law and the enforceability of law, in this case the Residential Tenancy Act. It's not a very good excuse to say, "We've gone out and done all this consultation, and we're here to make changes to make it more positive," and so on and so forth, and then for the minister to simply refer back and say: "Oh well, it's the same as before." If that's the case, why bother bringing forward a bill that, really, basically doesn't advance changes in a positive way? It doesn't make sense to me. That's not an answer at all. It's not an acceptable answer for the minister to provide.

The issue I want to raise here is this. The concern I have is that if we don't change the language to be more direct in terms of a requirement for the director to provide information to landlords and tenants about their rights and obligations under this act, then you run the risk of people not knowing how to apply the act. It is important that people do know and are educated and receive this information so that the law will be followed as closely as possible, if not in its entirety — at least people are informed. Education is key, and the provision of information is key. Having been an advocate, I know what that is like. Access to information is access to rights — what rights should be afforded to you and how you make sure people do not abuse the process or discriminate against you. You have to have the information in order to know, and if you don't have the information, you cannot know.

It would seem to me that for the purposes of advancing this act and the purposes of protection and the application of rights in the residential tenancy provisions, the director must provide information to landlords and tenants about their rights and obligations under this act. The director must help landlords and tenants resolve disputes that can be and have been referred to arbitration and publish or otherwise make available to the public arbitration decisions or summaries of them.

All of this is important by way of information, particularly on the last point, where the minister says, "Well, we'll establish in regulation what unconscionable means," when it's a very new term. In fact, it's a

new term in the residential tenancy arena, and yet there's no requirement for arbitration decisions or summaries of them to be made public so that people know what the case law has been and how it's been set. Why wouldn't the minister want to go further than just to say: "Well, you may do it, or you may not do it"? Why wouldn't the minister want to go further, to say, "Well, you must do it," in an effort to ensure that the application of this act is fulfilled so people do have the information available to them and they're educated about it so, therefore, they can apply it appropriately?

[1640]

**Hon. R. Coleman:** There are over 20,000 arbitrations in the province of B.C. every year. When we dealt with some of these issues in and around the publication issues, the privacy issues were brought up by the privacy commissioner with regards to what would have to be deleted and not deleted. The entire administrative bureaucracy that would have to be built around that, rather than just having selected arbitrations out there so that people could see what in certain circumstances was the decision, was felt to be the more reasonable approach. We think we can accomplish that quite nicely in the management of the branch, and we don't think it's necessary to make it that every arbitration should be or shall be published.

**J. Kwan:** It's not just the issues around arbitration decisions and what is made public. I would argue to the contrary. I understand the issue around privacy, and you can meet the issue of privacy and the test of privacy by deleting names, and so on and so forth, for the protection of the individual in the particular arbitration, whether it be the landlord or the tenant. Those things could be dealt with by sitting down with the privacy commissioner, seeking his advice and then acting accordingly. That's it.

The issue is this: sharing information, educating the public, so that the landlords and the tenants know what their rights are and what their obligations are under this act, making sure that the landlords and the tenants work towards resolving disputes that can be or have been referred to arbitration. I think it is important to make sure that arbitration decisions, at least summaries of them, are actually made public so that people know what cases have come before the arbitrator and whether or not they have won or lost, on what basis, what the arguments are and what the rationales are for the case to be won or lost. It's valuable information for landlords and tenants alike.

If the interest is to make sure that people understand how to apply the law and what their obligations are, then one would think that the government would go a step further than saying, "You may use this information and educate the public," or then again, "may not," and say: "This must be done in the interest of ensuring that people know what their rights are." It simply makes sense to go a step further.

The other concern I have, of course, is that in the environment people are subjected to today, sometimes accessing information is particularly difficult because of cut-

backs. We know residential tenancy offices have been shut down — one in the lower mainland, one in Victoria. These are issues of concern for the public in terms of access to a place where they can file a complaint. That access is already diminished. If we don't work hard to get the information out to the public, how can we then expect people to know what their obligations are? Doesn't government take a responsibility in that as well — to ensure that the public actually knows what their rights and obligations are — if you think that this is a priority?

This impacts, as I say, over a million people in British Columbia. Government should take more of a progressive, proactive approach in providing information. It doesn't make sense to me.

I'm going to move an amendment to section 9(4) of the act, to replace the word "may" with the word "must." So it reads as follows:

[Section 9 (4) is amended by deleting the text highlighted by strikethrough and adding the text highlighted by underline:

(4) The director ~~may~~ must do one or more of the following:

- (a) provide information to landlords and tenants about their rights and obligations under this Act;
- (b) help landlords and tenants resolve any dispute that can be or has been referred to arbitration;
- (c) publish, or otherwise make available to the public, arbitration decisions or summaries of them.]

I move this amendment standing in my name. I think you've all got copies — and for a copy to be passed on to the minister....

[1645]

Amendment negated on division.

Sections 9 and 10 approved.

On section 11.

**J. Kwan:** Section 11 deals with the director and the staff who must not be compelled in civil proceedings. Here, interestingly, the word is "must" as opposed to "may." My question and concern to the minister is this: does this section then allow for evidence or documents held by the residential tenancy office...? Would that information not be made available, for example, for judicial reviews?

**Hon. R. Coleman:** It's not the intention to change what is made available for judicial review with regards to this section. In situations of civil proceedings, particularly in family relations where something has taken place with regards to conversation or what have you in an arbitration and an arbitrator is there between two spouses, for instance, or along those lines, sometimes we do get to where they are summonsed to come to civil proceedings. We get those quashed by going through basically what is an expensive court process. This allows us to take care of that without having to go through that process.

[H. Long in the chair.]

**J. Kwan:** If the intent is not to exclude judicial review from accessing the information, would that then

be spelled out in the regulation? Where would it state that clearly? In this section of the act it doesn't say that clearly. It simply says under civil proceedings "...must not be compelled in civil proceedings arising out of a dispute or an arbitration under this Act."

**Hon. R. Coleman:** It's not the intention for staff to change what is current practice; it's made available for judicial review. This deals with other civil proceedings. Frankly, we're not going to change the policy, what we presently do.

**J. Kwan:** Yes, the minister says it wouldn't change the policy in terms of what we currently do. The question is: where would it be spelled out clearly that judicial review would not be counted as civil proceedings in this situation? Where would it say that? Would it be by regulation? How would one have the reassurance that that is in fact the case, other than the minister's word?

[1650]

**Hon. R. Coleman:** The ministry reviews with counsel when these things happen as to what should or should not be released, and that practice will continue. The intent is that this type of definition is part of the admin justice project, which is ongoing in the Attorney General's ministry. It is basically so that we can separate what would be made available under a normal proceeding, which is with counsel, versus whether we're dealing with civil proceedings that we don't think our arbitrator should be drawn into.

**J. Kwan:** Why wouldn't the minister put this in regulation so that it's completely clear?

**Hon. R. Coleman:** We just don't think it's necessary. It's been the practice, and we'll continue the practice.

**J. Kwan:** Well, it remains to be seen. As a member of the opposition, I certainly will be observing this very closely. I would imagine that those who advocate for tenants will be watching this very carefully too, and I hope it is the case that judicial review would be exempted from this provision so that information could be shared from the residential tenancy office if a matter arises to a judicial review.

Sections 11 and 12 approved.

On section 13.

**J. Kwan:** Under section 13(2)(a) it makes reference to the words "the standard terms." Could the minister please explain what this means? It's not clear in terms of what this means — the standard terms.

**Hon. R. Coleman:** The standard terms are what's deemed to be part of every tenancy agreement. Right now it's laid out in the tenancy agreement regulations that exist in the existing act and existing operation. We

will be reviewing those standard terms as we go through the development of regulation and putting a standard set of terms and standard tenancy agreement in place for everyone to understand that that is sort of like the baseline of tenancy agreements in the province. It is something that we think is quite applicable and look forward to working with the stakeholders to make sure that we have those standard terms developed as we go through regulation.

**J. Kwan:** Section 13 of the act does not clearly state or explicitly prohibit landlords from collecting guest fees in residential hotels. Now, it appears that is the intent from the comments of the minister at second reading in the House. Although it doesn't say explicitly, the section could be abused by residential hotel owners and others because the term "occupant" is not defined and therefore could be applied to guests, and also because a tenancy agreement is only disputable under unconscionable terms. Guest fees could fall through the cracks, as they could be seen as unreasonable but not necessarily unconscionable. Is it the intent of the minister to prohibit landlords from collecting guest fees?

[1655]

**Hon. R. Coleman:** Under section 14(4) of the old act, it was specifically in there that landlords of SROs could collect guest fees. We've taken that out of this act, because that's what actually gave them the ability to do so. We've changed that in this act.

**J. Kwan:** If the intent is to say that guest fees should not be allowed, why don't we actually make an explicit statement to say they are not allowed and that they are prohibited?

**Hon. R. Coleman:** We think there is regulation-making power to deal with that where we can identify that in the fees that are allowed to be charged to tenants, and we don't need to specifically put it in the legislation as the member looks at it. In regulation we will identify that as something the landlord cannot do as far as one of the fees that they're not allowed to charge.

**J. Kwan:** The minister just said something to trigger another question. The minister suggests that through regulation, they will be establishing what fees would be allowed and what fees wouldn't be allowed. Let me just ask this first question: is it the intent of the minister to not allow guest fees? Is that the intention — that guest fees would not be allowed under this act, so therefore regulation will follow?

**Hon. R. Coleman:** Yes. That's correct.

**J. Kwan:** What other fees would the minister be contemplating allowing landlords to apply to tenants under the tenancy agreement?

**Hon. R. Coleman:** I guess a couple of examples would be.... Further on in the act, we actually deal

with where you could have a deposit for keys or card access systems or what have you. Regulation will allow us to deal with a lot of the issues that are, frankly, misunderstood at the arbitration level between both landlord and tenant, such things as NSF cheque fees and that sort of thing. We're going to deal with that in regulation.

[1700]

**J. Kwan:** The minister has taken out this section 6(3), which reads that "a term that is not reasonable is not enforceable," to maintain the authority of the act. Why did the minister take that out?

**Hon. R. Coleman:** We've already dealt with that in a previous section when we talked about the term "unconscionable" and other portions of definitions under section 6(3) of the act. That's the same answer to this question, to the member, as the previous one.

**J. Kwan:** It sounds like the minister is trying to make the act consistent, but this is problematic, as I mentioned earlier. These two sections are related in terms of what's reasonable and what is not reasonable and of what should be deemed to be conscionable and unconscionable. Relating to section 13 again, section 13 actually allows for — or, I should say, erodes from the old act — consequences if the landlord does not comply. That's to say that within 21 days after a landlord and a tenant enter into a tenancy agreement, the landlord must give the tenant a copy of the agreement.

Under a previous act, it used to be that there was a section of consequences applied to the landlord if they didn't do this, but now that's gone. In the old act under section 19(2), it used to read: "If a landlord does not comply with subsection (1), the tenant's obligation to pay rent is suspended until a copy of the agreement is delivered to the tenant, and as soon as the copy of the agreement is delivered to the tenant, any rent that was not paid to the landlord in reliance on this subsection becomes immediately due and payable."

It's plain language as well. That used to be the old act. Why did the minister take that out? Why did he take the consequences section out if the landlord does not comply by providing, within 21 days, the tenancy agreement to the tenant?

**Hon. R. Coleman:** There was a shift in this act where, under section 12(b), the standard terms of the tenancy agreement are deemed to be in force "whether or not the tenancy agreement is in writing." That is to protect all tenants from tenancy agreements not being delivered. We felt we have that protection in there for arbitration purposes and any other discussion around the tenancy, because the standard terms of the tenancy agreement will be deemed to have been in place if a tenancy agreement is not signed by the two parties in writing.

**J. Kwan:** Yet that would require the tenant actually bringing the matter to arbitration, whereas under sec-

tion 19(2) before, the act states that if the landlord does not comply, the tenant's obligation to pay rent is suspended until the copy of the agreement is delivered. It's much more direct, much more explicit to say to the landlord: "Here's your obligation." So many of the changes in this act actually hinge on the tenancy agreement that the minister himself acknowledged that what the terms are and so on and so forth.... Is it reasonable? Is it unconscionable and all of those kinds of things? Is it agreed to by the tenant?

If a tenant actually moves in and does not receive the information within the prescribed period, the person actually has to go to the residential tenancy branch to file a complaint. Before, it was much simpler. The incentive for the landlord to comply is this: "Hey, you know what? If you don't provide this to me as a tenant, you're not going to get your rent." It's within the accordance of that act to do so. It makes no sense. If the intention is to cut red tape across government, one would think that cutting red tape for tenants should also apply.

[1705]

In this instance, it actually cuts the red tape and send a clear message to the landlord, "By the way, you have not complied, and here are the consequences to you," without having to go through the bureaucracy of the residential tenancy branch to file a complaint. Why would you take it out? How is that helpful, really, at all?

**Hon. R. Coleman:** I guess it depends on what the member is arguing. If the member is arguing that heat and light be provided as part of the tenancy agreement or whether the state of the unit or whatever the case may be is part of the tenancy agreement and that's in the standard form, that can go to arbitration. The standard-form tenancy agreement will apply with regards to this. If it's a question of the tenant disputing what the actual rent is because it's not in writing between landlord and tenant, then they can go to arbitration and have that discussion, but the standard forms of tenancy agreement and all other things would apply. It's in there; it's in regulation. The standard-form tenancy agreement is in regulation. If you want to add to it, you can, and sign off as a landlord and tenant, or you can take the standard-form tenancy agreement that will be available in regulation, and you can sign that with your tenant.

The question the member says is if they don't get one within 21 days, then they don't have to pay their rent. Well, the intent of this is to make sure there's a standardized tenancy agreement that is deemed to be in place between landlords and tenants across the province.

**J. Kwan:** Is the minister saying that if the landlord does not come forward to the tenant within 21 days with the tenancy agreement, then by default the prescribed tenancy agreement the government is establishing by regulation will simply then apply? Is that what he's saying?

**Hon. R. Coleman:** The standard-form tenancy agreement would apply if there's no tenancy agreement in place between a landlord and tenant. If there's an oral agreement between the landlord and tenant with regard to things that are not contained in the standard-form tenancy agreement, they can go to arbitration to deal with that. But the standard-form tenancy agreement is in place, and that will be what will be applied by our arbitrators.

**J. Kwan:** The minister did not answer my question. My question is very clear. If a landlord does not provide a tenancy agreement to his tenant within 21 days, does that mean, then, the standard tenancy agreement which the minister is going to establish by regulation will then simply apply? He didn't answer the question. My suspicion behind all the mumbo-jumbo he actually said is that no, it would not apply, and the landlord could still come forward with their own tenancy agreement. A tenant must then take that dispute to the residential tenancy branch in order to try to win the argument to say the standard tenancy agreement should apply.

The issue here is this: under the previous act, under section 19(2), the obligation of the landlord is stated very clearly. That is to say, the landlord must, within 21 days, provide the tenant a copy of the tenancy agreement so that people know what the rules under the tenancy agreement are which they must comply with. Now, if the landlord does not do that, there's a consequence. That is that the tenant, without having to go to the residential tenancy branch, could withhold their rent. That's a huge incentive for the landlord to comply. The minister is saying: "Well, don't worry. There's still recourse for you. All you have to do is go to the residential tenancy branch to ask for the case to be heard, to file a complaint."

[1710]

That, to me, is adding red tape that wasn't there before. This government is very fond of saying it wants to reduce red tape. Why not reduce red tape consistent to what the act already provided for, which is to not require the extra step of having to go to the residential tenancy branch to get an enforcement order for the landlord to provide a tenancy agreement?

Especially with so many changes in this act, it's contingent on what the residential tenancy agreement is going to say. Take as an example the issue we just dealt with earlier around postdated cheques. The minister himself has said the landlord could put it into a tenancy agreement to require a tenant to provide postdated cheques. That could be a verbal thing that is said but is not in the tenancy agreement. He did not say that if the landlord does not provide for it, the standard tenancy agreement per the regulation that's being established by the minister would apply.

If that was the case, then there's another story. Automatically, by default, the tenancy agreement that's established would apply. It would apply even if you don't receive one from the landlord, as opposed to saying: "Well, it's there for you to use, and you can sign it." What if the landlord refuses to sign it? We know there's a problem, and the person.... The extra step

the tenant has to go through is to go to the tenancy branch, whereas before it was simple — here's the incentive: withhold the rent so that the landlord must provide the tenancy agreement. Especially with the changes in this act, so much hinges on what the tenancy agreement says.

**Hon. R. Coleman:** The standard-form tenancy agreement applies to all tenancies. Basically, if somebody doesn't have a tenancy agreement, the standard-form tenancy agreement applies. If it's not delivered to the tenant in writing, that's what the arbitrators will be expected to apply to the relationship within that tenancy — that being a standard-form tenancy agreement.

**J. Kwan:** But that has to be sought after by the tenant through a complaint to the residential tenancy office. There's a marked difference. The minister says, "Here's a standard-form tenancy agreement. You can make it applicable to you if you like. You can use it if you like. You can alter the terms if you like." This act allows for that to take place. The act also says that within 21 days, the landlord must give a copy of the tenancy agreement to the tenant, but if they don't, the onus then is on the tenant to file a complaint to see what terms would apply for this tenant.

I'm saying that in the previous act, the government actually achieved the goal of what this government wants to do — and that is to reduce red tape — because automatically, a consequence is invoked. That is to say, if the landlord does not comply with this section of the act by not providing a tenant with a tenancy agreement within 21 days, the tenant can choose to withhold rent. That is a big step. The tenant doesn't have to go to the residential tenancy branch to file a complaint — just not pay the rent. I bet you that in a big hurry, the landlord is going to come up with a tenancy agreement. That's the issue here.

So, Mr. Chair, I have an amendment to make. I suspect that if I keep asking the minister questions, he's going to get up and say the same thing. That actually provides no comfort and does not reinstate the consequence that I think needs to be in place, which achieves the goal of cutting red tape and also providing protection at the same time.

[1715]

My amendment to section 13 is:

[Section 13 is amended by adding the text highlighted by underline:

(4) if a landlord does not comply with subsection (3), the tenants' obligation to pay rent is suspended until a copy of the agreement is delivered to the tenant, and as soon as the copy of the agreement is delivered to the tenant, any rent that was not paid to the landlord in reliance to this subsection becomes immediately due and payable.]

I trust that you have a copy of this amendment, Mr. Chair, and that a copy has been passed on to the minister.

On the amendment.

**J. Kwan** I think that by invoking this consequence, by putting it back in place, what used to be section

19(2) in the previous act will say very clearly and give the incentive to the landlord on this issue, on this section of the act, that they have an obligation to comply. If they don't comply, there is a consequence. The tenant doesn't have to go through the residential tenancy branch to invoke that consequence. They simply can withhold the rent until such a tenancy agreement is presented to them by the landlord.

**Hon. R. Coleman:** We'll be opposing the amendment. Under section 14(1), a tenancy agreement cannot be amended to change and remove the standard terms. The standard terms apply within a tenancy relationship in this province, and we don't think it's necessary to amend that any further.

**J. Kwan:** The minister knows full well there will be provisions within these so-called standard terms that will give extra provisions for the landlord to choose which would apply and which wouldn't. Take as an example, he just said it in the Legislature today when we talked about postdated cheques. He said it would be up to the landlords to decide whether or not they want to impose a provision that requires a tenant to provide postdated cheques. If the landlord requires that and the tenant does not meet the task, that's grounds for the landlord to refuse the tenant the accommodation.

He knows full well there is a whole range of areas and provisions which a landlord could add to under a tenancy agreement. It's not just the standard that applies. Within the regulation that we don't see before us, which is not before this House, there will be lots of provisions to give leeway one way or the other. We don't know what that is yet.

We know of one thing in this Legislature today through our debates. It is unclear as to what the rest of the requirements are that a landlord could impose on a tenant. Short of that, I think it is critical to say clearly to the landlord: "Here's your obligation; meet it." If the intent of the government is not to say to them, "Here's your obligation. Within 21 days, landlord, you must provide a tenancy agreement," why have the section there? If you have the section there, why take out the consequence that would require, that would actually force, the compliance of the section? It simply doesn't make sense.

How does the minister explain the whole notion that somehow this government is intent on cutting red tape? If a tenant wants to have this section enforced, a person actually has to go file a complaint in order to find out what tenancy agreement would apply to them, whereas before they didn't have to do that. Adding another step — more barriers for the tenants — seems to be, under this section of the act, what the government's intent is. Maybe it's not so much to state clearly what the obligations are for the landlord — maybe it's not so much that — but rather to say: "Well, we'll go through a pro forma of pretending that we want to do that, but at the end of the day, if you don't comply with it, that's okay, because the onus is on the tenant to follow suit." The automatic provision that was in place before, the ability for

the tenant to withhold payment of rent, is now no longer in place.

Amendment negated on division.

On the main motion.

[1720]

**J. Kwan:** Just on reflection, I know the minister said he will provide for regulation to disallow guest fees to be collected at the residential hotels under section 13(f). Through the course of this discussion, as we continue with debate, I must admit I'm getting less and less confidence from the government in terms of the protection that may or may not surface by regulation and what the onus is for the landlord, what the onus is for the tenant and their obligations. It worries me.

Just to be sure, I want to actually put forward an amendment that says explicitly that the landlord must be prohibited from collecting guest fees in residential hotels. I would like to move this amendment.

The amendment, then, to section 13(f)(iv) would read as follows:

[Section 13 (f) (iv) is amended by adding the text highlighted by underline:

(iv) the amount of rent payable for a specified period, and, if the rent varies with the number of occupants, the amount by which it varies;

(A) a tenancy agreement must not include any provision to allow guest fees to be collected from guests or visitors of residential hotel tenants.]

On the amendment.

**J. Kwan:** I don't think this is in contradiction to the intent, if in fact it's the intent of the government to put this in regulation. It now simply puts it explicitly in the act so that people know what their rights are. I say this with all due respect. I think it is important to set it out clearly. Lots of people are being abused right now in our communities, where guest fees do apply. For tenants who are low income, for tenants who ought not have to pay extra money to have a visitor in their room, they are.

This will just simply say, very clearly, that landlords are not allowed to do that. Without having to wait for regulation, we now have it in legislation, which I think is much stronger in its message and in the language and much more explicit.

Amendment negated on division.

Section 13 approved on division.

On section 14.

**J. Kwan:** Section 14 deals with the changes to the tenancy agreement. Under section 14(3)(b), the section reads as follows: "(b) a withdrawal of, or restriction on, a service or facility in accordance with section 27." When a person goes to section 27, it says: "(1) A land-

lord must not terminate or restrict a service or facility (a) that is essential to the tenant's use of the rental unit as living accommodations."

I have to discuss this section in the context of section 27, because it actually makes direct reference to it. Section 27 is, of course, a concern, because the word is changed from what was, again, a test of "reasonableness" to the test of "essential" under section 27, to say that it is essential to the tenant's use of the rental unit as a living condition. What one might deem essential might not be the case for somebody else, but what might be reasonable to one person may well be also reasonable for another person.

[1725]

The problem that I have with section 27, of course, is that the word "essential" once again narrows the definition of what the tenant may deem to be reasonable for their rental unit as living accommodation.

Take, as one example, an elevator. Would an elevator be deemed to be essential in a tenancy agreement, or would it be deemed to be reasonable? Now, I would argue that for a person who has a physical disability, an elevator would be essential. For a person without a disability, if the building is such that you live on the ninth or tenth floor and have to climb the stairs without an elevator, perhaps you may argue that is unreasonable, especially if an elevator was in place and, for whatever reason, the elevator is taken out or is not operable, or whatever the case may be.

My problem with this section is that this allows for a further erosion of what may be deemed to be reasonable for the purposes of rental accommodation. This section actually allows for that in terms of the changes under the tenancy agreement.

Why would the minister allow such a change, which could potentially open up issues around discriminatory practices in a rental accommodation situation?

**Hon. R. Coleman:** Basically, this section covers what is essential to a tenant's use of the rental unit, like heat, light, water and that sort of thing on one side, and it also allows for removing something if a reasonable substitute can be found. But when doing that, because there's a tenancy agreement, there has to be corresponding reduction in rent.

I guess an example of that would be if the cable service was being globally provided to the building, and the landlord decided to no longer provide cable service. If it had been included in the previous rent at a cost of \$40 a month or whatever the case may be, they could give notice of that and would have to reduce the rent accordingly when they remove that service.

The "essential" is pretty clear, I think. They can't remove essential services.

**J. Kwan:** Would the operation of an elevator be an essential service? Would that be deemed to be an essential service in a tenancy agreement in a rental accommodation situation?

**Hon. R. Coleman:** I don't want to sound glib on this, but I guess in some ways it may depend on the height of the building. It's certainly something that is part of a tenancy agreement that is removed as a service within that building. I would think that access to an elevator, for instance, for somebody who is a senior could certainly come into the question of being essential and could end up in that realm of discussion.

**J. Kwan:** What if it's not prescribed in the tenancy agreement? Some people may not take it as a requirement to make sure that the elevator that is operating when they first move in.... All of a sudden it's taken out, it's no longer operable, and the landlord has decided not to fix it. Therefore, it's not covered in the tenancy agreement. One may not think about that.

[1730]

Actually, in my own situation when I moved into my house, the fireplace went missing, so there's a hole in the wall. I didn't think it essential to make sure I put that into the agreement. Anyway, that's another story. A person doesn't think about these things necessarily, because you just take it for granted that those kinds of structures will be in place because they were there when you first moved in. Lo and behold, three or four months — whatever period — pass, and the elevator stops working. The landlord decides it's too expensive to fix, and they're not going to fix it. Is that then deemed to be an essential service that has now been taken away?

Even for a two-storey building, if you're a person with disability, even half a flight may become a bit of a problem. If you're a senior who may have a heart condition, climbing stairs, even one storey, could become a bit of a problem.

What is essential for some may not necessarily be essential for others. However, what is reasonable for some can also be reasonable for others as well. That's the issue under 27, and we'll get back to 27. Because this section actually references 27 in that context, I have to bring up these matters for discussion under this section of the act.

**Hon. R. Coleman:** I guess the test is what is essential, and in any individual situation that could be quite a bit. An elevator, obviously, for someone who is disabled is pretty important. It would certainly be something that would be essential to their daily living if they lived on a floor that wasn't accessible by wheelchair.

I think this is intended to set up a situation so that you can't have a restriction of a service or facility that's withdrawn, which can't be reasonably replaced by another service or another substitute. It could be purchased by the tenant. For instance, in the issue of cable, where the cable is removed, you can pay for your cable. I think the reasonable test is applied here. I guess that's why we have arbitrators, and we ask them to deal with these issues if they come up.

**J. Kwan:** The minister just said the reasonable test applies, but the wording of the legislation under 27 is

not the word "reasonable" but rather the word "essential." If the reasonable test is to apply, why doesn't the minister leave the legislation as it is, where the word "reasonable" is being used, as opposed to replacing it with the word "essential"?

**Hon. R. Coleman:** Subsection (b) of that section says a reasonable substitute cannot be purchased by that tenant. I think that's where the reasonable issue in the section comes in. You can't read sub-subsection (a) without reading sub-subsection (b). We're not on that, but I understand the member is discussing it in the realm of how it is mentioned in section 14(3)(b).

**J. Kwan:** Yes, the section we're discussing is section 14(3)(b). Section 14 reads:

"(1) A tenancy agreement may not be amended to change or remove a standard term.

"(2) A tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and tenant agree to the amendment.

"(3) The requirement for agreement under subsection (2) does not apply to any of the following:

"(a) a rent increase in accordance with Part 3 of this Act;

"(b) a withdrawal of, or a restriction on, a service or facility in accordance with section 27...."

When you go to section 27 of the act, it says: "(1) A landlord must not terminate or restrict a service or facility (a) that is essential to the tenant's use of the rental unit as living accommodation, and (b) that cannot, or for which a reasonable substitute cannot, be purchased by that tenant."

The first test that a person has to apply is to figure out whether or not the service that is being terminated is essential to the tenant's use of rental accommodation. You have to establish if that is essential for the tenant's accommodation before that service can be withdrawn. If it's not essential, then the service can be withdrawn.

[1735]

The second test is that a reasonable substitute be found, but not an essential substitute be found. There's inconsistency here. To apply a test to say what is essential, for the landlord to decide whether or not they withdraw your service, the provision for defining "essential" is much more narrow than the test of reasonableness. Yet when you ask someone to replace that essential service, they can then apply a reasonable test.

There's something wrong with that in terms of its application. The words in the terminology have been chosen to be easier. It's a further erosion of the protection for the tenant. Let's be clear about that. Let's be very clear about that.

A laundry facility. A person could say in the tenancy agreement that laundry facilities are to be provided. Let's say the washer and the dryer have broken down, and the landlord doesn't want to replace them. Will one argue that providing laundry facilities is essential, or is it reasonable that laundry facilities be provided in the rental accommodation? One could make the argument that it is not essential to have laundry

facilities. They could say that you can go to a laundromat. For some tenants, though, who may be elderly, who may be frail, dragging their laundry back and forth may become a problem. It could be an essential service to them to have access to laundry facilities.

How can the minister see this to be an advancement in rights, rights for the tenants in this instance, when he's allowing for services to be withdrawn unless that service is deemed to be essential? Again, who gets to define...? No doubt the minister will probably say the arbitrator. Then for every dispute that comes up on what might be deemed to be reasonable versus unreasonable and so on, a person will have to go to the residential tenancy branch and have a new definition defined for them in terms of the test of reasonableness will no longer apply. A much narrower, stricter application will now apply, meaning in this instance, in reference to section 27, the requirement of essential services or facilities to be provided to tenants for the rental unit as living accommodations.

**Hon. R. Coleman:** I think that we can certainly identify what is essential to someone's tenancy. I think we can deal with that. Right now it's not possible on the other hand of this discussion for somebody.... Let's say they have a building of 100 units, and they have a particular cable provider that is actually doing the entire building under contract with the landlord. The tenant could actually get it cheaper than the landlord is charging. There is no way for them right now to step back from that and allow the tenant to take it over and to pass that saving on by reducing the rent. I think they should be able to do that in a relationship that's a business relationship between the two parties.

[1740]

At the same time, I think that most people — probably 99 percent of the cases, and you can always go and find a case or give me an example that you think of what's essential and what isn't.... I think that in 99 percent of the cases it's pretty clear what's essential to a tenancy in a residential relationship between a landlord and a tenant. There is a tenancy agreement in place, and if there is something that's being removed that is essential to that tenant's life, then at that point in time — which would be on a very odd occasion, because I think the essentials are pretty clear — there would be some discussion about that.

You know, anytime you draw up legislation, you try and put the basic standard forms, the basic disciplines in place, and you try and have some ability to manage the eventualities. That's what you're doing whenever you're drafting a relationship between two consumers in something like this, which is a relationship between a landlord and a tenant, and it should work between those two parties.

**J. Kwan:** The example the minister brought in about cable is not even the issue. The issue is this. The minister can say that you can always make up scenarios to ask questions about what is essential and what is

not, but this is a definitive change that the government is bringing forward. It is changing the threshold of a test, a legal test, to determine what services could be withdrawn from a tenant.

The change is from a test of reasonableness to, now, what is going to be required — a test of essentiality, I suppose, for the tenancy to continue. It is not clear what is essential and what is not. I've used a couple of examples already to illustrate that what might be essential for one person may not necessarily be essential. To date, the minister has not answered the question. Even with a simple question around a laundry facility, what might be essential in terms of a laundry facility for one person may not be for another person.

One person may be able to use the local laundromat, as an example, but others may not be able to. Dragging laundry back and forth is an onerous thing for them, especially for seniors or people with disabilities, as an example, and especially at a time when government has taken away home support services for seniors. This is a huge deal. It is not something that is clear and easy to define. It is not.

I want to use another example. Is a landlord required to supply heat, as an example? If the landlord withdraws heat and replaces the central heating system with a space heater, is that a reasonable substitute? If heat is essential in the definition, then is replacing the central heating system with a space heater a reasonable substitute?

The minister did not answer the question. Maybe the minister is just in a big hurry to whom through this act. His earlier attitude was: "Who cares?" You know what? A lot of people care, and I expect an answer to my question from the minister.

Well, the arrogance of it. The minister doesn't feel he has to get up and answer a question on a section of the bill that impacts people's lives. It impacts their lives through their living accommodation and what is deemed to be essential and not deemed to be essential. Heaters. I just asked the question: is a heater an essential service? Is the replacement of a central heating system by a space heater reasonable under this section of the act? A landlord could withdraw those services under the provisions of this act, and it is unclear — unclear to me and, I suspect, unclear to many people — what is deemed to be essential and what is not.

**Hon. R. Coleman:** I guess it's unclear to the member. I don't think it's actually unclear to the public out there what's essential in a residential tenancy: heat, light, water, sewer — those sorts of things when you're in a tenancy. The member grouses on about laundry facilities in apartment buildings or residential tenancies. The fact of the matter is that a lot of those are already contracted out by apartment owners in B.C. to companies that come in, put the machines in there and operate them on a coin-operated system. That's how they get the

maintenance, because frankly, they don't have the time to deal with it.

[1745]

To keep drawing back to that sort of thing... I mean, is a space heater heat? Yes, it is. Is it essential? Heat is. But does it put the tenant's life at risk because it's a space heater instead of hot water heat? Well, maybe it is if the boiler is going to break down or there's pressure on the waterlines and the pipes need to be replaced. The fact of the matter is that the essential tenancy is what we're talking about, and we're trying to give the essential terms to a tenancy and a reasonable approach to any changes that may have to be done in an affordable manner for the benefit of both landlord and tenant.

**J. Kwan:** Maybe in the minister's mind he thinks I'm the only person who cares about these issues. Actually, from the way it looks around this House... So far we've been in debate around major changes to the Residential Tenancy Act since about 2:30 or so. And not one question has been asked from the government bench, not one question about anything in terms of these changes. The minister is probably right: I am the only person in this Legislature who actually cares about these issues. I'm raising these issues in this House. It is my job to do that, and I expect it's the job of all the MLAs in this House to do that. But we rarely ever hear from the government side on any of these issues.

You know what? It's not just me who is asking the question about the heaters. As one example, a note was brought into this chamber just moments before for the question to be asked, because people are watching this debate, because people are concerned about what the changes are. People are concerned about what the government is letting the landlord do to withdraw services they may deem to be not essential services. The test that used to apply was a reasonable test. It's now going to change, with this government, to tests of essentialness. For the minister to get up and be flippant about his answer is absolutely outrageous. He may not care, but British Columbians do. Many British Columbians do. The question was just brought into the House, and I had to ask the minister three times before he got up to answer the question. Even then he did not answer the question.

You know, from the members in this House, the member from Whistler, the minister of state responsible for the Olympics...

Interjection.

**J. Kwan:** Actually, that's true. There are many people in this House who I don't even know when I see them outside the chamber, because they never speak in this House. They might as well be strangers, a potted plant outside, who may actually make more noise and raise questions in this House on behalf of their constituents. Is it any wonder no one knows who the so-

called minister of state responsible for the Olympics or what he does, to be exact? We never hear him in this House raising questions. In fact, in Whistler a major concern and issue around affordable housing... Tenancy issues are a major issue. Has he gotten up to ask one question? No, not on your life. God forbid any of the government MLAs should get up and raise questions to the government, ask questions on behalf of their constituents and advocate for them, get clarification on what exactly this piece of legislation means. It's absolutely outrageous.

Maybe the members don't want to engage in debate and ask the questions on behalf of their constituents. They are in a big hurry to just move forward and ram it through with a big majority. "Never mind. We don't have to ask any questions at all." Maybe members want to do that. Well, I don't, the opposition doesn't, and I expect many British Columbians don't either. I'm going to continue to ask questions of this government, because this section here is very fundamental.

[1750]

Let me read the section into the record once again. What does it say? "Changes to tenancy agreement." Under 14(3), "The requirement for agreement under subsection (2) does not apply to any of the following: (a) a rent increase in accordance with Part 3 of this Act; (b) a withdrawal of, or a restriction on, a service or facility in accordance with section 27." What is section 27? Section 27 talks about: "A landlord must not terminate or restrict a service or facility (a) that is essential to the tenant's use of the rental unit as living accommodation, and (b) that cannot, or for which a reasonable substitute cannot, be purchased by that tenant." It's a fundamental change, because instead of the word "essential," the old act uses the word "reasonable." It's a far cry, as I've been trying to establish in this House.... The minister has refused to date to answer the question: what is deemed to be essential? What is deemed to be essential for one person may mean something else for another. Yes, I used a couple of examples to illustrate the point, and the minister does not want to answer the question.

It is important, because now this legislation is before us, and the government wants to pass legislation to take away, to erode, rights for tenants. We must be clear on what the intentions of government are as they take away these rights. We must be clear in understanding what they mean and its application. That is the purpose of the debate in this House when we're in committee stage: to go through clause by clause, so the minister can answer these questions. It is his job to do that.

Interjection.

**J. Kwan:** It is rather stunning, Mr. Chair. It is rather stunning.

Interjection.

**J. Kwan:** Let's be clear who this member heckling me is. He is the member for West Vancouver-

Garibaldi, the Minister of State for Community Charter. He says: "It's not important to us to get the answers; it's only important to you." Well, is it important to British Columbians to get answers, answers that they ought to know as legislation is being brought before this House and the implication of the legislation that would have huge ramifications for their lives?

Maybe the Minister of State for Community Charter, the member for West Vancouver-Garibaldi, doesn't care about what those ramifications are, but he ought to. In his own community, tenancy issues and the need for affordable housing for renters are major issues. You would think the minister would rise up in this House and advocate on behalf of his constituents. That obviously is not to be, because nobody in this House on the government bench has gotten up to ask one question and advocate for one thing for their constituents in this House. It's absolutely outrageous.

I want to get back to this section where a person, a tenant, could lose services or facilities to them. If it is determined that the service is not essential, they could lose a service. That's what it says under section 27, and under section 14 it allows for that to happen.

I want to ask the minister once again: is electrical service an essential service?

**Hon. R. Coleman:** This piece of legislation is called the Residential Tenancy Act. It's not called the tenant act, and it's not called the landlord act. It's about building relationships between two parties so that on one side, an individual can get safe, secure, affordable and hopefully — and, in most cases, certainly — a quality home to live in and that they will have certain things that are essential to their life in that tenancy on which they have an agreement with the landlord.

On the other side of the coin is somebody that's actually gone out and made an investment — perhaps taken out a mortgage — in a tenancy. The member's only stance today has all been along the one side of this equation. You know, this is about a relationship that's good for both parties. If it's not good for both parties, then we don't have successful landlord-tenant relations in British Columbia. We don't see tenancies being created. We don't see these things being protected. We certainly don't see new product available for those people that need housing in the future.

[1755]

I think it's absolutely critical that the member understands that when we say "essential," it's essential, and the "reasonable" situation, as we've talked about in section 27, should apply. I find it frustrating that rather than actually looking at this act as a relationship between two parties that are going to enter into a relationship that should be mutually beneficial for both.... Otherwise, in the long term, long-term tenancies don't work if they're not. Then we're not going to get there.

The member should understand that the language in the act is what gives us the format to move forward, which gives us the platform to work on. We then move into regulation — as the member well knows, being a former member of government — that actually gets

into some of the more prescriptive issues in and around how we deal with these things in tenancies.

The fact of the matter is that this act here is taking care of a longstanding, very complicated problem within residential tenancies. In section 14, which we're dealing with, under section 14(3) we have basically outlined the agreement where there can be some changes. Those changes outline that you can't take away what's essential to a tenancy. I think that's good for a tenant. Somebody will actually come up with an understanding of what is essential.

The member wants to define everything on behalf of only one sector of the relationship in landlords and tenancy. I happen to believe that most people want to have a valuable, ongoing relationship as landlords and tenants.

I think we're going to end up continuing the debate on this act for some time to come. I'm more than happy to go through this section by section, but noting the time, I move that the committee rise, report progress and ask leave to sit again.

Motion approved.

The committee rose at 5:57 p.m.

The House resumed; Mr. Speaker in the chair.

**H. Long:** Mr. Speaker, the committee rises, reports progress and asks leave to sit again.

**Mr. Speaker:** When shall the committee sit again?

**Hon. R. Coleman:** At the next sitting, Mr. Speaker.

**Mr. Speaker:** So ordered.

**Hon. R. Coleman:** I move that the House recess until 6:35 p.m.

**Mr. Speaker:** The House is in recess until 6:35.

The House recessed from 5:59 p.m. to 6:34 p.m.

[Mr. Speaker in the chair.]

**Hon. C. Clark:** I call committee stage of Bill 68.  
[1835]

#### Committee of the Whole House

##### VITAL STATISTICS AMENDMENT ACT, 2002

The House in Committee of the Whole (Section B) on Bill 68; J. Weisbeck in the chair.

The committee met at 6:36 p.m.

Section 1 approved.

**The Chair:** I understand there are no questions to be asked on this bill...

**J. MacPhail:** By the opposition.

**The Chair:** ...by the opposition.

**J. MacPhail:** I have no idea what government...

**The Chair:** Okay.

Sections 2 to 61 inclusive approved.

Title approved.

**Hon. K. Whittred:** I rise and report the bill complete without amendment.

Motion approved.

The committee rose at 6:37 p.m.

The House resumed; Mr. Speaker in the chair.

#### Report and Third Reading of Bills

Bill 68, Vital Statistics Amendment Act, 2002, reported complete without amendment, read a third time and passed.

**Hon. C. Clark:** I call second reading of Bill 69.

#### Second Reading of Bills

##### OPEN LEARNING AGENCY REPEAL ACT

**Hon. S. Bond:** I move that Bill 69 now be read a second time.

This bill will provide for the eventual repeal of the Open Learning Agency Act in order to enable government to introduce a transition plan to transfer Open Learning Agency programs and services to new providers over the next two years.

[1840]

[J. Weisbeck in the chair.]

With the advent of new educational technologies and the Internet, British Columbia's post-secondary institutions are now actively involved in distance education activities and increasingly in the delivery of on-line learning. Therefore, the Open Learning Agency's role and market share in the delivery of open and distance education represents only a part of the opportunities currently available to the students of British Columbia.

Government has launched the implementation of a new collaborative post-secondary on-line and distance education learning model called BCCampus. Building on the strengths and expertise available in all of British Columbia's public post-secondary institutions, key programs and services at the Open Learning Agency that are important to this new model will be transferred to other public post-secondary institutions and

will contribute in a significant way to the BCcampus collaborative model. In addition, most other important programs and services from the Open Learning Agency will be protected and eventually transferred to other providers.

The changes to the Open Learning Agency and the transition to a new delivery model for on-line and distance education will be made gradually and thoughtfully over the next two years. These amendments will allow us to take the time we need to make this transition as seamlessly as possible. The amendments provide for the winding-up of the Open Learning Agency, for the transfer of the agency's assets and liabilities and, eventually, for the repeal of the Open Learning Agency Act.

The windup will involve the transfer of most of OLA's programs and services to public post-secondary institutions or other public or private providers. This transition will be done in a way which will minimize disruption for student and other clients.

The open university and open college programs and services are integral to the new BCcampus on-line and distance learning model and will be transferred to other public post-secondary institutions in British Columbia.

The Knowledge Network will be separated from the Open Learning Agency as options are delivered for the future of the network. Other programs and services that will be deemed non-core by core services review will be transferred to other providers, funded through other sources or phased out if no alternative provider is identified.

Most importantly, I want to emphasize that throughout this transition period, we will give careful consideration to the needs of our students and our clients as we move towards this model, and every effort will be made over the next two years to ensure minimal disruption to them.

This legislation is in keeping with our government's commitment to strengthening the network of colleges, institutes and on-line learning throughout the province. It will allow us to improve the delivery of on-line and distance learning in British Columbia and to more efficiently meet the needs of learners and employers. Ultimately, it will increase access, choice and opportunities for the students of British Columbia.

**J. MacPhail:** Thank you for those words, through you, Mr. Deputy Speaker, to the minister responsible for repealing the Open Learning Agency. I have no idea exactly what it is the government intends to do. I have no idea, from what the minister just said, what they intend to do. It's all about maybe, could be, if somebody comes forward, transition, we'll do this, we'll protect that, we won't protect that. None of that's in the legislation. Of course you can't tell from the actual words that the minister says about what's really going on.

I use the resources available to me to try and find out what exactly the government's intent is with the Open Learning Agency. I'm going to tell you what I

found out first, and then I'm going to tell you what's at risk here with the minister killing off the Open Learning Agency. Let's be clear. This act that we're going to pass, unless the government caucus rises up and says, "Oh, minister, you got it wrong," is called the Open Learning Agency Repeal Act.

[1845]

I used the Freedom of Information Act while it was still there. That was last July. I relied on the fact that we were discussing a very popular institution, the Open Learning Agency. I know the Premier had promised openness and accountability, and there were all sorts of rumours floating out there, circulating about what the government was going to do with the Open Learning Agency. So I thought: why don't I just file a freedom-of-information request and find out what their plans are?

Well, I did that on July 9. I filed a freedom-of-information request for information on the future of the Open Learning Agency on July 9. I asked, "What are you working on? What are your plans? What are the options? What's the financial consideration?" — all the things that the minister just sort of speculated about in her second reading notes.

I got a response on July 11 that the opposition would receive the information no later than August 21; then on August 20 we got a letter saying we'd get the information by October 3. July, August, September — okay, that's three months. On September 25 we got a heavily severed version of the core services review that the minister just referred to — basically nothing in it, nothing. There was a commitment that the government would release the rest of the documents as soon as consultations with the Premier's office were completed.

[Mr. Speaker in the chair.]

Alas, five days later we get another letter under our freedom-of-information request. It says that because of these extensive consultations with the Premier's office, including the public affairs bureau — you know, that nice group of politically appointed spin doctors.... Because they're involved now and the Premier's office is involved, the information we requested in July will be provided to us no later than — anybody take a guess — January 2 of next year. Whoa — there's openness and accountability. That really helps with this debate, doesn't it?

In the meantime, the Minister of Advanced Education stands up and brings a bill in to kill the Open Learning Agency. That's what this bill is about. It may be a slow death. There may be some parts dismembered and pickled for future use. There may be a free hand that will float on its own, like a chicken with its head cut off, for another month or so. This is about killing the Open Learning Agency; there's no question about it.

What's the government killing? Well, we don't know from them. We can't tell from their bill, except that they are killing it. We can't tell from the freedom-of-information request. Boy, this open and accountable

government is really working successfully so far, isn't it?

Here's what the Open Learning Agency is about. Here's what it does. Here's the agency that's about to be killed. The Open Learning Agency serves over 20,000 students every year. They get approximately 26,000 registrations for individual courses, 6,000 of whom are British Columbians in ongoing Open Learning Agency degree programs. Every year enrolment goes up. In fact, just in the month of January of this year there was an 18 percent increase in enrolment.

The Open Learning Agency serves a unique market of mature students who need guaranteed access. Many of the OLA students are served in communities with no access to regular college or university. Many are single moms and individuals who cannot take time out to attend a full-time institution.

At the Open Learning Agency the faculty model ensures that people can enrol whenever they are ready. Classes are never closed, and the faculty are in place year-round. Many of the students that are enrolled through Open Learning Agency did not have a successful educational experience in their youth. Because of their age, they now tend to be highly motivated and successful. The Open Learning Agency offers them a second chance. Access to the Open Learning Agency is not barred by the need for a given grade point average.

That's pretty good so far. That sounds like a big commitment to give people the skills and the education they need. That's what's being killed off.

[1850]

What do those students lose just right off the bat by the killing off of the Open Learning Agency? They lose access to the credit bank, to the prior learning assessment services and to advice from faculty. They lose all of the collaborative programs which have assisted British Columbia citizens to earn the degrees they need for their careers without wasting their own time and taxpayers' money on redundant courses. That's just the beginning of some of the highlights of what the Open Learning Agency is.

It was created in 1978. That was a good Social Credit government that created this; the Social Credit government of 1978 created the Open Learning Institute. That had come out of the Winegard commission report, which said in 1978 that there should be greater access to college and university education in B.C.'s rural areas. In 1988 the Open Learning Institute and the Knowledge Network merged into the Open Learning Agency, again under a Social Credit government. It was an organization created to serve all learners through a variety of distance education programs and alternative delivery methods.

The Open Learning Agency includes a college, a university and skills centres. It includes an educational television station. They serve students from K-to-12 through university. They have teachers benefiting from their courses. Other institutions and corporate clients also use the Open Learning Agency. It is recognized around the world as a leading developer and provider

of flexible and accessible learning opportunities. That's what's being killed off.

Now, what does it cost? Well, I did get this information from my FOI request. They gave me information from 1999-2000 and 2000-01. That was useful information. I could have looked that up myself, but I'm very grateful that they put it in one place. In the budget for the fiscal ending '01, the expenses were \$57 million. The revenue they got in was \$56,792,671.

How much of that came from government? Well, about a third came from government revenues from the Ministry of Advanced Education and the Ministry of Education, and all the rest came from outside, non-government revenue sources. We're killing it off because on an almost \$57 million budget, of which only a third is provided by this government, they ran a deficit of \$263,000. A \$263,000 deficit on a \$57 million budget, and this government's killing it off.

[1855]

Well, from what we can glean from the minister's speech so far about what's going to happen to this wonderful institution that's almost completely self-supporting — a quarter-of-a-million-dollar deficit on a \$57 million budget, and \$20 million of taxpayer revenue to allow for distance education for rural communities.... But I expect the rural MLAs will be standing up to defend their own communities and the loss to the rural communities of the Open Learning Agency. I must say that rural communities are in a state of shock about what this government has done to their economy. They're in an absolute state of shock over what's happened to their economies deliberately as a result of this government's actions over the last 16 months. This will be another stake through their heart, the loss of the Open Learning Agency.

Interjection.

**Mr. Speaker:** Order. Order, please.

**J. MacPhail:** It's another stake through the heart of the rural communities. It's the Minister of Education and the Minister of Advanced Education who hold that stake together to pound it through the rural communities' hearts. Here's what they're leaving behind. Here's what they're offering. Here is what the Minister of Advanced Education is offering them. She's offering them a virtual campus. Gosh, that sounds good, doesn't it? Doesn't that sound sexy — a virtual campus? Well, what a virtual campus means is no access to a human, no access to anything except a webpage, no access to any personal contacts, no access to any advice and no exchange — no exchange whatsoever between an adviser, an instructor and a student. That's one thing. That's the great improvement this government's making.

Will it be available to those who were using it so successfully before, those without a secondary education? No. You've now got to be on a university track, a college track, to use this government's new webpage. If you need any assistance for adult basic education, if

you need any grade equivalent upgrade — all gone. It's not available anymore. It will not be available. You have to be on a college and university track.

Interjection.

**J. MacPhail:** Actually, the Minister of Education sits there and heckles, and I would be happy for her to join the debate and tell me where I'm wrong. It would be good, actually, instead of the cheery little statements of confusion and....

Interjection.

**J. MacPhail:** I believe we're at second reading debate here, and I think the Minister of Advanced Ed had a chance to answer all of these questions and chose not to.

Interjections.

**Mr. Speaker:** Order, please. Let us address the Chair and continue with second reading.

**J. MacPhail:** Right, and I hope the Minister of Education gets up and joins in, because her reputation is really losing credibility throughout the education system on a personal level as well as on a professional level.

Let's just look at the reference the minister made about the on-line learning services she's going to be using. She referred to BCcampus. Everybody might be fooled by the fact that it says BCcampus, that somehow it's a made-in-B.C. initiative. Well, the core technology is offered by a U.S. company, WebCT Inc. The Inc. would mean it's incorporated, so it's a privatized company taking over a publicly delivered service. Here's what the website boasts. WebCT, now taking over for Open Learning Agency, is in use in more than 2,500 institutions in 81 countries. However, the BCcampus briefing emphasizes that courses offered must be able to be taken wholly on line — no personal contact, no advisers, no instructors, no assistance.

We have a situation where the assistance for rural communities who are trying to upgrade their skills and don't have access to a college or university is now a computer and nothing at the end of the on-line. You better be able to figure it all out by pushing buttons on your computers because there will be no exchange of written correspondence, there will be no essays, there will be no advisers, and there will be no instructors.

[1900]

We had a situation where the key to on-line learning through the Open Learning Agency was not the on-line learning. That was very important, but it was a tool. The keys were the tutors supporting distance education students and the provision of course materials. The students submitted assignments to the tutors, and then they were available by e-mail or phone for assistance when required. That's distance education. The print shop of the Open Learning Agency and the ware-

house are all critical components of the Open Learning Agency, but those are going to be the ones that are going to be eliminated — by the minister's own words. Those are going to be the first ones to be eliminated.

Tutor-based distance education is being killed off today as we speak. It's finished in British Columbia — absolutely finished. The huffing and puffing and the protests of the Minister of Education and the Minister of Advanced Education won't change the facts about what this government is doing to distance education in Hazelton, Burns Lake, Fort St. James, Prince Rupert, Smithers, Golden and Valemount. It won't change. Their huffing and puffing will not change the fact that distance education is being killed by this government.

Did the minister know what she was doing? Well, let me just read this letter out to the Minister of Advanced Education. It's actually from a constituent of hers. It's from Diana Coder, who lives in Valemount. Diana Coder is a student using the Open Learning Agency. She was trying to find out some information about what the minister's intent was, as well, because here's the promise the minister made about the future of the Open Learning Agency. It was March 28, 2002. The Advanced Education minister was on CKNW radio, and she said that if there are to be changes, discussions will be held with Open Learning Agency employees and the public.

This student of the Open Learning Agency heard the minister say that, and she thought: "Oh well, I'll just write to the minister. The minister's planning on engaging in public discussions, and definitely with the Open Learning Agency employees." So she just called the minister's office. When did she do it? Did she do it before the minister made that promise of openness and consultation with the employees and the public? No, no, she did it after. She took the minister at her word, and she wrote a letter on June 14.

This is a letter to the Minister of Advanced Education. I'll just read it into the record.

"I'm writing to you in respect to the possible closure of the Open Learning Agency. I phoned the morning of June 7 and spoke to an assistant of yours with regard to this matter. Unfortunately, I didn't get her name. I gave her my name and told her that I lived in Valemount, B.C. I was told by her that she had not heard anything as such" — meaning the closure of OLA. "I had mentioned that I had heard rumours of this and phoned the Open Learning Agency, and at that point my rumours were confirmed. Your assistant did not deny this as I mentioned it.

"I further stated that I was enrolled in a program, taking a course through the Open Learning Agency, and my intention was to complete my degree that I had started many years ago. Your assistant asked me: 'Why can't you attend a university?' This took me by surprise. I asked her: 'Do you know where Valemount is located?' She answered: 'No.' I explained that Valemount is located three hours east of Prince George and three and a half hours north of Kamloops.

"I could not believe that this person is working for you, Minister of Advanced Ed, who is our elected representative in our riding. I further suggested that she have a look at a provincial map and familiarize herself

with the communities located within your riding. I would expect that people who are employed, even at the minister's level at the office, should know at least where communities are located. They are, after all, paid employees of the public.

[1905]

"I was further appalled that I was not told the truth by your office. I found that to be very offensive. I feel that your assistant did not have the right to lie to an employer. After all, I do contribute to her wages. I would strongly recommend that you speak to your office staff about honesty. I find it very hard to believe that everyone else knows about the closure other than your assistant. There was still no denial by your assistant of the possibility that Open Learning Agency was closing.

"Let me point some things out to you, as you may not be aware of them. Open Learning Agency provides access to the rural outlying areas within British Columbia. By allowing such access, it allows the increase of our educational levels. By closing Open Learning Agency, you are forcing British Columbians to seek higher education out of province. This creates more problems for British Columbia.

"It reduces the number of British Columbians employed, as you are reducing the number of jobs available within British Columbia. It removes the dollars that should have been spent within our province, giving these benefits to other provinces. Money earned is no longer being spent within our own province, losing funds from other provinces, as some students are registered from out of province. Lowering the access to education will have a direct effect on our economic well-being in British Columbia.

"I believe more British Columbians will leave, even the highly educated ones. For me, it is not an option to attend university on campus per se. I have a family with two loving children, who are the most important thing to me. I would never leave my family to pursue finishing my degree. They come first, and if this is not made possible through British Columbia, then I will be looking at other universities out of province. You understand, of course, that it costs money — my money, not yours — every time I have a transcript evaluated" — that would be the personal contact, I say as an aside — "and perhaps I will have to take more courses to complete my degree, depending on the requirements at that particular university.

"I find myself quite shocked that you, the Minister of Advanced Ed, would be actually thinking of closing such a facility. You yourself know how important it is to complete a degree. I do not have the luxury of attending UNBC, as you do, while being employed by the taxpayers. I would strongly recommend you oppose the closure of such a facility and allow British Columbians to have access to higher knowledge.

"I do not want to think that the Liberal government is for denying access to further education. All British Columbians must have that opportunity. I will continue to work on completing my bachelor of general studies while raising my family with my husband. I intend to go into a professional development year towards teaching. I hope you will not deny me or any other student in British Columbia this opportunity."

That woman will no longer have distance education as she knows it. She will no longer have tutors. She will no longer have access to transcripts. She will be able only to interact with a made-in-the-U.S. virtual univer-

sity that has no personal learning component to it whatsoever. But this government thinks that's just fine. What else can they do to a rural community? Shut down B.C. passenger rail service. Shut down the hospitals, the courthouses, the schools. Charge policing costs to the small communities. Disrupt life as rural communities have known it since the turn of the century on every aspect, and now they're doing it once again.

Distance education learning is for all intents and purposes gone for people who live in rural communities. I get tired of the Minister of Education saying that's not true. She may actually think that because her spin doctors tell her something, it's the truth. But over and over British Columbians are saying: "Stop with the spin doctoring. We know what's going on. We know what the truth is, and you're cutting services to our community." The Open Learning Agency is just another example of that.

[1910]

Perhaps in committee stage we can actually find out from the Minister of Advanced Ed. She will have had time to get beyond the ministry of truth spin-doctoring and actually be able to provide real answers.

As we know, no one was fooled by her original announcement — no one. It was rather embarrassing — the media commentary around what the minister's announcement purported to be and what the real announcement was. A columnist, a pundit who exists right here, Vaughn Palmer, said the announcement was.... I know that now they're in government, they just hate to have the pundits quoted back to them. It used to be the source of their work, their research, but now I know they hate it. Here's what Vaughn Palmer suggested the announcement was: "www-dot a-web-address-to-be-named-later dot.com." That's the conclusion he came to. Here's what he said about the overall announcement the minister made about killing off the Open Learning Agency: "I'm positive the minister's announcement was intentionally, wilfully, positively misleading." There's been feedback since then from people on the Open Learning Agency.

I've been told that I may be the only speaker on this issue, but I expect that people who live in rural communities and represent rural communities would want to have a say on the future of the Open Learning Agency, not to stand up like they did with B.C. Rail passenger service and laud the government for shutting down a service to their communities, not to say, "Go get my community. Right on. Destroy the services to my community" like these government caucus members did with B.C. Rail service. That served them really well. That got them a lot of kudos in the rural communities. Why not stand up now while they have a chance to have some input and say, "This legislation killing off the Open Learning Agency is bad for my community"? It's bad for education, but it's particularly bad for rural communities. It's particularly bad for adult students who need to upgrade their skills — not necessarily to go on a degree path, but to

upgrade their skills — and no longer have access to that.

It is another day where rural British Columbia is being kicked in the butt once again by the Liberal government, despite whatever they say to the contrary. Despite what their spin doctors do, it's a day to say: "Bad news for rural British Columbia brought to you by this Liberal government."

**R. Hawes:** I have the pleasure to stand and support this bill. I've just been listening to the Leader of the Opposition, and you know, I have to congratulate her. I think that she's learned the skill of being in opposition very well. You can stand up and say anything you want. Facts don't have to get in the way. You can ignore anything factual. Just say anything. It's just remarkable listening to that stuff.

I went to the rollout of BCcampus, and there was a whole bunch of people from the steering committee there. I watched as the press honed in on the minister and looked for the negative. All of the people in the steering committee, including a fourth-year student from Simon Fraser, the president of the University College of the Fraser Valley and others, stood watching this gang of press around the minister and completely ignoring the people on the steering committee, including the fourth-year student from Simon Fraser who was just electric about what was happening. He was very, very excited because he saw this, as did the president of the University College of the Fraser Valley, as a very exciting day for education in British Columbia.

[1915]

The Open Learning Agency courses continue to be available. Some of the things that the Leader of the Opposition said, among which was that now everything would have to be on line.... That's just not true. There are paper courses that are still available, and there are lots of paper courses available.

What I found interesting was that when I spoke to the president of the University College of the Fraser Valley.... Incidentally, you don't have to make an FOI request to speak to him; you just have to walk over and speak. I noticed that the Leader of the Opposition wasn't at the announcement, so she didn't speak to those who were a part of the group that put this together. However, the president of the University College of the Fraser Valley did mention to me, which I found fascinating.... He said: "We have an opportunity to put the backbone of courses on the Internet and build a backbone for any course." The actual instructor for the course would.... There would be an interactive part of the course, but over time he felt that there was an opportunity to start looking at lowering tuition fees if the backbones of these courses were built properly.

I think that's a very great thing for them to be thinking about — making education available at more affordable prices. Gosh, what a concept. But it's not something that I think the Leader of the Opposition would be interested in, because she's too

busy trying to make up a bunch more fearmongering and a bunch more divisiveness. It's very interesting, the way she puts this stuff.

What I found when I went through the BCcampus site, and I looked at it as though I may want to take some courses.... I found it quite easy to get around that site. There's a great variety of courses that are available. I know that no matter where you live, whether it's a small community or a large, there is access through the Internet, or as I say, paper courses are available. I know the minister has said that the remainder of the Open Learning Agency is going to be looked at over a period of two years. There is going to be a home found for much of it. I think that almost everything in the Open Learning Agency is going to be salvaged.

The interesting thing, though, as the Leader of the Opposition went through the financial part of the Open Learning Agency, she did mention, but it was as though the money falls from the sky.... She said that it was within a few hundred thousand dollars of a balanced budget, and she did say that one-third of the funding for the Open Learning Agency comes from two ministries. That's about \$20 million. That's not bad. This is not necessarily a balanced budget as she would have people believe.

Interjection.

**Mr. Speaker:** Order, please.

**R. Hawes:** I would have looked at that as, if there's an opportunity anywhere in government to save money, the government has a responsibility to look at that. If they can maintain services — in fact, improve services — while still saving money, I would suggest that's a very noble pursuit, and I know that the minister here has been able to improve services and save money. It's a remarkable concept that really escaped the last government.

I'm very proud to be part of a government that looks for that kind of savings. I'm proud of this minister for the work that she's done with the steering committee. Every one of the people on that steering committee should be commended for the wonderful work that they've done for all students throughout this province, whether urban or rural.

I just wanted to stand up and voice my support for both the minister and the bill as she put it forward.

**Mr. Speaker:** Second reading debate on Bill 69 — the minister closes debate.

**Hon. S. Bond:** I want to say one thing and say it very clearly. The services that are currently provided by the Open Learning Agency that are important and essential for the students, including open university and Open College, will be protected and sent to another public post-secondary institution in British Columbia.

Interjection.

**Mr. Speaker:** Order, please.

**Hon. S. Bond:** The great news is that all of those things that the member opposite has referred to in terms of access, continuous intake, the ability to get a degree and a credential through the Open Learning Agency.... We've actually recognized and would agree with her that they're absolutely essential. That's why we're going to protect them. That's why we're going to enhance them. We're going to make them part of a new on-line strategy in this province called BCcampus. We're keeping those things.

I think it's absolutely...

[1920]

Interjection.

**Mr. Speaker:** Order, please. Will the Leader of the Opposition please come to order.

**Hon. S. Bond:** ...essential that the people in rural British Columbia realize tonight that those services are being protected and will continue to be part of an on-line and distance learning strategy in the province. In fact, as we are going to take the next two years, we are going to look at where those services will be placed within the province, and we have assured both students and employees that in the next two years we are going to be careful and thoughtful about how those services will be protected, maintained and in fact enhanced by joining those with the collaborative process called BCcampus.

It's interesting that you would note that the member opposite would quote from a letter from a constituent of mine. As a matter of fact, upon receiving that letter, I actually contacted the constituent personally to talk about the concerns expressed about Valemount and the answer that a member of our staff had given her here in Victoria. I reassured the constituent personally on the phone after receiving that letter, as I am today in this statement, that the Open Learning Agency is not being killed off. In fact, we are looking at those services that have been....

Interjection.

**Hon. S. Bond:** As a matter of fact, those services which are essential and have provided great service to the students of British Columbia will be protected and enhanced in this province. In addition, when we look at the kinds of things we're going to add to BCcampus, in fact, students will have a 24-hour help desk when they'll be able to access support and services.

Interjection.

**Hon. S. Bond:** Yes. As a matter of fact, they will be on line in addition to the distance learning component. The great news is that this government has an aggressive plan in terms of connectivity in the prov-

ince. B.C. is currently leading the way with Internet access in Canada. We intend to increase that and improve it, and 80 percent of people in British Columbia will have access to broadband within the next year. Imagine that. We need to actually be thinking ahead and looking at services that will enhance opportunities and increase access. In addition, we're going to maintain those services through distance learning that are currently provided by the Open Learning Agency.

I simply want to reassure rural British Columbia, considering the fact we actually understand the needs for access, that we are going to enhance them, we are going to protect them, and we are going to work to make sure there is a seamless transition not just for our students but for the employees that are currently working at the Open Learning Agency.

This is a great news story. BCcampus will help enhance those opportunities. We're going to protect those services that are vital from the Open Learning Agency, and we're going to do it over a two-year period so that it can be done thoughtfully and carefully.

[1925]

Second reading of Bill 69 approved on the following division:

YEAS — 35

Hogg	Halsey-Brandt	Whittred
Cheema	J. Reid	Santori
Barisoff	Nettleton	Wilson
Lee	Collins	Clark
Bond	Stephens	Neufeld
Jarvis	Anderson	Orr
Harris	Bell	Mayencourt
Bennett	Christensen	McMahon
Bray	Locke	Wong
Bloy	Cobb	Lekstrom
Brice	Hamilton	Hawes
Kerr		Hunter

NAYS — 2

MacPhail

Kwan

**Hon. S. Bond:** I move that the bill be referred to a Committee of the Whole House to be considered at the next sitting of the House after today.

Bill 69, Open Learning Agency Repeal Act, read a second time and referred to a Committee of the Whole House for consideration at the next sitting of the House after today.

Hon. G. Collins moved adjournment of the House.

Motion approved.

The House adjourned at 7:30 p.m.