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3RD SESSION, 37TH PARLIAMENT

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Afternoon Sitting

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MONDAY, NOVEMBER 25, 2002

The House met at 2:03 p.m.

Introductions by Members

Hon. R. Neufeld: In the House today we have a number of guests that were at our announcement this morning about an energy plan for British Columbia and a way to move forward. They are Geoff Morrison, Anadarko Canada Energy; Patrick Lloyd, B.C. Gas; Mike Doyle, Canadian Association of Geophysical Contractors; Lorne Grasley, Mining Association of B.C. and Joint Industry Electrical Steering Committee; Steve Davis and Harvey Campbell, Independent Power Association of B.C.; and Allen Wright, Coal Association of Canada. Would the House please make them welcome.

R. Harris: It's not that often I have the pleasure of introducing someone from Skeena who gets to come down here, but today in the gallery we have a very good friend of mine, John Nester. John currently is the president of the Northwest Loggers Association, a group that he represents extremely well. He also sits on the board of Northwest Community College, where he is a tremendous advocate for trades training and just does a great job in the community in a number of events. Would the House please make him welcome today.

[1405]

Hon. S. Bond: It's my pleasure today to introduce a number of students who are visiting with us in the precinct, and I should say that I invited them to Victoria from a number of institutions on Vancouver Island to talk about directions in advanced education. I should tell you that the discussion was candid. They expressed their views — some concerns but also some good-news things about our strategies.

I'm pleased to introduce them to you today. From Malaspina University College, we have PS Sidhu and Melanie Vogels. From North Island College, we have Darren Hutton, Leann Pitman and Patrick Barbosa. From the University of Victoria, we have Basil Alexander, Troy Sebastian and Denise Sam. From Royal Roads University, we have Ms. Terry Rachwalski, Michele Vincenti and Sean Weller. I want to thank them for their input and participation in the process today and ask my colleagues to help me make them very welcome here.

Hon. J. van Dongen: It's my pleasure to introduce to the House today three of B.C.'s leading agrologists: Wayne Wickens, Larry Bomford and Garth Bean. Also visiting the House is Mark Parsons, one of my staff. I would ask the House to please make them all very welcome.

J. Les: It's my pleasure this afternoon to introduce to the House the constituency assistants for the members of the government caucus who are in the precincts

today. They are here to learn more about the policies and procedures as they evolve and the things that will enable them to do their jobs better. On behalf of the government caucus, I want to express my appreciation to all of them for the wonderful work they do on our behalf and welcome them to the precincts today.

Hon. M. de Jong: Van Scoffield is the executive director of the Association of B.C. Professional Foresters, and John Leech is the executive director of Applied Science Technologists and Technicians of British Columbia. I think people are aware of the significance that both those professions play under the guides of the new forest management regime we're in the process of enacting, and I hope the House will make both those fine gentlemen welcome today.

A. Hamilton: Joining us in the House this afternoon are 26 grade 11 students along with their teachers, Ms. Christine Ersoy and Mr. Marvin Dodds, from Esquimalt Community School. Would the House please join me in giving them a warm welcome.

T. Christensen: It's my pleasure today to introduce a couple of good friends from my riding of Okanagan-Vernon. Mr. Ajit Sidhu and his son Sid Sidhu are both leading members in the Sikh community. Sid is the vice-chair of the Agricultural Land Commission for the Okanagan region. They are both from that fine, fine tradition and profession in the Okanagan, fruit-growing, and are the owners of Bella Vista Farms. I would like the House to please make them both very welcome.

W. McMahon: It's a pleasure today to introduce a constituent and friend from Invermere, B.C., Buzz Harmsworth, who is in the gallery.

H. Long: Earlier today, there was a class of students from the Sunshine Coast, and I don't know whether they're in the precinct this afternoon or not. If they are, it's a class from Chatelech School, and I would like to make them very welcome here in Victoria.

[1410]

Introduction and First Reading of Bills

FORESTERS ACT

Hon. M. de Jong presented a message from Her Honour the Lieutenant-Governor: a bill intituled Foresters Act.

Hon. M. de Jong: I move that Bill 78 be introduced and read a first time now.

Motion approved.

Hon. M. de Jong: I am very honoured to rise today and introduce Bill 78, the Foresters Act. This piece of

legislation, repealing and replacing the existing Foresters Act which has been in place since 1947, will bring that act up to date and strengthen its provisions in terms of dealing with professional accountability.

Members will know that the Forest and Range Practices Act relies extensively on the judgment and accountability of forest professionals to ensure that environmental standards are maintained under a workable results-based code. The key to meeting this commitment is being able to depend on highly trained, dedicated, accountable professionals to make sound resource management decisions. With this new Foresters Act, the judgment of forest professionals can be relied upon as a cornerstone in the results-based era.

Under the new act, the association of British Columbia forest professionals will continue to be responsible for upholding and protecting the public interest by providing expertise in entomology, ecology, hydrology, silviculture, road planning and numerous other areas, planning and approving all forest activities and assessing the effect of activities on the forests.

I want to thank the Association of B.C. Professional Foresters and the Applied Science Technologists and Technicians of British Columbia for their invaluable help in working our way through this legislative initiative.

I move first reading and move that the bill be placed on orders of the day for consideration by the House at the next sitting after today.

Bill 78 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.

AGROLOGISTS ACT

Hon. J. van Dongen presented a message from Her Honour the Lieutenant-Governor: a bill intituled Agrologists Act.

Hon. J. van Dongen: I move that Bill 79 be read a first time now.

Motion approved.

Hon. J. van Dongen: I'm honoured today to introduce Bill 79, the Agrologists Act. This legislation updates and improves the professional self-governance system for agrologists. Agrology was first established as a self-governing profession in 1947, and this is the first time the Agrologists Act has been updated.

The act continues to enable the British Columbia Institute of Agrologists to oversee the profession of agrology. The institute is charged with upholding and protecting the public interest by preserving and protecting the scientific methods and principles that are the foundation of the agricultural and natural sciences, upholding the principles of stewardship that are the foundation of agrology, and ensuring the integrity, objectivity and expertise of its members.

Recently the hon. Minister of Forests introduced the Forest and Range Practices Act, which establishes a workable results-based code and reduces the forestry regulatory burden without compromising environmental values. The key to meeting this commitment is to ensure that the government, natural resource industries and the people of British Columbia can rely upon highly trained, dedicated, accountable professionals to make sound resource management decisions. The new Agrologists Act ensures that professional agrologists and the B.C. Institute of Agrologists continue to be capable of fulfilling that role.

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

Bill 79 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.

[1415]

Statements (Standing Order 25b)

INTERNATIONAL SELKIRK LOOP

B. Suffredine: I rise today to draw the attention of the House to a tourism growth opportunity in the Kootenays called the International Selkirk Loop. The International Selkirk Loop is a 450-kilometre scenic tour exploring more than 65 vibrant towns in Idaho, Washington, Montana and, of course, British Columbia. Along the loop, you will find activities to suit every interest and lifestyle. Encircling the Selkirk Mountains, the International Selkirk Loop is home to moose, deer, elk, caribou, bighorn sheep, mountain goats and grizzly bears as well as thousands of species of birds.

While skiing and golf are primary drawing cards, unique towns exist along the loop that also offer outstanding shopping, dining, entertainment and events. There are artisans at Crawford Bay. There's the Hills Garlic Festival, the Kaslo Jazz Fest and the Harrop-Procter storytelling festival, just to name a few. Accommodation ranges from budget hostels to four-star resorts. *Sunset Magazine* has recently named the loop the best new scenic drive.

Formed in 1999 as a non-profit corporation for promotion of tourism, the loop continues to draw acclaim and international attention. Directors of the loop recently met with the Canadian consul general in Seattle to explore joint funding opportunities to develop this innovative project. The Premier has recently spoken of the potential of the Kootenays as a major tourist destination. Groups like the International Selkirk Loop will serve the Kootenays well in realizing our tremendous potential.

I invite all members of the House to visit the loop from the queen city of the Kootenays, Nelson, to the Ainsworth or Nakusp Hot Springs, the Creston Valley Wildlife Centre, the alpine city of Rossland or the sil-

very Slocan. The Kootenay towns on the Selkirk Loop will welcome you with open arms.

WORK OF COASTAL PARLIAMENTARIANS COMMITTEE

G. Trumper: Today I'd like to speak about the Coastal Parliamentarians committee, which consists of MLAs and MPs whose ridings are on coastal British Columbia. This was initially spearheaded by Senator Carney, and it was felt that there was a need for the coastal Members of Parliament and MLAs to get together to put forward some of the issues that surround coastal communities in the fishing industry, in the marine industry, and any other issue that affects them.

We meet once a year at the Coastal Community Network annual meeting, and at that time we invite local government representatives to be there. We coordinate the issues, and we hope we have a voice, particularly in Ottawa, with some of the issues that are very important to us.

Most recently we have turned our attention to the Coast Guard service, which we all know has been a major issue on the coast just recently and which we believe is being depleted, and, most recently of all, the discontinuance of foghorns on the coast. Now, for those of you who live in the interior, that may not be an important issue. Ottawa seems to feel that most marine vessels have the various newest navigational instruments today, but we have hundreds of pleasure boaters on the water, some of whom use road maps to navigate and have no knowledge of the marine weather on west Vancouver Island, particularly as that is known as the graveyard of the Pacific. To us, this is a policy that has been developed by someone east of the B.C. border.

If there are issues that can be addressed by the committee, please approach any of us and myself, as chair of the committee. We would welcome any input that would further our cause, particularly in Ottawa.

THE NEW BEACHCOMBERS TELEVISION MOVIE

H. Long: Last spring I spoke in the House about a hope for production of a two-hour *Beachcombers* movie. *The Beachcombers*, of course, is the long-running TV series based in Gibsons. At the time, Telefilm Canada had not committed to the project, but ultimately they did, and tonight at 8 p.m. *The New Beachcombers* movie will air on CBC TV.

[1420]

You could say I'm an old relic of sorts, so I do remember what a positive impact this series had on the lower Sunshine Coast. *The Beachcombers* provided good family-based entertainment for close to 20 years. It had everyday characters we could all relate to. It was not a cheap knockoff of hit American shows; rather, it was classically Canadian. I will be working hard to convince the CBC that it should be given an opportunity to reach a new generation of family viewers through a regular series. The benefits are significant. *The Beach-*

combers is still watched by viewers all over the world. It's free publicity for the Sunshine Coast and British Columbia.

Last week the people of Gibsons were treated to an audience screening. Hear what Gerry Parker, terminal manager at Langdale for B.C. Ferries, had to say: "It's good, clean, family-oriented fun with a lot of fine acting and quality writing. I will encourage everyone to see it for themselves — a new Molly's Reach with what life on the Sunshine Coast is still about."

Colleagues, I will be tuning in tonight at 8 p.m. I invite you all to join me. For those on House duty, I would ask that you call division only during commercial breaks. [Laughter.] I join with the community at Gibsons to say to *The Beachcombers*: welcome back.

Oral Questions

PRIVATIZATION OF B.C. HYDRO ASSETS

J. MacPhail: For generations, British Columbians have benefited from some of the lowest electricity rates in North America. Today that hydro advantage is on the way out. While just a couple of years ago the current Minister of Finance was saying that even with those low rates, hydro rates were artificially high and should only go in one direction — down — today it's a different story. In order to satisfy its backers in the private power sector, the government is handing over responsibility to private power producers to generate new supply.

Can the Minister of Energy tell us how much more B.C. Hydro customers are going to pay to subsidize the profits of private power producers?

Hon. R. Neufeld: Again, we're moving ahead with this government with more good news. We're moving forward with a publicly owned hydro, B.C. Hydro, to provide low-cost energy to British Columbians now and well into the future. We're seeking secure, reliable supply for British Columbians well into the future. We want to have private sector opportunities to gain their expertise in building plants in this province, which they have been ably doing since the mid-eighties. Even under the last administration they were doing that.

We need to make sure we're environmentally responsible. This is a good plan. This is great for British Columbia, and I look forward to what it's going to do for the province in jobs and investments.

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

J. MacPhail: Well, we just heard a good source of wind power, but not much else there.

It's not just supply that the government's turning over to the private power producers. They are also opening up transmission to the private sector. Buried in today's announcement was news that any new transmission capacity will be built privately.

The government claims over and over again that it's not privatizing B.C. Hydro. We hear it from the back bench. The truth is: it's privatizing all future supply, and it's allowing private transmission. Although the minister didn't want to admit that today, the technical briefing said that. It's making B.C. consumers pay more for their electricity to subsidize private profit.

You can call it anything you like, but British Columbians know that when the MLA for Prince George-Omineca said it's creeping privatization, he was bang on. Can the minister tell us how relying on the private sector to build all new generation and all new transmission will not result in the eventual privatization of B.C. Hydro?

[1425]

Hon. R. Neufeld: Again, the Leader of the Opposition has it all wrong. Should we be surprised?

Transmission will still be owned. It will be a Crown entity that runs the operation of the transmission system. The assets — the bolts and nuts — will still be owned by B.C. Hydro, and British Columbians will own B.C. Hydro from here into the future, as we promised during the election.

I wonder when this member changed her mind. She was part of a government in 1992, I believe, when Anne Edwards was Minister of Energy and Mines. I'm going to read a quote out of a policy: "IPPs will be encouraged where an electricity supply is needed and has been clearly identified and where they can provide real cost, innovation or expertise advantages." That was a policy of that member's government when she was in government. I can tell you we're going to look toward that expertise, that knowledge and that ability to get the commercial operations done in a cost-effective way for low-cost power in British Columbia, moving forward from here.

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

J. MacPhail: I know the Minister of Energy and Mines has flip-flopped perhaps a half-dozen times in the last two weeks about what his government's intent is on B.C. Hydro. Today the government announced that future transmission capacity will be built by the private sector. It was his own government that announced this just hours ago.

It comes down to this: public power is cheaper than private power to generate. It's been proven over and over again, but still the government's handing over responsibility for supply to private producers and has introduced a domestic price-setting scheme that is as uncertain as it is complex. That puts at risk B.C.'s number one competitive advantage, and it's exacerbated now by the privatization of transmission growth.

I suppose we'll see how it will settle out, whether prices will go up. We'll see, and the consumers will judge the wisdom of the government's plan. In the meantime, British Columbians will know who to blame

when and if the plan goes the way of every other private power scheme in North America.

Interjections.

Mr. Speaker: Order, please. Hon. member, let us have the question.

J. MacPhail: Can the minister tell us again: with all of the experience in the last two years about private power production throughout North America, why is he trying to fix B.C. Hydro when it so clearly isn't broken?

Hon. R. Neufeld: I want to tell you that it's no wonder this.... I can't understand why this member is so confused. We just had a private briefing for the two members of the opposition, done by the deputy minister that's been responsible for development of this plan, to clearly explain everything. Nowhere in this plan does it say that the private sector is going to build all the transmission from here forward. It will be done by the transmission identity.

Interjection.

Mr. Speaker: Order, please. Order.

Hon. R. Neufeld: It also amazes me how they can change their minds. Mr. Sihota, Mr. Zirnhelt, a previous Premier called Mr. Harcourt and Anne Edwards, a previous minister, all talked about the benefits of independent power producers.

Let me tell you, the only generation that was built from 1985 forward by B.C. Hydro was under the direction of the NDP for their friends and insiders to build a plant in Pakistan — a plant in Pakistan that still doesn't have the underground wires coming back to British Columbia so we can have that power. That's the only thing that group did.

KYOTO ACCORD

J. Kwan: Not only have the Liberals put the B.C. Hydro rate advantage at risk, their energy plan is also a big step backward for the environment. It will make it harder to meet our Kyoto commitments. Today in Ottawa...

Interjections.

Mr. Speaker: Please, hon. members, order. Let us hear the question, please.

[1430]

J. Kwan: ...Parliament is beginning the debate on the ratification of Kyoto. Meanwhile, here in B.C. the Liberals are opening up the smokestacks to allow private power producers to burn coal.

Will the Minister of Water, Land and Air Protection tell British Columbians what studies she has done to

determine the effect on air quality of allowing private power producers to dramatically increase coal-fired electricity production in British Columbia?

Hon. R. Neufeld: Again, with Kyoto this government is concerned about climate change. We're working towards having a plan in place for climate change, something that government never did when they were in power from 1997 forward. What we're saying is: there is new technology in generation of electricity either by coal or by natural gas, and we should seriously look at that.

If the member opposite is saying we should adopt Kyoto as it is — have the greatest impact on job loss of any jurisdiction in Canada...

Interjection.

Mr. Speaker: Order, please.

Hon. R. Neufeld: ...have the greatest impact on investment of any jurisdiction in Canada and have the greatest impact on our GDP of any jurisdiction in Canada.... That's what the federal government is trying to push down on B.C. We're saying no. We're standing up for British Columbians and saying that British Columbians deserve better.

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

J. Kwan: We learned over the weekend that the pine beetle epidemic in the northern part of B.C. has reached epidemic proportions with devastating consequences on B.C.'s economy. According to the real Minister of Water, Land and Air Protection's own report, this epidemic results from global warming and the increase in carbon pollutants. But the Liberals and the financial backers in the mining industry want to put even more pollutants into the air by letting...

Interjections.

Mr. Speaker: Order, please.

J. Kwan: ...the private power producers...

Interjections.

Mr. Speaker: Order, please, hon. member.

I don't know about the rest of you, but I cannot hear the member's question. Let us at least give her the courtesy of hearing the question.

J. Kwan: ...burn coal to produce energy for export.

Would the Minister of Water, Land and Air Protection, if there is one in this House, please now confirm that this government's plan to burn more coal and add harmful emissions is the real reason why she and the Premier have been fighting so hard to block the ratification of the Kyoto accord?

Hon. R. Neufeld: Again, this government is moving forward with an energy plan that will have British Columbia Hydro owned by the public. We will go forward with low hydro costs well into the future, and we will be innovative in how we generate that electricity across the province.

There are areas of the province where there is a lot of coal that can't be shipped, and it has some environmental impacts also. But for a group to sit there and talk about what we're doing, when they sat idly by with Sumas 2 — never lifting a finger, never even answering any questions about it, never even opposing it.... It's pretty hard to take. We're moving forward...

Interjections.

Mr. Speaker: Order, please.

Hon. R. Neufeld: ...with a plan that will be good for British Columbia, good for investment, good for jobs, good for low energy costs and good for British Columbians, because we will own B.C. Hydro. It was that government that wanted to sell B.C. Hydro. We are not.

DRUG COSTS

J. Nuraney: My question is to the Minister of Health Services. Under the current Pharmacare system, low-income families actually pay more for their prescription drugs than wealthy seniors. While the minister has already indicated that he's working on a plan that will bring fairness and equity to the system, many seniors in my constituency have called to express their concern about how this will impact the low-income seniors.

[1435]

Can the Minister of Health Services tell my constituents the steps he's taking to ensure that any change to Pharmacare will not hurt the low-income seniors?

Hon. C. Hansen: Several weeks ago in open cabinet I outlined our initiative to bring in an income-based Pharmacare system. We are facing huge cost pressures in Pharmacare — growths of 14 to 18 percent a year that the previous government did not fund in the last budget they presented to British Columbians. We are taking steps to make sure that the benefits are protected for low-income seniors, and we're also taking steps to reduce deductibles for low-income families who are not seniors and who are facing very high deductibles.

In the consultations that we have done, we've had a lot of good feedback from various organizations in the province, including many seniors organizations that we have met with. It is becoming more time-consuming than I would have hoped for. I had originally hoped we could implement this new income-based Pharmacare system on January 1. That is now not the case. It's going to be delayed by a couple of months, but when we are in a position to implement it,

I can assure the member it will be fair for the lowest-income British Columbians — in particular, the seniors.

Mr. Speaker: The member for Burnaby-Willingdon has a supplementary question.

J. Nuraney: It is important that the seniors have some input into how we redesign our Pharmacare in order to ensure that their needs are met. Can the Minister of Health Services tell us what further steps he will take to ensure that he will consult with the seniors before the changes are made to the Pharmacare system?

Hon. C. Hansen: Actually, the Minister of State for Intermediate, Long Term and Home Care and I met with several seniors organizations over the last couple of weeks, and we are going to continue to do that over the next coming weeks. We've had some great input from those different organizations in the province in terms of how to make sure that it's fair. One of the things we have to be very conscious of is that seniors are on fixed incomes. When they start designing their household budgets, they can't afford changes that are going to disrupt their planning for their budgets over the course of a year.

For low-income seniors, we're really taking great efforts to make sure that the program we designed is sensitive to those who are in lower incomes and really don't have the flexibility that other British Columbians may have.

[End of question period.]

Orders of the Day

Hon. G. Collins: I call committee stage debate on Bill 73.

Committee of the Whole House

COMMUNITY CARE AND ASSISTED LIVING ACT (continued)

[1440]

The House in Committee of the Whole (Section B) on Bill 73; J. Weisbeck in the chair.

The committee met at 2:41 p.m.

Point of Privilege

J. Kwan: Before I begin debate and ask questions relating to Bill 73, I rise to reserve the right to raise a matter of privilege.

Debate Continued

On section 3 (continued).

J. Kwan: Carrying on, then, with the committee discussion on Bill 73, the section that we were dealing

with last Thursday was section 3, "Director of licensing." I was asking the minister questions in terms of the power and authority that could be directed to the director of licensing. The minister has responded that under section 4, it would actually highlight a little bit more about the powers of the director of licensing.

Before I go into that, I'd like to ask the minister this question. The minister's response on Thursday and the act, as well, refer to the medical health officer in terms of the medical health officer's role. I just want a clarification: is this the provincial health officer, not the health authorities' individual medical health officers?

Hon. K. Whittred: The medical health officer that is referred to in this act is in fact the medical health officer in the health authority. It is the director of licensing who fulfils the provincial authority. He is the provincial official.

J. Kwan: In other words, it's not Perry Kendall, the medical health officer for the province. Rather, in each health authority there's a separate medical health officer, and that would be the person to whom powers could be delegated under the director of licensing.

[1445]

Hon. K. Whittred: The medical health officer is the medical health officer in the health authority. The provincial health officer is a medical health officer, but that is not the usual usage of this in the act as it is defined in section 3(2)(b) there.

J. Kwan: If it's not the usual medical health officer that's being referred to, does it preclude powers or work to be delegated to the provincial medical health officer? If that's the case, does it require the minister's approval, or does it just go straight to the director of licensing?

Hon. K. Whittred: Any medical health officer appointed under the act can be delegated, so that would include the provincial health officer.

J. Kwan: Does that need the approval of the minister, or is it just a delegation by the director?

Hon. K. Whittred: It would be a delegation by the director of licensing.

Section 3 approved.

On section 4.

J. Kwan: Section 4, of course, deals with the powers of the director of licensing, and it outlines those elements in section 4(1) and (2). The new act, as I understand it, attempts to separate the roles of the provincial and local officials in keeping with the spirit of the recent reorganization of health authorities, putting the emphasis on local autonomy. The director of licensing sets general standards and policies, collects and shares

information between regions, has an overall monitoring role, and where necessary for the health and safety of the residents, the director may intervene in respect to a particular facility. Of course, to assist in the enforcement, health authorities are responsible for ensuring that their employees and appointees follow the directions of the director of licensing.

Will the health authorities be funded or compensated for their reporting, auditing and investigative duties as required by this act, or are they simply supposed to look within their existing budget to do any work that's delegated to them by the director of licensing?

Hon. K. Whittred: The work that is described in section 4 is already being done by the health authorities, and that would fall within their area of jurisdiction. I think it's fair to say that if there was something extraordinary that occurred, which went well beyond what would be considered normal operations in the course of a yearly budget, that would be taken into consideration by the ministry.

[1450]

J. Kwan: As far as I could tell, this section of the act is new, and there's no existing provision in the old act relating to it. Perhaps I'm wrong, and if that's the case, could the minister please advise what section of the old act it refers to in terms of the powers of the director of licensing?

Hon. K. Whittred: The member is correct when she notes that this is a new section. However, the policy described here, which is now in statute, has been in effect for some time, so the reporting mechanisms have been done for some time as a matter of policy. They are now written into the legislation. The actual practice in the field does not change very much.

J. Kwan: The minister advises that under special circumstances, the minister, the ministry or the government will consider whether or not additional resources will be provided to a particular health authority if they are being requested to do a particular or special investigation. Could the minister please advise how one would trigger an investigation? What would the procedure be? Would it be by public complaint to the director of licensing, who in turn would make that consideration and decide whether or not an investigative procedure needs to be followed into a particular complaint? How would the procedure work?

Hon. K. Whittred: The need to provide a special report could, in fact, come from any number of sources. It could be triggered by a routine inspection. It could be triggered by an audit or by a public complaint. It could be triggered by any number of routes, but that would require the director of licensing to order that a special report be completed.

J. Kwan: Are there or will there be guidelines or policies that will be set in place for the director of li-

censing to consider when an investigative procedure needs to be executed?

Hon. K. Whittred: Yes.

[1455]

J. Kwan: What are the guidelines?

Hon. K. Whittred: Yes, in fact, there is a policy framework that is in place, and it is, of course, being clarified over the next several months. There is also practice in place from the current system. The ministry will be working to clarify those policy frameworks before section 4 is put into effect.

J. Kwan: Will the minister outline for the House what those policies are right now and what aspects within those policies are being looked into by government to be clarified?

Hon. K. Whittred: We have a flow chart, a protocol chart, that we would be quite willing to share with the member if that would be helpful to her.

J. Kwan: I would appreciate this flow chart, but I would also appreciate, perhaps, just for the minister to outline briefly in this House what that procedure is. I'm asking this, of course, because it is related to section 9 on the issue around inspection of community care facilities as well. Of course, in the last while we note that in the broader community there have been complaints with respect to facilities and the problems that have arisen, particularly for the people who receive their services in those facilities. So I'm particularly interested in what policies exist now in terms of investigative authorities, how one triggers that process and, of course, what the changes are going to be. What, in fact, the powers to investigate and the need to investigate as the complaints surface even more in the community.... Will the minister actually see to the policy that would allow for that and for that work to be done as opposed to actually minimizing and decreasing that work which needs to be done in the broader community?

Hon. K. Whittred: If I could just refer the member to the entire section 4 there, I think this addresses some of her concerns. This is, in fact, representative of an enhanced safety net. The powers of the director are enhanced in terms of the accountability over what was in place previously, and I think that when we get into discussion later on, on some of the other sections, that will become readily apparent.

[1500]

To address her concerns perhaps more fully, there are a number of things that might come up during the reports around any given facility. These might come from routine inspections. They might come from complaints from family members. They might come from licensing. They might come from regulations. They might come from policies. They might come from statute. Regardless of where they come from, any one of

those things can trigger the need for the director of licensing to investigate to ensure that the situation is safe for the people who are in care.

J. Kwan: My question is more specific than that, not just about where a complaint could come from or the source of the complaint, whether it be triggered by inspections or a complaint from a family member or whatever the case may be. My question is: how does the director evaluate that complaint? How does he or she then arrive at a decision that further investigation needs to be done? So what procedure...?

The minister had advised that there's some sort of standard procedure that would apply. There's a flow chart to which that would be applicable. If the minister could then just outline briefly what some of those steps would be.... Let's just say, for example, a family member makes a complaint to the director of licensing. Then what happens after that? Does that automatically yield an investigative team to look into the merit of the complaint and then to determine whether or not next steps need to be taken? And if so, what they are, or what happens? I'm just wondering what that procedure is and how you finally arrive at a place that says there needs to be, say, an independent audit of the functioning of the facility or not.

Hon. K. Whittred: All right. Let's take the member's hypothetical that there has been a complaint. I think the first thing that would happen would be that the director of licensing would ask for a report from the medical health officer who is in the regional authority. He would probably ask for a report from the local licensing officer. He would ask for evidence to be provided regarding the complaint. He would evaluate that evidence within the framework of policy, within the framework of the existing regulations, within the legislative framework. He might speak with the provincial health officer. He may speak with the CEO of the health authority. In other words, he may in fact seek counsel from other officials who would have an interest. Finally, after he has done all of those things, he would make a decision.

[1505]

J. Kwan: Would those investigative requests from whatever source be documented and be made public so that people would be aware of what the nature of complaints might be and how they are being resolved, particularly to the complainant? I could only presume that that information would be made available to the complainant, whatever the process one has embarked on, and then the decision that has been made and then the justifications behind that decision.

Hon. K. Whittred: The complainant would have information shared with himself or herself, providing that the investigation is not compromised in any way. Obviously, privacy concerns have to be taken into account as well as any information that may compromise,

for example, a police investigation or something of that nature.

J. Kwan: Barring confidentiality and privacy issues, will investigations of such nature be made public?

Hon. K. Whittred: Yes. I'd like to just be sure the member opposite understands that what we're discussing here is, in fact, a very rare occurrence. It would be something that would happen only in very, very few circumstances. The complainant would be informed, as appropriate, of the process. However, there would be no extraordinary measures taken to publicize the outcome of such an investigation to the public.

J. Kwan: Certainly, I hope that it would be a rare occasion. What I do want to make sure of, though, is that in the event such an occasion does arise, the public actually has the right to know. Also, as we know, there are tremendous changes taking place across the province. More changes will be forthcoming. What I'm particularly interested in is making sure that where a complaint is lodged, there are proper procedures and processes to investigate those complaints and that where there's merit applicable, that information is passed on to the public, because I do believe that the public has the right to know.

Section 4 approved.

On section 5.

T. Christensen: I just want to get a quick clarification. Does the minister anticipate that facilities or care arrangements that are not currently required to be licensed under the Community Care Facility Act, which we're currently working under, may then be caught by the new legislation and the definition of the prescribed services? Are there facilities out there now that aren't required to be licensed as community care facilities but, by virtue of this change, are going to now be required to be licensed under part 2 of this act? If so, what are we doing to try and alert those we may anticipate about that fact?

[1510]

Hon. K. Whittred: No, I do not think we anticipate that there are, in fact, facilities that are operating without a licence. That is not a concern.

B. Suffredine: Under the definitions section of the act, this act contemplates facilities that could affect both the old and the young. It's conceivable that in smaller communities a school might have several uses, including one that might be contemplated by this act. Could the minister explain why schools of varying types are specifically excluded from the operation of this act?

Hon. K. Whittred: Yes, schools come under the School Act and, therefore, are not covered in this legislation.

Sections 5 and 6 approved.

On section 7.

J. Kwan: Section 7 deals with the standards to be maintained. This is a major section, if you will, of this bill. Could the minister please explain why there's only one line in this legislation about the standards of care? The entire piece of legislation, one would have assumed, would be focused around the standard of care for those who fall under this act; yet when you look for the details within the act around what the standard of care would be and how it would be applied and so on, there's only one line in this legislation about that. Could the minister please explain why there's only one line in this legislation about standards of care?

Hon. K. Whittred: Yes, I would like to point out for the member opposite that this section is, in fact, exactly the same as the old act. Provision (b), "operate the community care facility in a manner that will promote the health, safety and dignity of persons in care," is, of course, enhanced and is followed by regulations. There are adult regulations and child care regulations which provide the detail and put the flesh on the bones, so to speak, of that particular section.

J. Kwan: Well, the trouble is that the minister advised that she's undergone consultation — went and spoke with stakeholders. The whole rationale for bringing this bill forward is to actually make it better, make it stronger and presumably make it provide better protection than the previous bill. Yet, when we go to this section of the act, "Standards to be maintained," I see nothing has changed. Really, it's not a very good excuse to say: "Okay, well, here's a piece of new legislation, and it's supposed to be better than before."

[1515]

What we know, though, across the province is that more and more people are going to be put at risk as a result of government policies. We know that. We know that across the board, whether it be long-term care, intermediate care or otherwise, because funding is being cut. The issue around standards of care becomes even more pertinent now than ever before. Many of the stakeholders have given this feedback to the minister. They feel the standard of care issue should be the centrepiece of the legislation. Why did the minister disregard the stakeholders' input?

Hon. K. Whittred: Yes, and when the member opposite speaks of standards, this section is only one area where standards are addressed in this bill. This bill goes a long way to, in fact, making accountability much more direct to the people who are in care and the families who have their people in care. We've already discussed the enhanced role of the director of licensing at some length. That is one part of this that makes this bill, in fact, much more able to deal with direct accountability. We will come to some of the others a little bit later on when we talk about the role of the medical

health officer and about the appeal process, both of which have been significantly enhanced to make this a more streamlined process.

As far as consultation goes, we did consult very broadly, and we have listened to the people who came forward during the consultation process in order to enhance this bill and make sure that it is a stronger bill than the old one and that it does, in fact, focus on the health and safety of people in care.

J. Kwan: Well, the point I was making to the minister is that on the issue around standards of care, the stakeholders' comments have been completely disregarded by the minister. It's not reflected in this bill in terms of addressing those issues. People have expressed very clearly that this should be the centrepiece of the legislation. People expressed clearly that they want to make sure that as all these policy changes and budget constraints are being placed on the broader community, health and safety would in fact be protected, and those standards would actually be settled in legislation. We don't see that in this bill under the section that is applicable.

The minister's press release a few Mondays ago said this about the standards: "The registrar will work with operators to establish basic health and safety standards." Why did the minister once again exclude stakeholders, advocates and clients from the development of standards?

Hon. K. Whittred: The member opposite, I believe, is talking about the registrar. That is in a section yet to come. But in response to her question of why we didn't speak to the stakeholders, I consider all of the people that she is speaking about to be part of the industry.

[1520]

J. Kwan: Well, let me just clarify. The issue around the registrar.... Yes, that is also in another section, but it directly goes to questions that are being asked under section 7, "Standards to be maintained." In the minister's press release, it actually states that the registrar will work with operators to establish basic health and safety standards. Under this section we're talking about standards to be maintained and what those standards are. What we know is that there's nothing in legislation. We know that what the government and minister have done is delegate that authority to the registrar to set the standards.

What we also know is that for the minister to say that industry includes stakeholders, advocates and clients, she's mistaken. She's mistaken because, actually, people see that differently. People who are in the industry, as opposed to people who use the services from the ministry, are different groups of stakeholders, if you will. It's simply not reflective of who the advocates and the stakeholders are in the broader public — to make such a suggestion.

I will simply say that this piece of legislation causes me great concern around section 7, where it does deal with the standards that need to be maintained. In the

legislation there is only one line about it, which basically is a statement that's apple pie. Who could say no that to operate a community care facility, it has to be in a manner that promotes the health, safety and dignity of persons in care?

How do you define health and safety and dignity? Those are the critical questions. It is unclear by this legislation. There is nothing in it that is defined. It's further delegated to the registrar to define that.

It does not, as far as I could see, include stakeholders, people who are most pertinent in the community care facility sector. Those would be the clients — the people who live there — and of course the advocates — the people who advocate for positive changes and who monitor that health, safety and dignity are in fact in place. When you exclude those people from participation, it leaves a big question as to what kind of standards would be set. That, to me, is problematic.

Section 7 approved.

On section 8.

J. Kwan: Section 8 deals with the certification of educators of children. The minister's website states: "The requirement for early childhood educator certificates will be continued through regulation for an interim period of time. Discussion is ongoing with respect to a permanent solution."

Could the ministry or the minister not come up with a permanent solution prior to the introduction of the act?

Hon. K. Whittred: Yes, we've had ongoing consultation with the early childhood educators. I think the member probably is aware — in fact, I think this probably dates back many years — that the ideal solution would be a self-regulating college for the childhood educators. That seems to be a route that is simply not feasible at this time, so in the meantime the responsibility will remain with the ministry.

J. Kwan: Essentially, we're to wait for the regulations, and they will all be defined in regulations. Why did the minister decide that the opposition and the public should not have the detailed regulations while debating this bill?

Hon. K. Whittred: I just wish to remind the member opposite once again that this is not a brand-new act. It is, in fact, an act that is replacing an act that was here for many, many years. Therefore, there are existing regulations.

[1525]

I've already explained that the existing regulations are being reviewed. This is an ongoing process. There is consultation occurring as that process continues. If the member wishes to review the regulations, the place to look is under adult care regulations and child care licensing regulations.

P. Sahota: I'm just looking for a bit of clarification on section 8. Bill 16 had indicated there is no longer a

registry for early childhood education, yet section 8 of this bill indicates that it's still in place. Can the minister please clarify?

Hon. K. Whittred: One of the groups we heard from very frequently in the consultation process was the early childhood educators. In the earlier draft of the bill, the certification was going to be left to the regulation. Something that came out in the consultation was that they preferred it to be in the legislation, and that is why we made the change. It was based purely on the consultation process.

J. Kwan: Before I was interrupted with my flow of questions, the minister said that this is just amending regulation, that it's an amendment of an existing act — fair enough. The issue is this: the government is going to be bringing in new regulations. What those regulations are is the crux of the debate here. The public needs to know. The opposition needs to know and wants to know, so we know what the changes are.

Simply to say that there's already an existing set of regulations and we're amending that, yet nobody knows what those changes are going to be and what the amendments are.... That really makes for, quite frankly, the introduction of a piece of legislation when the government and the minister are not ready.

Does the minister know what ratio of children to caregivers will be set?

Hon. K. Whittred: Those ratios are set by regulation, and those regulations will continue.

J. Kwan: There will be no changes to the ratio of children to caregivers. If I'm correct, I ask the minister to please confirm that with the new regulations, there will be no changes to the ratio.

Does the minister know what training will be required for early childhood educators under these new regulations?

Hon. K. Whittred: There would be no changes without consultation.

J. Kwan: Is the minister expecting changes? Her answer has just changed from a few minutes ago. When I asked her a question, she said there would not be changes to the ratio of children to caregivers. Now, in asking the question again, there appears to be some possibility that the ratio would be changed. Does the minister know what that ratio would be?

Hon. K. Whittred: I think the member opposite realizes the regulations that are currently in place evolved over the last 30 years, and I anticipate that there will continue to be an evolution of regulations. We would be very remiss in government if nothing was ever able to evolve and to change. I anticipate there will be some evolution as time goes on. We have, however, no plan at this time to change those regulations.

[1530]

J. Kwan: What is at issue is this. Where changes are to be taking place, what I'm asking and what British Columbians have said to me that they want to know is what those changes are and for them to be debated in this House, which is why Bill 73 is before us. The problem is that we don't know what any of those changes are. Like so many bills that have been brought to this House, all of the changes that would greatly impact British Columbians, positively or negatively, are not being shared in this House, because that information is simply not made available. That is what's at issue here. You know, it sounds almost a bit defensive to me for the minister to get up and say, "Well, gee, we don't want to stand in the way of progress and change," and then to say: "We're not changing anything, but we want to reserve the right to have the possibility for change." People in the child care community are particularly interested in what those changes would be.

The minister says she doesn't know. That's what it comes down to: she doesn't know. It does beg the question: why are we debating this bill when there are so many questions being asked of the minister, and she simply doesn't know the answers to them? It does beg the question of why this bill is before us to be voted on in this House.

Does the minister know what training will be required for early childhood educators under these new regulations?

Hon. K. Whittred: This act went through a very transparent public consultation process, and the process continues. There is, as I've already stated several times, an ongoing review of the regulations. That is something that goes on, I think, in virtually every ministry around many, many bills; there is an ongoing review of regulations. The same transparency that worked around the whole bill will follow with the regulations. There will be website consultation with the sector, there will be public documents, and there will be meetings with various members of the child care community, but at the present time there has been no change in the regulations.

J. Kwan: Well, I have just a stack of information sent to me by people in the community who are concerned about this bill and who are concerned about the process that they have actually embarked on. I know the minister and this government like to pretend that they have done a fantastic job on consultation, but it is notwithstanding that people have concerns. I have this and more information from the public who have raised these issues with me, with my colleague from Vancouver-Hastings, with the opposition caucus. I raised some of those issues in second reading debate, and I don't wish to go back and rehash all of that information.

The question I ask of the minister is this: does she know what training will be required for early childhood educators under these new regulations? Is she saying that there will be no new regulations in place in

terms of new requirements for early childhood educators? Is that what she's saying?

Hon. K. Whittred: We have made no changes around the qualifications of early childhood educators. However, I have no knowledge of what might come up in the future that may in fact become an issue with the child care community. We have to remain open to the possibility that that will emerge out of the ongoing consultation process.

Mr. Chair, I would like to make an offer to the member opposite. If she has information that is useful to the government on the policies in this bill, I would welcome her to send them, and we would be quite happy to review them.

The Chair: We will take a five-minute recess.

The committee recessed from 3:35 p.m. to 3:41 p.m.

[J. Weisbeck in the chair.]

On section 8 (*continued*).

J. Kwan: Just prior to the break the minister said she doesn't anticipate that there would be any changes to the regulations. I wouldn't actually venture as far as to think that my suggestions for the minister's consideration would be what she might deem to be valid. We've made many suggestions, certainly, in this House and in this debate, and so far all the indications have been that the minister doesn't even think some of the questions are all that valid. Nonetheless, there are lots of people in the public who have these issues and questions and will continue to raise them. It would be fantastic if the minister does actually take to heart the questions that have been raised in the Legislature as well as the comments made in second reading debate as the regulations are being redrafted and recrafted, given that there is no information available for the public to determine what the ramifications are.

The fact is this. There is a lot of uncertainty about these kinds of regulation changes, and they do create great anxiety for parents and caregivers alike — not knowing, as an example, what the ratio changes might be in terms of caregiver per child versus the other question around the training that might be required for early childhood educators and so on. When one does not know what those changes might be, one does not know what the ramifications might be and therefore the impact on all sectors involved and all the people we're concerned about regarding changes to the regulations.

That is the point here that I wish to make with the minister. When the information is not forthcoming, it creates anxiety in the broader public, and people do want to register that concern for the minister's information.

Section 8 approved.

On section 9.

D. Hayer: I'll have a few different questions on different sections of Bill 73. The first one is.... Many people in my constituency in this province are living independently but require some help for a few day-to-day basic tasks. Can the minister please tell us if the assisted-living units will be considered primary dwellings?

[1545]

Hon. K. Whittred: If you're speaking of a primary dwelling as a private residential facility, then the answer is no, it would not apply. In order for this act to apply, there are very specific criteria which must be met. Among them is that it must provide housing, it must provide hospitality, and it must provide at least one or two of what are itemized in the bill as prescribed services.

B. Suffredine: Section 9 refers to a facility being open at all times to visitation and inspection by the director of licensing or the medical health officer. Should this give rise to any privacy concerns for any of the people who are patients in these facilities — that they might be subject to an inspection of their rooms, it seems, at virtually any time of any day?

Hon. K. Whittred: The first thing I think we need to keep in mind when addressing the particular issue that you raised is that there is a whole practice of professional ethics around this question. Certainly, the medical health officers are very practised practitioners in this field and would be very aware of the need to respect the privacy of the individuals in the home.

In fact, I have to say that when I am visiting long-term care facilities, the privacy of the residents is one thing that virtually all of them take very seriously. Sometimes I'm invited into a suite to visit with the resident and to look at what it is like, and privacy concerns are always addressed, so I think that whole area of ethics and practice is one that is important.

Secondly, if we're talking about an assisted-living unit or a private home, then the act specifically states that a warrant would have to be achieved before the licensing officer can enter the premises.

B. Suffredine: When will facilities for seniors accommodation not require licensing? This sets out the things that are appropriate when you are licensed, but when is it that facilities don't require a licence?

Hon. K. Whittred: This act addresses the need for licensing when care is provided to dependent and vulnerable persons. There are, in fact, many kinds of seniors facilities that are there for seniors who do not fall into that category of care to live in. The most noteworthy amongst those are those complexes that are often called retirement homes. Typically those homes offer housing, and they offer hospitality. They do not, however, venture into the area of care. The people who live

in them are quite competent to direct their own well-being. Those kinds of facilities do not fall and are not captured within this bill.

[1550]

B. Suffredine: Is there a particular level or kind of service that triggers the licensing requirement, a particular level of care?

Hon. K. Whittred: Yes. What the bill says about licensing is that a facility must be licensed if there are three or more prescribed services offered by the facility. The prescribed services are established by regulation. They are as follows: regular assistance with activities of daily living such as eating, mobility, dressing, grooming, bathing and personal hygiene — all of those are captured in one prescribed service; administering and monitoring the taking of medication; the central storing or distribution of medication; the maintenance or management of resident cash resources or property; the monitoring of food intake or therapeutic diets; structured behaviour management and intervention; psychosocial rehabilitative therapy or intensive physical rehabilitative therapy.

If a facility addresses and offers services to a client in three or more of those areas, then it would require that it be licensed.

B. Suffredine: In many of the communities in Nelson-Creston, there are fears of the seniors and their families that they will be forced out of what they consider their homes and their home community as a result of reclassification when they are evaluated.

Recently I was given a copy of a letter from the chief operating officer of the health service delivery area to the residents of Halcyon Home, which is an extended care facility at Nakusp. Without disclosing the name of the recipient — and I understand this went to all residents — it says:

"I understand that you and possibly members of your family are very concerned that there are changes coming to Halcyon Home. It is true that Halcyon Home will eventually be closed. The interior health authority is moving to develop alternate forms of housing for seniors in the Arrow Lakes, upper Slocan Valley area. These will be available for citizens in the area who are not presently a resident of Halcyon Home for their future needs.

"Please be assured that you will not be required to leave the community of Nakusp when Halcyon Home is closed. Accommodation arrangements will be developed to ensure that you can remain in Nakusp when Halcyon Home closes.

"Halcyon Home is to be closed because it no longer is suitable, nor does it meet the provincial standard of care of residents requiring higher levels of care and support. The interior health authority will be offering in Nakusp different forms of independent housing accommodation that you may wish to consider.

"Whether you wish to consider relocating to independent housing or not, I wish to re-affirm that you will not be asked to leave the community of Nakusp at any time, unless you request to do so. If you or members of your family require any further information or

clarification regarding the future of Halcyon Home, please contact Deborah Austin, director, or myself.

"I hope that I have been able to calm some of your concern with respect to the future of your accommodation in residential care.

"Yours sincerely,

C. F. Riley, chief operating officer."

That's good news for Nakusp residents, but can the minister advise whether other areas of the riding and of the province can expect any different treatment than that in Nakusp?

[1555]

Hon. K. Whittred: The member is aware that we are, in fact, in the process of renewing our home and community care facilities across the province. It is the goal of the ministry to ensure that there is a more substantial network of care available to clients. One of the things we have certainly learned is that the kind of network that is available, for example, here in Victoria, where there is a broad network of services available to serve the senior community — including various kinds of facilities, bathing programs, meal programs and so on — is often not available in smaller communities. We are looking to find appropriate programs for communities such as Nakusp and others that are in your area.

This is certainly a particular challenge, considering that many of the facilities that exist in some communities are very old, and they are outdated. They will not support the kind of complex care needs of today's client. Health authorities, as the letter has indicated, are working very hard to ensure that all clients are suitably cared for at a level that is appropriate to their needs.

J. Kwan: Section 9 is "Inspection of community care facilities." Why is it left to the medical health officer, who "may" inspect as opposed to "must" inspect? Why is there this change in this act?

Hon. K. Whittred: To address the member's concern in section 9, the registrar has the power to inspect if he believes or has reason to believe there is a problem. That is, he is empowered to use his judgment to determine what course of action he would take. That is why the term "may" is used there. He has the duty to inspect in section 15, so the power you're looking for is in fact defined. It is simply defined in a different section, under the duties of the medical health officer.

J. Kwan: Well, the difference is this in section 9. The current act says that you are required to inspect facilities and that these inspections will be done by the ministry. What does the new act require? That you may inspect. And this task is being devolved to the health authorities by way of the medical health officer. There is a fundamental difference in terms of what was in the current act, which will be revoked as Bill 73 comes into force after this debate, and a weakening, if you will, in terms of the role of inspection.

When you deal with section 15, the duties of the medical health officer, of course, that deals with inves-

tigating complaints. That's on a complaint basis as opposed to regular inspections, which I will get to section 15 in a few moments.

[1600]

The issue here is this: why would you weaken a piece of legislation that formerly actually required inspections to take place and now simply says that inspections may take place? Can the minister confirm, as well, that the health authorities could themselves be running the community care facilities? Would there not be a conflict if they also get to decide whether or not inspections should be taking place, to make that decision as opposed to the routine inspections that were in place under the act prior to the changes — prior to the enactment of Bill 73?

Hon. K. Whittred: For the information of the member opposite, the current act is.... The wording is similar in the old act. What is currently in section 9 of the new act was section 16 of the current act. It is defining the power of the medical health officer to inspect. The other power is the duty to inspect; it means that he must inspect. That is in the current act in section 14, and in the bill we are discussing, that is section 15. The member is not correct when she says that there has been a change. In fact, there has been no change. It is just in different sections of the act.

J. Kwan: Can the minister then confirm that health authorities who could themselves be running the community care facility may be in a conflict of interest in terms of doing their own inspections?

The Chair: The member for Vancouver–Mount Pleasant.

J. Kwan: Hon. Chair, just to continue on with that question, to add on — also to be able to make the determination whether or not they should be inspecting a particular facility which they might be running themselves....

[1605]

Hon. K. Whittred: I would like to go back to the previous question that the member was asking and refer her to section 14 of the current act — well, the original act — not the bill that we are debating before us. In section 14(c) it says "carry out inspections, whenever the medical health officer considers it necessary...." That is the same as the new act in both the power of section 9 and the duties as defined in section 15. I hope that clarifies that for the member.

To add to that, the medical health officer has a framework of risk assessments that is used to determine when inspections would be necessary, and that has not changed from the old act to the new act.

Finally, to address the member's question about the conflict, that really has been built into section 3. We have already discussed that section. We have actually added a safety net to that. Section 3 — the director of licensing has the power to delegate and could, in fact,

delegate some other person to carry out the director's powers.

J. Kwan: Are there guidelines in place that actually outline, as an example, that the medical health officer from the same health authority cannot investigate and inspect their own facilities — facilities which they are operating? Is it a standard guideline that is now in place, or will there be one?

Hon. K. Whittred: Yes, public health officers have a statutory authority. Their responsibilities are clearly defined. They have the power to protect the public. They have the power to protect water quality. They oversee public health safety, infection control, safety in food services and many other areas such as that. They are, of course, also guided by their own professional sense of ethics and practice.

All of those accountability frameworks are in place, as well as the role of the director of licensing, who has the power, as I've already pointed out in section 3, to delegate another person. Also, the provincial health officer has a statutory obligation to oversee the medical health officers in each health authority. There are, in fact, a number of accountability frameworks, and this is nothing new. This is not a change in this act. This is something that, in fact, has been in place for, I think, many, many years.

[1610]

J. Kwan: The minister keeps on resorting back to the fact that Bill 73 is not a change from the existing act, but the fact of the matter is that we're actually in this House debating a bill to replace the old bill. This is supposed to be a new, better and improved bill. There are these questions that exist, and they need to be addressed.

Can the minister confirm, then, that a medical health officer from the same health region would not be able to do their own inspections on facilities which they're operating? If inspections are to be required and to take place, that work must be delegated to somebody else outside of that health region by the medical health officer's direction.

Hon. K. Whittred: Medical health officers have a role, a statutory role, to inspect facilities in their health authorities, and that will continue. It is appropriate that it continue. However, the change that is in this act, which adds a safety net to that particular issue that the member raises, is the inclusion of section 3, where we have added the "Powers of director of licensing" to delegate, and that addresses the new portion of the act that strengthens the accountability of the medical health officer.

J. Kwan: I think the question to the minister is a simple one. Where there may appear to be a conflict or at least the appearance of conflict in a particular facility, that facility's operated by the health region. The medical health officer in that health region is charged

with the responsibility to do with inspections. Is this, then, an automatic delegation that that inspection would be done by somebody else — be delegated to somebody else so that that conflict or the appearance of conflict would be eliminated? It's a simple question. Yes or no from the minister's policy?

Hon. K. Whittred: The answer to that question is no. The medical health officer in the health authority will continue to have responsibility to inspect facilities.

J. Kwan: Including facilities which that health region is operating itself?

Hon. K. Whittred: Yes, that is correct.

J. Kwan: Well, then it does raise the question from the public, particularly around: just how thoroughly does one think and does this government think that they will inspect themselves? It does raise that question, especially around the appropriateness of that. It's not to say that medical health officers don't do their jobs well, but there is an issue around the perception of conflict. In this instance, it would certainly apply if they were to inspect their own facilities in their own regions. That's problematic, and the question is not being addressed by the minister, nor is it being rectified by the minister as a problem that has been identified, and that's a shame.

The minister says there's nothing that's changed between the current act versus this bill, Bill 73, the current act on the community care facility. I'm interested in knowing whether or not this act, Bill 73, still puts in place the mandatory inspections of facilities and the annual inspections of facilities. If it does, could the minister please advise what section refers to that?

Hon. K. Whittred: Yes, the mandatory inspection that the member speaks of was not in the old act. It is not in this act. Again, the responsibility of the medical health officer.... He will continue to use his risk assessment and his experience and judgment in order to inspect facilities.

[1615]

J. Kwan: Well, that's another issue, then, that the minister herself has just highlighted in terms of the need for annual inspections or mandatory inspections, if you will. Just because it isn't in the old act doesn't mean it shouldn't be done in the new act, particularly as I raised earlier around the changes that are now taking place within government policies with the budget constraints that are impacting every sector throughout British Columbia, and particularly for facilities that require government funding. To simply not put in place that routine inspection is remiss of government. It's remiss of this minister by introducing a new bill that does not address that question.

How does one actually make sure, then, that the standard of care that was debated in the previous section would actually be maintained? The only recourse

that people can go through is then on the basis of complaint. There would be no routine inspection to check into whether or not there are violations of standard of care. Whether or not the standard of care that is supposedly being established is certainly not clearly articulated in this act, but nonetheless a standard of care that would be established.... How would one know that they're actually being followed in the different facilities if no routine checks are being put in place?

Section 9 approved.

On section 10.

J. Kwan: Didn't even wait to see whether or not the minister wishes to answer the question, and we've moved on to section 11. The speed and the cooperation with which all concerned in this House are assisting the minister to speedily go through the sections of the act is unbelievable. Of course I mean every member in this House, whether it be in the chair or elsewhere.

Section 11 deals with the powers of the medical health officer. The medical health officer has the authority to judge a person's personality, ability and temperament. Some would argue that that is a tall order. How much time would the medical health officer be spending with potential licensees to enable this judgment to be made?

[H. Long in the chair.]

Hon. K. Whittred: The medical health officer would do an interview. The extent of that interview would be in keeping with his responsibility to determine at the end whether a licence should be awarded, and I would assume that that interview would be quite extensive.

J. Kwan: Will they be subjected to personality tests? The minister says they'll be quite extensive. I couldn't say that I could fairly judge the personalities, the abilities and the temperaments of the members of this House based on the time I spend with them. I also like to think that their behaviour in this chamber is, well.... Anyway, let me just not go there.

[1620]

Section 11(2)(b) seems to have a typo, actually. Perhaps the minister will amend that. It says: "(b) if a corporation, (i) has a director permanently resident in British Columbia." Was the intent to say "permanently residing in British Columbia"?

Hon. K. Whittred: "Permanently resident" is the intended language.

J. Kwan: That must be the new plain language that is running rampant throughout this ministry and this government elsewhere.

Under this section, I understand that the standards for facilities, licensees and employees will now be pre-

scribed by regulation. Why is the minister eliminating the statutory authority for the protection of clients?

Hon. K. Whittred: Mr. Chair, I wonder if we could ask the member to repeat her question. We are not quite sure what is being asked.

J. Kwan: The question to the minister is this. I understand that the standards for facilities, licensees and employees will now be prescribed by regulation. Could the minister please advise why the minister is eliminating the statutory authority for the protection of clients?

Hon. K. Whittred: It's standard practice for the statute to say that the regulations will define the standards. That is the way it was done in the old act, and that is the way it will continue to be done.

J. Kwan: I'll simply close with this. It just seems to me that that has been the practice of this government. They say: "Here's new legislation." They say: "Here's better legislation. Here's the new, improved piece of legislation." They say they've consulted with people, and they say: "Here are the new changes." Yet when you go through the act, the minister's response when questions are asked about why this is not changed and why these concerns are not addressed.... The minister simply resorts to saying: "Well, gee, that's how it was."

Well, the whole purpose of bringing in new legislation is to address concerns that have been raised from stakeholders. The minister says she has consulted, but the reality is that we don't know what the new regulations are. When asked about those questions, the minister just says: "Well, they're existing regulations, but then they will be clarified." In terms of what direction would they be clarified? What are the changes? The minister has no idea whatsoever. Yet we're in this House right now debating a bill that is going to go through — that is going to go through with, actually, I would venture to say, the minister not knowing what the ramifications are.

[1625]

The concerns that have been raised, questions that have been asked in this House, raised by the community, are simply not addressed. Quite frankly, Mr. Chair, it's simply not good enough.

Sections 10 and 11 approved.

On section 12.

D. Hayer: Many facilities across the province currently operate under the Hospital Act. For all those facilities that currently operate under the Hospital Act, how is the minister proposing to transfer them to the Community Care and Assisted Living Act?

Hon. K. Whittred: There are two groups of hospitals that are affected by this section. The first is private hospitals, and the second is extended care hospitals. Both those groups are presently licensed under the

Hospital Act. The ministry has written letters to the facilities that are affected and has told them of our plans to bring them under the umbrella of the Community Care and Assisted Living Act. We have included in the communication that we will be consulting with them broadly before they will be brought under the jurisdiction of this bill.

Section 12 approved.

On section 13.

J. Kwan: Section 13 deals with suspension or cancellation of licence. Section 13 uses the term "in the opinion of the medical health officer" for the medical health officer to decide whether or not to suspend or cancel a licence. I'm not disputing whether or not the medical health officer should have the authority to do that.

[1630]

The question is that the term "opinion" in this section of the act strikes me as broad. It actually doesn't really say what some of the conditions or criteria are that would apply in formulating that opinion, other than to say that if the licensee no longer complies with this act or the regulations or has contravened a relevant enactment of the B.C. or Canadian licence provisions. Could the minister please explain the term "opinion," and is the minister comfortable with this term?

Hon. K. Whittred: Yes, the medical health officer is a professional, and we do think it's appropriate that we rely on the professional judgment of a medical health officer. It needs to be pointed out that items (a), (b) and (c) in this subsection itemize the areas that he would be making judgments upon. I think we need to point out once again that the medical health officer will be basing his opinion, making his professional judgment, on the basis of information that he has. That information will come in the way of inspections. It will come in the manner of making a judgment about whether or not the regulations have been applied properly. It will come around a judgment about whether or not the statute is being properly enforced. He will look at his risk assessment tool. He will, I'm sure, assess the problem and take some appropriate action.

The other thing I think we need to point out here is that the decision of the medical health officer can be appealed. Therefore, it is incumbent upon the medical health officer that his decision be justifiable, because he may have to justify that before an appeal board.

J. Kwan: Under the current act the requirement is that the director can determine, following a hearing, whether or not to cancel or suspend a particular licence. Why is that process being eliminated?

Hon. K. Whittred: This section is, in fact, one of the sections that the member has been asking about around what is different about this act. Well, this section is one of the areas that is different. It is, in fact, one of the areas that significantly enhances this bill. It significantly

improves the ability of the medical health officer to protect the health and safety of persons in care, because it gives him the opportunity to take immediate action to ensure health and safety for residents.

One of the things that came out very loud and clear is — also, practice over the last number of years has shown us — that in the old act, the local hearing process often became bogged down. It went on for weeks and months of process, and that was not to the benefit of the people in care, nor did it add to the ability of the act to ensure good care. The new way of dealing with that will actually be addressed in section 17, when we get to the reconsideration process, but I wish to point out once again that this is an enhancement to the act. It is an improvement.

J. Kwan: The minister says it is an improvement. The trouble I'm having here is that it is unclear to me what constitutes the opinion of the medical health officer; therefore allowing the medical health officer to either suspend or cancel a licence, I think, works both ways. One has to be clear so that people will know under what circumstances they will actually risk losing their licence. I'm not saying that that work should not be done by the medical health officer. I'm simply saying that the rules and guidelines need to be very clear so that people understand them.

[1635]

Would the minister agree that any violation or contravention of the act would yield a suspension of a licence and potentially the cancellation of a licence? What constitutes the extent to which a licence could be suspended or cancelled? Is it only to the degree to which health and safety would be compromised? What about the issue around quality of life as it applies to the client who is residing in such a facility? Quality of life is actually not prescribed under the standard of care as established in this act.

Hon. K. Whittred: Section 13 gives the medical health officer the authority to do a number of things. It gives him the authority to use his professional judgment. A very simple reading of the bill says that he may suspend, he may cancel or he may attach terms and conditions. In other words, there are a number of things he can do to enhance the community care facility.

There is a common practice, I think, that is well known. That is the practice of what is known as progressive enforcement. The medical health officer may, in fact, issue a warning. He may put some conditions around some aspect of the community care facility. He may suspend a licence, or he may cancel a licence. Or all four of those things may happen over a period of time. It is the responsibility of the medical health officer, really, to evaluate when there is grave danger and where health and safety are compromised and to take measures to ensure that that is not happening.

J. Kwan: That was an interesting answer, because if you look at the current act, the Community Care Facil-

ity Act, it actually says.... Section 7 reads: "The director may, without notice or a hearing, attach terms or conditions to or suspend a licence or interim permit until the commencement or completion of a hearing under section 6 if the director has reasonable grounds to believe that the health or safety of persons cared for at the community care facility is at risk if the terms or conditions are not attached or the suspension is not imposed."

In other words, actually, there are provisions by which you can override the process of a hearing for the purposes of health and safety protection.

[1640]

It's interesting, because earlier on the minister said that under this section of the act, the hearing procedure was cumbersome, so we needed to find a way to override that. In the existing act there is a way to override that. One must actually justify that on the issue of reasonable grounds to make that determination. It's just a curious thing, because the terminology has changed. It's one's opinion to be used to make an evaluation as opposed to measures or tests, if you will. It's simply a matter of opinion, so it's intriguing in terms of how the words have changed.

We'll watch and see how this section of the act will play out in due course — whether or not the health and safety of people who are in these facilities would actually be protected; more to the point, whether or not people's quality of life would be protected and enhanced; and how government would deal with facilities that are being operated by the health authorities themselves where they may come into contravention with the act and its application. We'll be watching very closely on all those fronts.

Sections 13 and 14 approved.

On section 15.

D. Hayer: I have a question for clarification from the minister. With this new legislation, local medical health officers will have increased decision-making authority. They will have responsibility for evaluating and reviewing, issuing and enforcing the community care facilities' licences. Can the minister tell us what the procedure is for appealing the decision of the medical health officer?

Hon. K. Whittred: The appeal process is actually a two-step process, so what happens in terms of a licensing decision is this. Let's suppose someone has gone and applied for a decision, and the person applying does not like something that has been decided. They may ask the medical health officer to reconsider, and they would discuss the matter. This process of reconsideration is a fairly informal procedure, and the situation may be resolved or may be changed. However, it may still in fact remain, in which case the person would have the right to go to the second stage, which is the appeal board, to actually appeal the decision of the medical health officer.

J. Kwan: This section of the act deals with the duties of the medical health officer, including investigating every complaint that is made. I think it is important that when complaints are made, investigation takes place. But as I mentioned earlier, I also feel very strongly that there ought to be annual inspections. Those need to take place as well. I don't think we can simply rely on a complaint basis to ensure that a standard of health safety is being maintained.

[1645]

This is problematic because nowhere in the act does it indicate there would be annual inspections of facilities. Could the minister please advise that...? Is it her opinion that annual inspections are not required? Why does she make that determination not to require annual inspections in addition to inspections that are triggered on the basis of complaints?

Hon. K. Whittred: For the information of the member, this is really a decision that is based on best practice in the field. The literature clearly supports the philosophy that risk assessment is a route to be followed. There are many things that go into the risk assessment program. There are action plans from various facilities. There are incident reports. The medical health officer, in fact, has a whole risk assessment framework. That risk assessment framework would undoubtedly indicate there are some facilities that, in fact, need far more frequent inspection than once yearly, and there are others who have never been called into question who probably would not benefit from an assessment.

In summary, the best practices in the field all indicate that it is far better to focus resources on those areas that require more frequent monitoring than to try to use a kind of overall approach where everybody's going to get one visit a year, even if that is clearly inappropriate and is not going to accomplish the task.

J. Kwan: Nobody's suggesting that's the only method in which inspections should take place. In the minimum, though, one would assume that annual inspections with facilities would take place on a random basis, so that you can actually go in there and see what is going on and whether or not standards are being violated, whether or not people's quality of life is being compromised in any way, shape or form. Without doing those inspections, you would never know. Yes, you can use risk assessments as a tool to make that evaluation. You can use complaints as a tool as well. But the fact of the matter is that there is no inspection being required even on a random basis to actually check out whether or not what people say is going on is in fact the truth.

What I'm worried about is this. In some of the facilities so much of it is dependent on the complaint, or the investigation is dependent on complaint. As we know, many of the clients who use these facilities may well not be in the position to file a complaint or to make a complaint. When that happens their health and safety and standard and quality of life are being compromised. That's what I'm worried about.

I want to make sure there is a process in place from government to ensure that those individuals who may not be in the position to make a complaint would.... Someone would actually ensure that those facilities are operating in a manner that is appropriate and not in violation particularly of health and safety standards but also, in my view, quality-of-life standards.

[1650]

Hon. K. Whittred: Certainly, I share the goals of the member opposite that we want not only health and safety, but we want quality of life. However, there is absolutely nothing in the literature that supports the idea that a regular inspection of any kind is going to either enhance quality or, in fact, improve health and safety. The literature clearly states that when a clearly followed framework of risk assessment is adhered to, the risks can be identified and managed much better when that procedure is followed. The best practice is one where we want to focus upon those that are clearly perhaps not providing, as you've suggested, the best quality care. Those are the ones where we would want to put our resources.

I might also add that the member's concern that some clients might not be able to speak on their own behalf.... This act, again, clearly allows family members, staff members, volunteers — all of those individuals — to report incidents as is appropriate.

Section 15 approved.

On section 16.

J. Kwan: On section 16, which deals with the issue of exemptions, the change as I understand it from the government side — the rationale, if you will — is that it allows for the medical health officer to grant exemptions, which provides greater local autonomy and as well removes one administrative process. The granting of exemptions will be guided, of course, by regulations, and these regulations will be designed to encourage, as the minister or the government says, innovation and special projects.

Obviously, no exemptions should be able to jeopardize the health and safety of persons in care. In the standard of care definition there is no mention of the issue of quality of life. Quality of life, as the minister just said minutes ago with respect to questions around section 15, is an integral part of the standard. In my opinion, that certainly is the case, and it should have equal standing with health and safety concerns. Does the minister agree with that? How will one then ensure that quality of life is being maintained?

Hon. K. Whittred: We are, as I've mentioned earlier, in the process of renewing home and community care in this province. One of the goals that we are pursuing is to ensure that there is, in fact, appropriate care given to people to suit their needs. At the present time we have many, many examples around this province where people are channelled into levels of care that are

not appropriate and do nothing to enhance their quality of life. It's precisely around the issue of quality of life that we are focusing our resources. We are looking at ensuring that the facilities that we have are conducive to enhancing independence for our residents and in fact to enhancing their family life, enabling them to live as normally as possible as they reach that time in their life when they need some support in order to live independently.

[1655]

J. Kwan: Where in the act does it refer to the standard of quality of life being maintained? Who gets to set that standard?

Hon. K. Whittred: Two things. I would like to again remind the member of areas that we've already passed. In section 7(1)(b) it talks about a community care facility being operated in a manner that will promote the dignity of persons in care. Dignity, I believe, is the word that comes to mind when we're talking about quality of life.

Returning now to section 16, which is the section we're dealing with right now, section 16(1)(a) says "there will be no increased risk to the health and safety of persons in care...." We must remember that is the absolute, fundamental bottom line in terms of what can be looked at. I am thinking particularly in that area of an example which is one of my favourites: a mobile child care facility for the film industry. The regulations in the present act deny child care to the workers in the film industry, because it is not possible to meet the prescriptive regulations.

This act will enable the child care industry to have a child care setting in a mobile form, which is the way that those workers work. This is one that I'm quite familiar with, because I have a great deal of the film industry in my home riding. I see this all the time. There are a lot of workers that go out for very long days. They have great difficulty getting child care because of their long hours and their very different settings. This act will allow that. However, there must not be any increase in risk to the health and safety of persons in care.

J. Kwan: There's a disconnect with what the minister says versus what the act says. It's true that section 7 deals with the health, safety and dignity of persons in care. Not to go back to section 7, but I just want to set this in context in terms of the standard of care we're talking about.

When the minister is asked what exactly that means, the minister actually doesn't know, because that is yet to be developed in regulation. Whether or not quality of care, quality of life, actually is incorporated in that remains to be debated, in my view. The standard of quality of life and how that would be defined remain to be debated. We don't have the regulations before us at this time so that we can make that judgment.

We go to section 16, which deals with the exemptions issue. The issue around exemptions deals specifically with only two standards of care: health and safety — health and safety only. It makes no mention of quality of life or even the vague words of "dignity of persons in care."

There's a disconnect in terms of making sure that the provision is there in terms of the standard of quality of care, quality of life, actually being maintained and where exemptions may be applied. I'm not quite sure how one would be able to deem, from this act, that exemptions to the regulations would not be granted, because the only two requirements that are there would be health and safety requirements.

[1700]

Where does it say in section 16, which deals with quality of life...? If the minister likes, then the words "dignity of persons in care...." Where is that in section 16 that would actually disallow for an exemption?

Hon. K. Whittred: Even with an exemption, the act still applies. In the example I gave around the childcare facility in a mobile facility to accommodate the children of people in the film industry, that would still have to meet the requirements of the act, including the child care regulations and including the broader aspects of the act that speak to the dignity of, in this case, the children who are in that program.

J. Kwan: Have the regulations that apply in this section been drafted?

Hon. K. Whittred: In this instance, when an applicant is asking for an exemption, they would have to propose alternative arrangements to the medical health officer. If I can go back to the example that we've been using in the film industry, if this is Lions Gate Studios who are wanting to set up a child care program for the people working in their film industry, then they would have to show what alternate arrangements they have in place that are not going to increase the risk to health and safety of the children in their care and, at the same time, satisfy the medical health officer that the terms of the act are, in fact, in place.

J. Kwan: Will there be draft regulations attached to this section of the bill?

Hon. K. Whittred: Yes, there will be work done on describing what the prescribed requirements would be. That would be done following the passage of this act.

[1705]

J. Kwan: Could the minister please advise who requested this change to this act?

Hon. K. Whittred: I believe the question was: who was it that asked for this? In response to that question, I can go back to the five years I spent in opposition. This was something that was, in fact, acknowledged by both sides of the House — that the old act was ex-

tremely rigid and often stood in the way of what were really just seemingly commonsense solutions to things. We would hear this over and over again.

In fact, I can remember, in opposition, bringing forward an instance where a child care setting in a rural area had been closed down because it had a muddy driveway. Now, that was clearly silly. I've already given the example of the child care in the movie industry. I can give you another example of child care centres where ethnically appropriate food could not be given because the regulations stated that a certain type and standard of food had to be met — not just that the food was nourishing, but actually prescribed what it was.

This section is a response to many, many stakeholders in the system. It's a response to the child care community. It's a response from medical health officers. It's a response from people in the seniors care sector who see that there are other options that might be appropriate and that need to be looked at. I point out the remarks of Dr. John Blatherwick, who said that this new legislation allows for greater flexibility at the local level to meet the needs of the population. It gives communities something they've been asking for. Communities have been asking for this.

We previously had in this province an act that was so prescriptive that it didn't matter whether you lived in Atlin or in Vancouver. The regulations were precisely the same, yet the conditions around how you care for your elders or how you care for your children or how you care for your mentally handicapped were all lumped into one. It made it particularly difficult for people in the outlying and rural areas. In answer to the member's question, that is the reason. The asking for that came from many, many sources and, I think, has been widely known around this province for some time.

Now, to address the member's question perhaps more specifically, this act endeavours to simplify the process that was in the old act. In the old act you would have to go to the medical health officer and request a change. That change would then have to be referred to the provincial variance committee, who would make a ruling. That, in fact, could be appealed, so it could go to the Community Care Facility Appeal Board. This was a very complicated process that was frustrating to everyone in the field.

This change is a response to the communities who said: "Let us have some local input and allow communities to make sensible decisions that will not put health and safety at risk but will enhance the delivery of community care to the people who live in those communities."

J. Kwan: The example the minister used, of muddy driveways.... Whether or not a child care facility should be shut down because of a muddy driveway obviously does not impinge on the question around health and safety, if that's the only issue here. Nor is it applicable to this section of the act around exemptions,

quite frankly. Really, the example she used is rather.... Well, it's not relevant or applicable.

[1710]

The other issue around food, as an example.... I know of facilities that actually serve a variety of different ethnic foods, especially in celebration and recognition of the ethnic diversities throughout our community.

Before I got elected to this Legislature, there used to be a program called "adopt a politician." We used to be adopted by particular, different care centres around the community, to visit them and to be familiar with them. Ethnically diverse foods were often served, and there were never any questions as to whether or not that was appropriate. It's not a question of whether or not they should be exempted by regulation. As long as the food is healthy, clean and safe for people to consume, then it is being consumed. That ranges from health care facilities for children, child care centres, to those for seniors. I've been to both where that is applicable.

I'm not quite sure if the examples which the minister has highlighted are particularly relevant to the question or applicable to this section of the act. If it was indeed the case in the past that people or facilities were being shut down because ethnically diverse foods were being served, then I do question the efficacy of the work being done and the appropriateness of it, but to my knowledge, I actually haven't come across that. I've seen a number of different facilities where that is, in fact, being encouraged.

We'll see. On this issue my biggest concern remains around people's quality of life and whether or not those standards will be maintained and, if so, how. Will people's care — whether they be children or seniors or somebody in between or people with disabilities — be compromised as a result of this act? We shall see, and we'll monitor that very closely.

Sections 16 to 21 inclusive approved.

On section 22.

D. Hayer: Unfortunately, there are occasionally incidents of abuse reported in the assisted-living facilities. Even more unfortunate is that often employees are scared to speak out in fear of retaliation from their employers. They fear they could lose their jobs or be discriminated against in the future.

How will Bill 73 protect employees that speak out against abuse and in turn protect the residents of these facilities?

Hon. K. Whittred: Section 22 is indeed another example of how this act is improved from the old one and is a significant enhancement. The member has mentioned or asked how people are protected. Well, that is the purpose of this section. It protects people in care — whether it is the person themselves, a family member or a volunteer — from any kind of reprisal, intimidation or that sort of thing if in fact they do report what they consider to be abuse.

Sections 22 to 24 inclusive approved.

On section 25.

J. Kwan: This section of the act deals with the powers of the registrar. The bill doesn't deal with any of the major affordability issues on assisted living. Under this act there are no restrictions on what can be charged for rents, for services or for care aides. Can the minister tell us why not?

[1715]

This was canvassed earlier under the definitions section. The minister simply says that the question around affordability is not applicable to this act. One would argue differently, that it's particularly applicable, because seniors and their families will be impacted by that.

Hon. K. Whittred: The purpose and the scope of this act are to provide a framework that addresses the health and safety of individuals who live in continuing care facilities and assisted-living facilities. The purpose of this act does not address the issue of financial eligibility.

J. Kwan: That's precisely the point: it doesn't. Therefore, if you look at this act, one could certainly determine and arrive at the outcome that rents could be charged and increased on a regular basis, and there could be no justifications to why rents were being increased for those who live in the assisted-living facilities. They could increase as often as someone wants to, hence creating a problem for seniors.

The notion of separating out the assisted-living section from the Residential Tenancy Act actually provides zero consumer protection on affordability for those who live in assisted-living facilities. Isn't that a problem? Isn't that a problem that the minister should be worried about?

Hon. K. Whittred: We are aware that consumer protection is an issue. The member has raised it before. We have had the issue raised, I have to say, by other sources.

I might also say that that member was a member of a government for ten years. The issue also existed then, and the issue was not addressed. The issue remained all of that time and was not included in any legislation.

We have taken the step to include assisted living as part of a community care facility, and we have made that decision on the basis that there is an element — one criterion of care — that goes into the definition of that. I repeat what I said the other day. We are in consultation with the Ministry of Community, Aboriginal and Women's Services around appropriate consumer protection for other kinds of living arrangements.

[1720]

J. Kwan: Prior to the changes that will be forthcoming today or the next day around the Residential Tenancy Act, at least consumer protection applied to those

living in assisted-living facilities. That is no longer the case, because the RTA no longer provides that protection. Under this act it doesn't either. There is no affordability protection, consumer protection, which the minister admits is applicable to people living in assisted-living facilities. That's a problem.

In fact, just a few days ago we even received correspondence from various people, including the Canadian Reformed Senior Citizens Home Society, who raised a variety of concerns around this act including the assisted-living provisions within the act. That's a major problem, in my view. Can the minister advise? She said the Ministry of Community, Aboriginal and Women's Services is going to come forward with a separate act dealing with the consumer protection on that. Could the minister advise what the time line is on that? How long will there be a lapse in which no consumer protection would be afforded to those who live in assisted-living facilities?

Hon. K. Whittred: I do not believe I have said that the Minister of Community, Aboriginal and Women's Services is going to be coming forward with an act. I have said the minister is in consultation with stakeholders. We have been part of that consultation, and the member will have to ask the Minister of Community, Aboriginal and Women's Services exactly what his intent is.

J. Kwan: So the minister is saying she doesn't care. Is it the case that the minister doesn't care when an act, if there would be an act, would be brought in to provide consumer protection for her clients under the assisted-living provisions of this section of the act? She is saying it doesn't matter if there are no affordability provisions, and whatever the Minister of Community, Aboriginal and Women's Services decides to do is fine with her, even if he doesn't bring forward the consumer protection that would be required, I would say, for British Columbians.

Hon. K. Whittred: The member is quite mistaken in her remarks. I, in fact, do care, but I have also pointed out that this is not my jurisdiction. I have said repeatedly that there are ongoing consultations. I am part of that consultative process, and I'm sure there will be movement on this file, as they say, over the next weeks or months.

J. Kwan: Perhaps years, with the exception that this minister is charged with responsibility for people living in assisted-living facilities. This minister is actively moving people out of long-term and intermediate care facilities into these supposedly assisted-living units. This minister is charged with the responsibility of supposedly building some 5,000 units of assisted-living facilities over the next four or five years.

In the process of doing that, there's nothing to protect consumers on the issue around affordability, and somehow the minister says: "Oh, but I do really care." Tell that to the people who are faced with substantial

rent increases — rent hikes with zero protection and nowhere to turn to and no homes to go to because the government has evicted them.

[1725]

P. Sahota: Can the minister elaborate on the process if the registrar were to determine that standards are not being met on an assisted-living facility? What would the process be?

Hon. K. Whittred: The process that the member asks about will be developed by a registrar who will be appointed by myself. Perhaps just to make that a little bit clearer, the first thing that's going to happen is that an interim registrar will be appointed. It will be the duty of that registrar to put in place a process, in fact, to see that standards are developed. It will be the responsibility of that person to consult with stakeholders and that sector. That sector, and I'm very clear here, includes the broad cross-section of people who are affected and who are applied in that sector. They will come up with not only the process but also the standards.

P. Sahota: As the minister just said that the minister will be appointing a registrar to the process to monitor the complaints, has the minister given thought in terms of who will be appointed as the assisted-living registrar? Would it be a bureaucrat, a private sector worker, a health authority employee, etc.?

Hon. K. Whittred: There is no necessity in this bill for the registrar or the interim registrar, for that matter, to be a public servant, so I would anticipate that we will be looking for someone who is in fact very knowledgeable around the industry. We would, of course, be looking for somebody very well qualified who would have the ability and the background to put the process in place.

P. Sahota: I know that the registrar will work to establish basic health and safety standards and will have the authority to conduct inspections, but what will trigger the registrar to inspect a facility?

Hon. K. Whittred: The criteria are listed, I think, quite clearly in section 25(2). If the registrar has reason to believe that an unregistered assisted-living residence is being operated or that health and safety are at risk, the registrar may enter and inspect. He may inspect. He may make copies of things and so on. The registrar, in fact, has powers that are quite similar in that field to the powers of the officers in the community care side.

Section 25 approved.

On section 26.

[1730]

Hon. K. Whittred: I would like to move the amendment to section 26 that is in the possession of the Clerk. I will read the amendment now — that the

Community Care and Assisted Living Act be amended as follows:

- [SECTION 26, by adding the following subsections:
 (6) Subsection (3) does not apply to a person if the spouse of the person
 (a) will be housed in the assisted-living residence with the person, and
 (b) is able to make decisions on behalf of that person.]

On the amendment.

Hon. K. Whittred: Just to give some explanation around that, Mr. Chair, if we look at section 26(3), it says that a registrant must not house in an assisted-living residence persons who are unable to make decisions on their own behalf. The floor amendment addresses a point that has been raised in feedback that we have received. It would prohibit assisted-living operators from housing persons unable to make decisions on their own behalf. It has been pointed out to us that there are situations in assisted living where the decision-making capacity of a spouse diminishes, but the other spouse is able to provide the assistance that would allow them to remain in their assisted-living home. In these circumstances, it is appropriate that the prohibition in section 26(3) not operate to force the couple to relocate. This floor amendment addresses that situation by providing an exception to section 26(3), allowing a person with diminished capacity to continue to live in their assisted-living home if their spouse is able to make decisions on their behalf.

Amendment approved.

Section 26 as amended approved.

Sections 27 to 32 inclusive approved.

On section 33.

J. Kwan: Section 33 deals with the offence and penalty section of the act, and I see that's changed quite substantively from the existing act. The new section under Bill 73 around offence and penalty states: "A person who contravenes section 5, 6, 18 (2) or (3) or 26 (1) of this Act or a term or condition attached to a licence commits an offence." It goes on to talk about what the fines are. The question that I have for the minister is this. It would seem to me that section 7, which stipulates the issue around health and safety provisions and the standards that need to be met, as well as the quality of life standards that need to be met.... One would assume that violation of section 7 ought to warrant an offence or a penalty to be applied, yet that is not the case. Why is that?

[1735]

Hon. K. Whittred: To address the member's question, the most stringent penalty that could be imposed upon a licensee would be, in fact, the suspension or cancellation of a licence. The member mentions this in

terms of section 7 around the dignity of a person. If, in fact, the medical health officer believed that was not being addressed, he would have the power to withdraw that person's licence and remove him from his livelihood.

Sections 5, 6, 8 and so on are actually offences which have to do with more administrative things, such as operating without a licence, a non-adult managing the facility, prohibited financial inducement of persons in care — in other words, an infringement on some of those sorts of sections of the act. It is breaking the terms and conditions of the act. The \$10,000 fine would be considered a lesser kind of punishment than having one's licence suspended or cancelled.

J. Kwan: Under the old act, the suspension or cancellation of a licence would apply if one contravenes the act, but also the offence and penalty of that contravention would include any contravention of the act or the regulation that would be deemed to be an offence. That actually allows for application of both to be applied, whether it be the suspension or cancellation or a fine being imposed. There is now only one level of penalty of offence that would be applied. In my view, one of the most important sections of the act is to make sure that the standards of health and safety and quality of life are being maintained, yet there is not a broad range of penalties that could be applied.

It would seem to me that there's actually a reduction in trying to enforce the act, as opposed to the broadening of the enforcement of the act. It just strikes me as odd. I would think the violation of section 7 is an essential component that should also be incorporated under the offence and penalty section of the act — not to say that's the only application, but it also should be included, in my view. One would have thought that would have been the case, as well, for the minister.

Sections 33 to 58 inclusive approved.

Title approved.

Hon. K. Whittred: Mr. Chair, I report the bill complete with amendment.

Motion approved.

The committee rose at 5:38 p.m.

The House resumed; Mr. Speaker in the chair.

Reporting of Bills

Bill 73, Community Care and Assisted Living Act, reported complete with amendment.

Third Reading of Bills

Mr. Speaker: When shall the bill be considered as read?

Hon. K. Whittred: By leave, now, Mr. Speaker.

Leave granted.

Bill 73, Community Care and Assisted Living Act, read a third time and passed.

[1740]

Hon. G. Plant: I call committee stage debate on Bill 70, the Residential Tenancy Act. In conjunction with that, I would ask that the House, as it moves into committee, recess for approximately five minutes to allow members to assemble the necessary materials.

Committee of the Whole House

RESIDENTIAL TENANCY ACT (continued)

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

The committee met at 5:41 p.m.

The Chair: The committee will stand recessed till 6:30 this evening.

The committee recessed from 5:41 p.m. to 6:37 p.m.

[H. Long in the chair.]

On section 46 (continued).

J. Kwan: Prior to the break over the weekend, we were debating this bill, section 46(4), and an amendment I moved. Just to bring people's memories back, the amendment I moved was to allow for an extension of time to pay rent by applying for arbitration. That amendment was moved and was defeated at that time.

Relating to section 46, which of course deals with the landlord's notice, non-payment of rent, there is another issue pertaining to it which causes me some concern. That is section 46(6) under this act, which allows for.... I'll actually read sub (6) into the record: "If (a) a tenancy agreement requires the tenant to pay utility charges to the landlord but does not specify when those charges are to be paid, and (b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them, the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section."

[1840]

Utilities, then, under this section of the act are now considered rent, and if not paid, it is grounds for eviction. Under the old act the landlord actually has a remedy, and that is that the landlord could seek a monetary claim for this. Why did the minister really change the act to consider utilities as part of rent?

Hon. R. Coleman: Under the old system, some arbitrators would find that the utility was within the

definition of what they thought was rent, and some arbitrators would find it wasn't in the definition of what they found was rent. This really clarifies it as to what it is, so it's clear to the people that will be making those decisions.

That was the problem under the other system, where we actually had people who didn't.... We actually would have an arbitration where one would say it was rent, and another one would say it wasn't rent, within the same interpretation within the offices of our arbitrators. This clarifies it, and that's the reason it's been changed in this particular legislation.

J. Kwan: This change, though, could penalize some tenants in such a way that, as an example, if you have roommates, you may well have your utilities split between roommates. If one roommate does not come forward with that share, the other roommate who has come up with his or her share would then be penalized in this way, therefore creating a problem for all the tenants to be subject to eviction for non-payment of rent when utilities are considered as such. Under the current act, there is a remedy that allows the landlord to seek a monetary claim. Therefore the landlord would actually not be in jeopardy. In this scenario, where you're sharing accommodation with a roommate, it actually places you in a situation of potential jeopardy of losing your accommodation because one roommate has not come up with the utilities. Has the minister given that some thought, in terms of the ramifications?

Hon. R. Coleman: First of all, it's 30 days after a written demand is given for payment of the utilities to the tenant. That's to allow for the parties that are perhaps sharing to get that together. It depends again, of course, whether.... It doesn't depend so much, of course, but if both of the roommates were actually parties to the tenancy agreement, how they split that up in the tenancy agreement would be between them and the landlord. But the reality is that the landlord has to pay his utility bill. Giving 30 days, saying if it's not in there, to specify when the charges are to be paid, whether included in rent or not.... Then with 30 days' notice given in writing and a written demand for payment, that's the only time they can apply that portion of the clause to non-payment of rent. I think 30 days is sufficient time for the roommates to get together and solve that problem prior to having to deal with it as part of the rent.

J. Kwan: I disagree, and I have concerns about that, because it would seem to me that there would be a recourse for the landlord to actually collect the utilities portion by making a monetary claim. Therefore whoever is in breach of providing the utility costs, there is an avenue for the landlord to actually collect that. In this instance it would seem to me that it's a heavy hand that's being played to consider utilities as part of a rent. In such a case where the rent that includes utilities is not received, then the person is subject to eviction.

[1845]

I have an amendment to move relating to section 46 standing on the order paper in my name. I move the amendment, which strikes out essentially section 46(6)(a) and (b).

[SECTION 46 is amended by deleting the text highlighted by strikethrough:

Landlord's notice: non-payment of rent

46 (6) If

~~(a) a tenancy agreement requires the tenant to pay utility charges to the landlord but does not specify when those charges are to be paid, and~~

~~(b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them;~~

~~the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.]~~

On the amendment.

J. Kwan: The reason why I move this amendment, Mr. Chair, is so that the application of a heavy hand against the person who has met the payment for utilities, but perhaps a roommate may not have.... That actually could be resolved through a monetary claim by the landlord through an arbitration. In that instance it would actually allow for all the sides of the tenants' stories to be heard and a determination to be made. Of course, it will be up to the arbitrator to make a reasonable judgment in terms of this application on whether or not a person should suffer penalties and, if so, what kind of penalties associated with it. So I move the amendment standing in my name on the order paper.

Amendment negated on division.

Section 46 approved on division.

On section 47.

J. Kwan: Section 47 deals with the landlord's notice on cause. The issue here deals particularly with respect to section 47(1)(b), which would allow a landlord to end a tenancy by giving notice to end the tenancy if one or more of the following applies, and 47(1)(b) reads: "...the tenant is repeatedly late paying rent."

One would assume that the breach by a tenant for not paying rent would, of course, be an eviction, within the prescribed period in which the late payment of rent is applied, but not simply for the fact that rent is paid late, even if it's a repeated situation. The tenant, in my view, ought to be given an opportunity to be made aware of it, to be advised that obviously late payment of rent is unacceptable and that in fact, if it overreaches the period which is prescribed within the act, a person could be faced with eviction. That, of course, would be recourse.

This act supersedes that. In fact, section 47(1)(c) then goes on to say: "...there are an unreasonable number of occupants in a rental unit." Once again, there's no requirement within the act that would ensure that

the landlord makes it clear to the tenant that there's a problem and, therefore, consequences. The act automatically allows for an eviction to take place if (c) applies.

It's really opening up the door for lots of ways for tenants to be evicted. Given that there's already a provision first on the issue around non-payment of rent, given that there is already a provision by which a person could be evicted, why would the Solicitor General bring in yet another provision to further allow for evictions to take place?

Hon. R. Coleman: This section basically outlines cause that a landlord can evict for. The tenant still has the ability to file an arbitration. Failure to do that within the prescribed time for an arbitration.... If they don't apply, then it's presumed they've accepted that the tenancy ends on the effective day of the notice. If they do file, then it goes to an arbitrator for arbitration.

[1850]

The issue here is that if a landlord is continuously having to file with a tenant because of late payment of rent, and then the rent gets paid within the prescribed time, and then it goes on every month, in the meantime their utilities or their mortgages or whatever have to be paid, or costs for the operation of the tenancy. The tenant has to understand that they can't be consistently late paying the rent, that there should be some discipline there.

Obviously, the second portion of the section the member talked about is really about the agreement between a landlord and a tenant relative to the number of occupants and what might have "unreasonably disturbed another occupant, jeopardized the health and safety or a lawful right or interest of the landlord" or put the property at risk. All of these are basically.... Well, subsection (c) is actually right now in the current act, and the one the member brings up with regards to the repeated late payment of rent is subject to arbitration. It allows our arbitrators to deal with what may be a systemic issue with regards to the ability of the tenant to pay on time and bring the parties together to find a useful solution to the problem.

J. Kwan: What is considered to be repeatedly late payment of rent? Would that be two times or more than two times? What would be deemed to qualify under this section of the act for it to be applied?

Hon. R. Coleman: I guess that's why we have arbitrations relative to this section.

The member's question. Frequency could be.... What if it's three times in a ten-year tenancy? Well, that's obviously not very frequent. If it's three months in a row and there seems to be no pattern for anybody to adjust to stop it from happening, then maybe the landlord needs to file the notice and end up in arbitration to discuss this with the tenant as to how they're going to fix the behaviour. I mean, that's why this whole section goes to the ability for an arbitration so that that interpretation can be made by arbitrators.

J. Kwan: Well, the section of the act allows for an eviction to actually take place. That's what it says under 47(1), which reads: "A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies: ... (b) the tenant is repeatedly late paying rent."

For an act that is supposed to bring clarity, it doesn't appear to me there is clarity around that, but it allows the landlord to issue such an eviction notice. To me that is worrisome, actually, and I think there would be lots of misgivings.

One example I could use is that when a tenant is on employment insurance and the money hasn't arrived on the date that it's expected — which actually happens quite frequently — of course the tenant can't pay their rent on time. If this occurs during the summer, such as the case with the CCRA which actually did occur.... For those who may not be aware of what happened, the CCRA's computer system suffered what I suppose some might call a glitch, for lack of a better word, and they lost significant data as a result. Letters were sent out to various individuals asking for the information once again so that the claims could be processed accordingly. That, of course, resulted in a significant delay for people in receiving their cheques, which caused the problem.

Of course, these kinds of things don't necessarily happen in isolation, as though they won't happen again. The fact is, as I mentioned, oftentimes people do end up receiving their cheques late for a variety of reasons. Even with the Ministry of Human Resources, I know there was another incident where that did happen. From time to time those things happen, yet under the provision of 47(1)(b) a tenant could be penalized and faced with eviction through no fault of their own, really. One could argue that through no fault of their own, they could actually be penalized and evicted. It seems to me that it's a really heavy hand that's being played.

[1855]

Non-payment of rent. There is already a provision that allows for an eviction to take place for non-payment of rent without delay, and that was the section that was already passed last week by the government, by the Solicitor General. Here we have yet another provision that could also trigger eviction as a result of non-payment of rent but, more precisely, as a result of late payment of rent, with no provision to say when it would be applied and no clarity on what would be deemed to be repeatedly late payment of rent.

That's a major concern for me. I don't agree with that, just knowing that our system does have a lot of problems — whether it be federal or provincial or otherwise.

To that end, I'd like to move the amendment standing in my name to section 47, which deletes subsection (b) under section 47(1) so that the clause relating to "the tenant is repeatedly late paying rent" is deleted from the act. I'll move that amendment standing in my name on the order paper.

[SECTION 47 is amended by deleting the text highlighted by strikethrough:

Landlord's notice: cause

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(a) the tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement;

~~(b) the tenant is repeatedly late paying rent;~~

(c) there are an unreasonable number of occupants in a rental unit;]

On the amendment.

Hon. R. Coleman: Under subsection (4) of this section it says: "A tenant may dispute a notice under this section by applying for arbitration within 10 days after the date the tenant receives the notice." That allows the tenant to deal with the issues the member has outlined with regards to what is repeatedly late payment of rent. If there's something to do with a government glitch, I'm sure an arbitrator would certainly take that into consideration at the arbitration. If they had a good working relationship with the landlord, I doubt that the notice of repeatedly late payment of rent would be there because one month there was a difficulty with cheques.

Mr. Chair, we will not be supporting the amendment.

Amendment negated on division.

On the main motion.

J. Kwan: Relating to subsection (c), which deals with the notion around "an unreasonable number of occupants in a rental unit," I know that the minister makes the argument that that was there before. As I've said in other bills, the whole notion of new legislation that's being tabled is to improve upon it, to make it better and to address some of the concerns that are outstanding. This is, of course, one issue that has been raised by people.

It would seem to me it is reasonable that if there's violation of the act, where a number of occupants are occupying a rental suite and it exceeds what is deemed to be reasonable in terms of the number of people occupying that rental unit, it would make sense, as a first order, that the landlord provide some sort of warning or request to the tenants that the number of occupants be reduced. Accordingly, over a period of time, if there's no action taken, then eviction should perhaps be contemplated. Why did the minister not engage in that incremental process, if you will, in addressing issues such as these?

Hon. R. Coleman: Two things. One is that the provision is basically in the existing act, and it doesn't seem to have caused a lot of problems.

Second, our experience is that when going before an arbitrator to just say, "Well, I just found out about it yesterday, and today I filed a notice of ended tenancy

because of the fact that there's an unreasonable number of occupants in a rental unit," I think you'd find that the arbitrator would say: "Well, actually, I think you should tell your tenant to reduce the number of tenants and continue the tenancy."

[1900]

I think because this has to go to an arbitrator, there is an expectation — and there always has been with arbitrations — that you would have basically a historical perspective in relation to the difficulty that you're asking the arbitrator to rule on. Therefore, failing to do that, you'll find that the arbitrator will not rule in your favour but rule in favour of the other party. That's why the arbitration process is there. I think that, frankly, since it hasn't caused any real difficulty under the existing act, we can continue to let it handle it, and I think that our arbitrators can handle it.

J. Kwan: The issue is not about whether or not the arbitrator would handle it. The issue is that we now have a provision in the act that would, quite frankly, automatically allow for such drastic actions to be taken. It would make more sense to me if the act actually said that there should be some progression in terms of violations, and then eviction notice is to be issued. Instead of doing that, we now actually have the reverse, where eviction notices are to be issued, and then it proceeds to arbitration for it to be determined whether or not that is a reasonable course of action.

That seems to me, actually, adding red tape for both the landlord and the tenant. It seems to me that it is making the system perhaps more complicated as opposed to clearly outlining what the steps are that one must follow in order to issue an eviction notice for something like an unreasonable number of occupants in a rental unit.

How does that actually address the issue of reducing red tape, when it seems to me it's the opposite?

Hon. R. Coleman: This is a section that is outlining landlords' notice for cause for the clarification between the parties. If there's an unreasonable number of occupants in a rental unit, that is one of the forms of cause that the landlord can give notice to the end of a tenancy. Section 4 of the same section of the act, sub (4), allows for dispute notice by the tenant applying for arbitration within ten days after the date the tenant receives the notice.

That is neither adding nor subtracting red tape. It is allowing for the landlords, if there is a reason for cause, to file for cause and the protection of the arbitration system to make sure that the cause is actually defensible. If it goes before an arbitrator, the arbitrator can rule in favour of either the landlord or the tenant.

J. Kwan: The same arguments that I've made for sub (c) actually apply also for sub (d) and then subsection (iii) under that, where it reads: "...the tenant or a person permitted on the residential property by the tenant has...(iii) put the landlord's property at signifi-

cant risk." Let me first ask this question: what does significant risk mean?

I'm waiting for an answer from the minister, and I think he might be intending to answer this question on (d)(iii), "put the landlord's property at significant risk." What does significant risk mean?

Hon. R. Coleman: It's an activity that puts the property at risk. In a marijuana grow operation where somebody has bypassed the meter and wired directly without a meter in between to take straight power, steal it from B.C. Hydro and actually flow it through to a hydroponics growing operation, you could have a fire hazard that could actually cause damage not only to that particular unit but to other units and put people's lives at risk.

I think the term "property at significant risk" is something that an arbitrator, if it's clear, will not have any difficulty identifying, nor will anybody else with regards to what is a significant risk.

[1905]

Certainly, the whole thing in and around the marijuana grow business in British Columbia, whereby we will literally deal with thousands of cases of this in the province this year with our police and law enforcement.... The fact is that we're losing \$50 million in stolen property from B.C. Hydro. These people actually gut homes. They take the wiring system without any code or any standards. They put in equipment that will grow marijuana in this particular case. In other cases it could be something like a methamphetamine lab. There are certain chemicals that risk explosion or make toxic gases available. That sort of thing is a significant risk, and I think that the arbitrators can deal with the whole issue in and around significant risk, as putting a property at risk. Then we go on further in sub-subsection (e) to deal with the illegal activity as well.

I think that if a landlord was concerned about his property being put at significant risk, they would be able to give notice to a tenant saying: "This is why I think it is." They can go to an arbitrator and say: "Here's a picture of what my unit, my residence, looks like. This is what I think is the risk. The tenant has not rectified the problem. Therefore, I'm asking for the tenancy agreement to end." I think that the arbitrator can certainly, in a hurry, decide whether there's a significant risk or not. That's why that is in section 47, whereby under the definition of "cause," under subsection (4), it can be taken to an arbitration within ten days.

J. Kwan: Hon. Chair, my apologies. Before I go on to ask the minister further questions around sub-subsection (d)... I thought that we had already voted on my amendment in relation to sub-subsection (b), but the Chair advises me that we have not yet voted on that, so I will simply let the Chair call the vote on my amendment, and then I'll get back to the debate.

Hon. R. Coleman: We did.

J. Kwan: I thought we did, but he advised me that we didn't.

Interjection.

J. Kwan: I thought we did, but the Chair advises that that hadn't actually happened. For the purposes of ensuring that we actually did.... We'll just do it again.

Amendment negated on division.

J. Kwan: Just getting back to the clause around sub (d)(iii), which reads that the landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies, and sub (d)(iii) reads "put the landlord's property at significant risk." The Solicitor General raised the issue around illegal activities particularly and therefore putting the landlord's property at risk, amongst all kinds of different scenarios. One could certainly understand that, but the issue here is that in sub-subsection (e), there is a whole provision that actually deals with illegal activities. Sub-subsection (e) reads:

"the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that (i) has caused or is likely to cause damage to the landlord's property, (ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or (iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord."

So the issues that the Solicitor General and the minister have raised under sub (d) are actually covered off by sub (e) in far more explicit terms than is written under sub (d)(iii). Why would you actually have two sub-subsections within one subsection of the act that deal with the same issues and concerns that the minister and Solicitor General has outlined?

[1910]

Hon. R. Coleman: Sub-subsection (d) is an expanded version of what's in the existing act to put into more detail, basically, the concern about putting the property at risk. Sub-subsection (e) is a new section that is specifically geared to illegal activity in and by itself. The intent of sub-subsection (d) is pretty straightforward. If you're putting the property at significant risk, the landlord may give notice to end the tenancy. If the tenant disagrees with that, then they can file within ten days for arbitration, and they can have that discussion with the landlord. Or the tenant may very well say, "Actually, I agree with you. That is putting your property at risk. I'll rectify that activity by X date," and they can come to a mutual understanding between them.

It is a tool to ensure that the property is not only just protected for the specific tenant or for the specific landlord's investment, but in a case where there are multiple units, it is also protecting the people within the entire complex or building where the tenancy exists. So it is subject to arbitration. It is something that

says: "We don't want tenants putting things at significant risk to either the landlord or the tenant." This is one of the causes that may end a tenancy. It may be cause to end a tenancy by giving notice. You can give the notice. You have ten days after the date the tenant receives the notice in which to file under subsection (4), the dispute notice under this section, by applying for arbitration. Then it can go to arbitration for a decision, if necessary.

J. Kwan: Well, it just seems to me that there are two subsections under one section of the act that deal with the same issue that the minister has highlighted. It is perplexing as to why that is actually necessary. One would assume that (d)(iii) actually covers off the issues that are described under (e). Yet we have two sections related to that.

In any event, I'd like to actually go to (g), where it reads: "the tenant does not repair damage to the rental unit or other residential property, as required under section 32 (3) [obligations to repair and maintain], within a reasonable time." When that violation takes place, the tenant's also subject to eviction. This is, of course, a concern. How come the minister does not put in the provision of requiring the tenant to repair the damage upon receipt of written notice so that warning is given to the tenant, and if the tenant does not follow through in addressing and repairing the damages, then the tenant would be subject to eviction? Why isn't that kind of provision in the act?

Hon. R. Coleman: Under section 32(3), "A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant."

Under 47(1)(g), "A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies: (g) the tenant does not repair damage to the rental unit or other residential property, as required under section 32 (3)...within a reasonable time."

So the landlord will say to a tenant: "Fix this within a reasonable time." If it's not done, then he can give a notice for cause. The tenant can still dispute this by applying for arbitration within ten days in accordance with subsection (4).

[1915]

In the existing act, there's no requirement to have this done this way or in writing or whatever, and I make note of the member's amendment. Under the current act, they're presently also required to do it this way. I think that section 32(3), taken in context with section 47(1)(g) and in context with section 47(4), certainly allows enough latitude and discretion to be able to handle these difficulties, and those that end up at arbitration will end up at arbitration with regard to this type of damage.

J. Kwan: In the old act, the damage that is mentioned had to exceed what's termed to be reasonable wear and tear. It is not clear under this new act what

would lead to an eviction for the purposes of damage. It just says to repair damage. What kind of definition would apply in terms of damage? Is it reasonable wear and tear? Is it significant damage? Again, would it be up to the arbitrator to decide, once a person receives an eviction notice? Would they then have to dispute it and have that definition clarified, or would it be in regulations?

Hon. R. Coleman: I'll walk back through this just quickly. The notice for cause under section 47(g) is for the tenant who does not repair damage to the rental unit or other residential property, as required under section 32(3). That section deals with the tenant of a rental unit who "must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant." Section 32(4) says: "A tenant is not required to make repairs for reasonable wear and tear." So section 32(3), as I said, taken in context with section 47(1)(g) through to section 47(4) for dispute under arbitration, allows for the latitude for these issues to be dealt with.

J. Kwan: Sorry. When you look at section 33, the section that the minister had mentioned, section.... Oh, sorry. I'm looking at the wrong section. I kept wondering how it matches. It doesn't, because section 33 deals with emergency repairs.

So it's section 32(3)? Okay. When you look at section 32(1), it reads: "A landlord must provide and maintain residential property in a state of decoration and repair that...." In section 32(3), "A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant." Subsection (4) goes on to say: "A tenant is not required to make repairs for reasonable wear and tear." So really, the focus is on subsection (3).

It is still not clear, though, what kind of damage. It says damage caused by actions or neglect of the tenant or by a person permitted onto the residential property by the tenant. What would be deemed to be damage? Can the minister give some examples so I could get a better sense of what would be deemed to be damage?

What I want to note as the difference is this. The language here is just about damage. It's not about significant damage. We have debated language in other sections of the act that talk about different tests that would be applied — the test of essentialness, the test of reasonableness, and so on. We can see consistently throughout the act the onus on the landlord to address concerns for the tenant.

We can actually see the standard eroding, whereas once upon a time, prior to sections of the act being passed, it was a reasonable test, and then it moved to an essential test. Now, with this, it seems to me that it is unclear what the definition of damage would be. Is it just any old damage, or is it significant damage? Is there a distinction in the Solicitor General's mind in terms of damage versus significant damage?

[1920]

Hon. R. Coleman: I guess we could get into the discussion of how long a piece of string is with regard to what is considered to be damage. It's the same as the current act, in that reasonable wear and tear is not something that the tenant is responsible for repairing, but the tenant is responsible for repairing any damage outside that. Would a door kicked off its hinges and broken be outside normal wear and tear? Probably. Would holes broken into or kicked into drywall be considered to be that? Yes. A broken toilet that was broken intentionally but not through wear and tear? Yes. If a sink is pulled away from a wall because it was damaged intentionally, rather than having to be wear and tear....

Those are the types of things, I guess. You could get into a long discussion as to what those are. That's why, frankly, we have the notice to give for cause. The landlord asks the tenant to repair what is not reasonable wear and tear. The tenant doesn't get it done within a reasonable time. The landlord then says to the tenant: "Well, I'm going to give you notice to end the tenancy." The tenant can say, "Actually, I think that's wear and tear versus damage," and he has the opportunity to file for an arbitration within ten days. They go to arbitration, and the arbitrator will make a judgment on that particular case-by-case basis.

That is probably the reasonable way to approach this, because there is such a thing as a case-by-case basis when there's interpretation with regards to what in one tenancy, in this building versus another building, could be determined to be normal wear and tear versus what would be damage the tenant should have responsibility for. That's why this section is written the way it is — so it can go to arbitration. The member is asking: "Give me some examples." Those are probably some quick examples that come to mind. I suppose there is a number of others we could all sort of come up with if we put our minds to it, but that's the reason for the section.

What we would want in most cases would be that the landlord says to the tenant: "You know, I was by, and I inspected the unit with you last week. You had a hole kicked in the closet door. That wasn't there when you moved in. There are a couple of holes in the drywall. I would like that fixed and brought up to standard." You give them a reasonable period of time. They don't do it. The landlord says: "My only other choice is to give you notice to end the tenancy." Then you go to arbitration. The arbitrator looks at it and says, "Well, you didn't fix it" — or you did fix it by now — or, "I consider what the landlord is asking you to repair is normal wear and tear," and makes a decision one way or another.

It's as clear as that, as far as my understanding of this section is concerned. I know the member has an amendment that maybe we can deal with under section 41(g). Frankly, I think the standard of practice we've established in this particular area of the act is workable and will continue to be workable.

J. Kwan: Well, the reason why I ask around the distinction between the notion of damage versus sig-

nificant damage is, I think, an important one. Some of the examples the minister highlighted.... What category would that fall under? Is it damage or significant damage? From the way it sounds to me, one can interpret that to mean significant damage.

On the other hand, I can use another example I know — in fact, it actually did happen — of a rental suite where someone did have a pet, and the pet had scratched their screen door and actually tore out the screen component of the door. One would argue reasonably that's damage, perhaps, to the rental property and should therefore be fixed by the tenant. I can understand that, but that, to me, is not grounds for eviction. That, to me, seems like minor damage versus a hole being punched in a wall or a door having been pulled off its hinges — I'm tempted to say sockets, but I think they're called hinges — those kinds of examples. There is a distinction between what kind of damage would apply.

[1925]

Of course, one would think that it's reasonable, as well, for written notices to be given so the tenant knows that if they don't fix this, they'll be subject to an eviction notice. I think that's reasonable in terms of warnings that need to be given to the tenant for remedies. To that end, I do have an amendment to make to section 47(1)(g). The amendment is actually on the order paper. I move the amendment standing in my name on the order paper.

[SECTION 47 (1) (g) is amended by adding the text highlighted by underline:

Landlord's notice: cause

47 (1)

(g) after receiving written warning to do so, the tenant does not repair significant damage to the rental unit or other residential property, as required under section 32 (3), within a reasonable time;]

Then, under those circumstances, an eviction notice is to be served.

Amendment negated on division.

On the main motion.

J. Kwan: Section 47(2) reads: "A notice under this section must end the tenancy effective on a date that is (a) not earlier than one month after the date the notice is received, and (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement."

This clause certainly doesn't seem to me like it is plain language. Many parts of the act, as I had highlighted earlier, don't seem to be plain language and are difficult to understand. I would urge the minister to go back, do some field testing and consult with some groups with respect to the language that is being used in this act. This is another example where landlords or tenants, I think, will find it difficult to understand exactly what is the meaning of this section of the act. It's anything but plain language.

Section 47 approved on division.

Section 48 approved.

On section 49.

J. Kwan: Section 49 deals with the landlord's notice: landlord's use of property. Subsection (6) is the section on which I'd like to engage in some debate with the minister or get some questions answered by the minister. Subsection (6) reads that: "A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law and intends in good faith to do any of the following...." Then sub-subsection (b) goes on to read: "renovate or repair the rental unit in a manner that requires the rental unit to be vacant."

Vacant possession for a renovation is regularly abused by landlords who evict even when the renovations are really cosmetic in nature — i.e., new carpets or cabinets. In my view, this section needs to be strengthened to close that loophole. But instead it doesn't actually address that issue.

Has the minister received recommendations from the Tenants Rights Action Coalition around what type of renovations would be used to define and qualify for the purposes of actually evicting a tenant under this section?

[1930]

Hon. R. Coleman: Under subsection (6), and I do have an amendment to subsection (1).... I will deal with the member's question and move my amendment that stands on the order paper so that we deal with this section as the package that I intend it would be. But you know, to renovate or repair the rental unit in a manner that requires the rental unit to be vacant.... This is subject to arbitration if the tenant believes that's not the case. There are provisions that will allow for penalties to the landlord if they don't use it for the purpose that they've given the notice for.

Under section 49(1), Mr. Chair, I move the amendment that stands in my name on the order paper.

[SECTION 49 (1), by adding the following definitions to the proposed section 49 (1):

"landlord" means

(a) for the purposes of subsection (3), an individual who

(i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and

(ii) holds not less than 1/2 of the full reversionary interest, and

(b) for the purposes of subsection (4), a family corporation that

(i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and

(ii) holds not less than 1/2 of the full reversionary interest;

"purchaser", for the purposes of subsection (5), means a purchaser that has agreed to purchase at least 1/2 of the full reversionary interest in the rental unit.]

On the amendment.

Hon. R. Coleman: The reason for that amendment is to more clearly identify what we mean in terms of a landlord so that we can't have some of the activity that's been identified to us by rental groups with regards to somebody having a limited interest in a property for the purpose of using this act. The amendment is to correct an omission and clarify that a landlord can give notice to end a tenancy for their own use and occupation only if the landlord has a reversionary interest in the rental unit exceeding three years and holds at least one-half interest in the rental unit.

The same limitation and definition of landlord is in the current act. It's really to correct an omission that is in this act — something that we felt was important to get into this section when we got to it this evening.

The Chair: Shall section 49 pass?

J. Kwan: Sorry, Mr. Chair. The minister just moved an amendment, and I think we were going to deal with the amendment and then get back to the question that I asked.

The Chair: Minister, I'll take the amendment.

Hon. R. Coleman: Mr. Chair, just to clarify, I answered the question, and then I moved the amendment. It was section 49(1), and the member for Vancouver–Mount Pleasant is dealing with section 49(6). I wanted to have the amendment in before we moved on to the whole of section 49 and dealing with whatever may come out of further debate on section 49(6).

Amendment approved.

On section 49 as amended.

J. Kwan: Well, getting back to section 49(6) of the act, I still have a concern with respect to this. Perhaps the minister would have a different opinion — obviously, that's what's surfacing, the minister's point of view — than mine.

Let me ask the minister this question: what of the case where renovations are required for a rental unit? Let's say it's an illegal suite, so the landlord, of course, does not advise the tenant that it is an illegal suite, who then, of course, pays rent and so on and so forth. At a later time, if the landlord runs into a problem of actually renting an illegal suite and the tenant is actually penalized and is evicted as a result of that, would there be protection for the tenant in that instance? That is to say, would the tenant be penalized as a result of the illegal suite which they're occupying, of which they have no knowledge, of which the landlord did not advise them at the beginning of the tenancy?

[1935]

Hon. R. Coleman: Illegal suites are covered under the Residential Tenancy Act, and the standard-form tenancy agreement applies to illegal suites. However, under section 47(1)(k) the rental unit, in addition to

whatever we're talking about — renovations here — may have to be vacated, with regards to an illegal suite, if the rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority. If a municipality were to determine that it was an illegal suite under their by-laws and gave notice to the landlord, the landlord would then have to give notice to the tenant. That really doesn't apply to subsection (6), which is what we're dealing with — just so we're clear on that.

Subsection (6) deals with.... A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law and intends in good faith to do any of the following. Then it gives a list of five, which includes to "renovate or repair the rental unit in a manner that requires the rental unit to be vacant." If the tenant feels that it doesn't require to be vacant, they would be allowed, under the normal procedures, to apply for an arbitration with regards to that notice to end the tenancy.

J. Kwan: It is relevant insofar as if the tenant actually pays the rent for the period and then, of course, subsequent to that, the landlord is undergoing renovations as required, and then it was discovered that it was an illegal suite from which the tenant may well have to be evicted from the premises.... In that instance, would the tenant actually be paid back the rent which the landlord has received?

Hon. R. Coleman: The landlord has to give two months' notice under this section. Unless the tenant has actually paid their rent months in advance, I don't know where the question with regards to how they would deal with the non-payment issue would deal with it. They have to give two months' notice. They have to have the necessary permits. They have to have the approvals required by law. They have to renovate or repair the unit in a manner that requires the rental unit to be vacant. If the tenant, when they are given that notice and knowing the level of the repairs, says, "That's really not good enough reason to have me vacate this unit, and I'll file for arbitration," they can do so. That one allows for 15 days after the date the tenant receives the notice for a filing for applying for arbitration under subsection (8).

J. Kwan: Actually, in some instances, if there is a violation, especially if the suite is illegal or does not meet standard maintenance bylaws, and renovation needs to be done, and if it's unsafe for the tenants to actually stay in those units, then they would, of course, need to vacate. In those instances, you might not be able to give the two months' notice. I can think of a recent case in Vancouver where that did, in fact, happen. A building was in such disrepair that the city of Vancouver actually had to go in and move the tenants out, because it was simply unsafe for the tenants to stay there.

[1940]

The question becomes, then.... Maybe it's under a different section of the act, and so please let me know

under whatever section of the act the tenant would actually get protection for the rent they have paid. Even though notice is required to be given to vacate, for whatever circumstances that may apply, the period of time in which notice is to be given may not actually materialize, in which case tenants would be at a loss. Could the minister please confirm, then, that in those kinds of scenarios, the tenant would actually not lose the rent that they've paid to the landlord and it is the landlord's obligation to repay the tenant for the rent the landlord has received?

Hon. R. Coleman: The tenant or landlord can apply to enforce any right or obligation. Paying for rent that they didn't get would be something they could apply to arbitration for, if what the member described were to take place.

J. Kwan: I didn't get the answer from the minister, or if he did provide it, I missed it. There was a recommendation from the Tenants Rights Action Coalition for types of renovations that could be applied under this section of the act, to be defined in regulations. Is it the intent of the Solicitor General to define the types of renovations to be applied under this section of the act in regulations?

Hon. R. Coleman: We're not going to get to that level of definition. I think it's "renovate or repair...in a manner that requires the rental unit to be vacant," and the ability within 15 days to file for an arbitration if the tenant disagrees with that is certainly something we'll leave to the arbitrators to deal with. We will not be sitting down and deciding that this renovation is, but that renovation isn't. Often it depends on what the structural issues are around renovations and changes and what people actually find as they go forward through those renovations. It's really not something that is simply as definable as the member would think.

I think that the two-month notice, along with the necessary permits and required approvals, the renovation that requires it to be vacant and the ability to apply for arbitration within 15 days after the date of receiving the notice.... Frankly, with that two-month window and the 15 days, I think you pretty well have it covered.

[J. Weisbeck in the chair.]

J. Kwan: Well, actually, I think the wording of the act could be strengthened. As mentioned before, in fact, there are often times when the landlord uses such repair provisions to evict tenants for reasons other than the repair.

To strengthen this section of the act, I move the amendment standing in my name under section 49(6) on the order paper. The amendment reads as follows:

[SECTION 49 (6) (b) is amended by adding the text highlighted by underline and deleting the text highlighted by strikethrough:

Landlord's notice: landlord's use of property

49 (6) A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:

(a) demolish the rental unit;

(b) renovate or repair the rental unit ~~in a manner that requires to the extent that permits are required and the rental unit needs to be vacant in order to conduct the renovation or repair;~~

Amendment negated on division.

Section 49 as amended approved on division.

Section 50 approved.

On section 51.

[1945]

J. Kwan: Section 51 deals with the tenant's compensation and, relative to section 49, notice. This is, of course, in some ways positive, as it extends the tenant eligibility for compensation to all situations where the tenant is evicted through no fault of their own. Also, it attempts to discourage notices not given in good faith through the doubling of compensation.

However, it is very difficult for tenants to collect any money from a landlord, and the lack of enforcement is not addressed in this section of the act. A suggestion has been made that the tenants' obligation to pay the last month's rent be suspended until they get notice from the landlord. That way, one could ensure that compensation is really provided for as intended in this section of the act.

Would the minister comment on such a suggestion, please?

Hon. R. Coleman: Section 51(1) prescribes that: "A landlord who gives notice to end a tenancy agreement under section 49...must pay the tenant, on or before the effective day of the notice, an amount that is equivalent to one month's rent payable under the tenancy agreement."

On or before the effective date is the day that the landlord wants the vacant possession of the property to conduct the work that they're talking about doing under section 49 for the use of property. Obviously, if the tenant hasn't received compensation at that point in time, I guess the tenant could not leave the premises and could file for arbitration because the landlord has not met the section of this act with regards to the notice.

I do agree with the member that this is actually a positive step under this act, because I think it's important that people understand what their liabilities are. By not using the property for what they say they're going to use it for after the renovation — the movement of family into the premises or whatever the case may be — and to not do that.... To double the monthly rent payable, I think, is also a good step.

J. Kwan: To further strengthen this section of the act, the issue of compensation could be required. That

way, I think the full intent of the act would actually be outlined by this legislation.

I'm going to move the amendment to section 51 standing in my name on the order paper. The amendment reads by adding section 51(3):

[SECTION 51 is amended by adding the text highlighted by underline:

Tenant's compensation: section 49 notice

51 (3) Compensation shall be extended to situations where the tenant is being evicted due to a municipal or health authority order to shut down unit or building.]

Amendment negated on division.

Sections 51 and 52 approved.

On section 53.

J. Kwan: I just want to highlight again the language in this act where it isn't very plain language. Let me read a section of the act, 53(3):

"In the case of a notice to end a tenancy, other than a notice under section 45 (3)...or 50...if...the notice is any day other than the day before the day in the month, or in the other period on which a tenancy is based, that rent is payable under the tenancy agreement, the effective date is deemed to be the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement...(b) if the landlord gives a longer notice period, that complies with that longer notice period."

Quite honestly, this is just as confusing as can be. It's anything but plain language. Just reading this section of the act, one is perplexed as to where all the dates are and how it applies and what exactly is the meaning of the act. Once again, I urge the minister to clean up the language of the bill to really make it plain language so that people can actually understand it.

Sections 53 and 54 approved.

On section 55.

[1950]

J. Kwan: Section 55 deals with the order of possession for the landlord. The issue here that I wish to raise is, of course, the ability of the landlord to orally request an order of possession. This is completely new, then, from the old act. The old act actually requires a hearing to be held, and of course, then the eviction process begins with an order of possession if, through the hearing, the arbitrator actually grants that procedure. This no doubt speeds up the eviction process for the landlord simply by an oral request, and it also strips the tenant of a final procedure, if you will, a quasi-judicial procedure for the two of them — that is, for the order of possession to be enforced and so on. That is very problematic and concerning.

In terms of oral request, is it the case that all a landlord would have to do is simply verbally make such a request for an order of possession to be set in place, and by virtue of that request one would be granted,

and that one can then proceed to enforce the order of possession?

Hon. R. Coleman: The tenant applies for an arbitration. It goes to a hearing on the application. The arbitrator has to uphold.... If the arbitrator upholds the landlord's notice, the answer to the member is yes, the oral request can be made at that point in time to have the arbitrator grant the order of possession of the rental unit. The tenant has gone through a process with the hearing. The arbitrator upheld the landlord's notice at that point in time.

On the notice of hearing to the tenant, it is in the notice of hearing to the tenant that should the arbitrator rule in favour of the landlord, the landlord has the ability to request the order of possession of the rental unit. This just streamlines it to where, at the hearing, the landlord can say, "I would like the order of possession," and the arbitrator must grant that, versus having to go away and go through an additional documented or written process to ask for what the arbitrator has already granted by upholding the landlord's notice.

J. Kwan: The minister says it's streamlining. For somebody else it is a different application — that is, of course, rendering somebody homeless perhaps more quickly than the old act allows.

I'm moving the amendment standing in my name on the order paper under section 55, which reads:

[SECTION 55 is amended by adding the text highlighted by underline:

Order of possession for the landlord

55 (1) If

(a) a tenant applies for arbitration to dispute a landlord's notice to end a tenancy, and

(b) on hearing the application, the arbitrator upholds the landlord's notice,

on the ~~oral request~~ written request in the prescribed form of the landlord made at the hearing, the arbitrator must grant the landlord an order of possession of the rental unit.]

I move the amendment standing in my name.

Amendment negated on division.

Section 55 approved on division.

On section 56.

[1955]

J. Kwan: Section 56 deals with the landlord's application for an order ending a tenancy early. Section 56(3) deals with: "If an order is made under this section, it is unnecessary for the landlord to give the tenant a notice to end the tenancy."

If the intent is to deal with illegal activities and is therefore for the purposes of eviction, this section actually addresses that as this. I think section 47 was another section that dealt with it as well, and then there was another section. Well, within section 47, I think there were (d) and (g) that addressed those issues. There are just multiple applications here. Under this

section, would the landlord be required to provide proof to the arbitrator for serving notice to end a tenancy?

Hon. R. Coleman: This is to allow for a landlord to apply for immediate arbitration — that is, to end the tenancy early. This would be when it is not reasonable to wait, because whatever activity is taking place is either putting at risk or endangering other tenants or the property. They would still go before an arbitrator and outline what that was. This just allows, rather than waiting a month or so, that they're able to move immediately to end a tenancy where there is significant risk involved with regard to that tenancy.

J. Kwan: In this instance, the landlord would have to provide proof at an arbitration, but under section 47, the onus is on the tenant to disprove the allegations from the landlord. We have two standards, then. Why wouldn't we be consistent and use the same standard — that is to say that the landlord has to provide proof in order to evict for illegal activities or causing the rental property to be unsafe, etc.?

Hon. R. Coleman: In both cases, the landlord has to supply proof for the reasons for the end of the tenancy. This is just for them to apply for immediate arbitration rather than having to wait a set period of time in the cases where the notice is being given with cause under section 47 to end it. That would be obvious, because it is not reasonable to wait, as I said, for the health, safety or whatever other reasons of the other people on the property or for the protection of the property itself. But in both cases, whether it be under section 47 or under section 56, the landlord is going to have to provide proof that would be able to satisfy the application to the arbitrator in order to end the tenancy.

Section 56 approved.

The Chair: We will now take a short recess.

The committee recessed from 7:59 p.m. to 8:02 p.m.

[J. Weisbeck in the chair.]

Sections 57 and 58 approved.

On section 59.

J. Kwan: I have a question for this section, which deals with starting arbitration proceedings. This is new, particularly the section that deals with: "The director may waive or reduce the fee if satisfied that (a) the applicant cannot reasonably afford to pay the fee, or (b) the circumstances do not warrant the fee being collected."

Would the circumstances of when fees would not be required to be collected or when fees could be either waived or reduced be defined in regulations, or would there be policy guidelines that would apply? How

would one know under what circumstances this provision would apply?

Hon. R. Coleman: The director can do this now — basically reduce or waive the fee for an applicant that can't reasonably afford to pay the fee. The circumstances that do not warrant the fee being collected under subsection (b) go to more in the use of.... Let's say there are other multiple arbitrations on one particular property or multiple applications from people from the same building, where you may charge the full fee on the first one but a reduced fee — because it's the same decision — for the rest. You wouldn't necessarily charge everybody the same fee. So it gives that latitude.

J. Kwan: Are those the only circumstances to which this would apply?

[2005]

Hon. R. Coleman: It could apply, for instance, in a multiple application to do a renovation on, let's say, ten units in a building where, under the section we just dealt with, the people don't feel it's reasonable that they should actually have to move. They think the renovations can be done while.... The first application would basically define the same circumstances for the other nine.

The other place we've seen it is in the other act, which we'll deal with later on. That is where we've had a number of applications with regards to things that have happened in manufactured home parks, where we may have basically 40 or 50 or 100 filings for arbitration with regards to the same issue in a particular tenancy. That would be an example where it may apply. I don't anticipate that it would be something that would happen often, but it's something we wanted to give the director the latitude to do if necessary.

J. Kwan: The Solicitor General won't actually be making a list in regulation to say that under such-and-such circumstances, the waiving of fees or the reduction of fees, etc., would apply. It's just sort of a case-by-case basis, and the examples the minister used are just some examples he knows of. Or does he have a list to which he's referring? If he does have a list to which he's referring, could he share that with the opposition?

Hon. R. Coleman: My understanding is the director already has a policy on this, but it would be the director that would actually establish a policy of what would be the parameters to waive or reduce fees.

J. Kwan: Then I can expect that the guideline or list which the director has established would not be changed. Could the minister make that list available?

Hon. R. Coleman: Well, it would be changed, because there's now a provision under sub-subsection (b) for circumstances that don't warrant the fee being collected, which is new. That policy hasn't been established by the director. Policies, as the member knows,

are established by directors in charge of branches to meet things as things change day to day. They have the ability, I suppose, to have some flex or some change in them as time goes on. Certainly, as the director establishes that policy, I'll be more than happy to make it available to the member.

J. Kwan: Under this section, subsection (5)(b) deals with the notion: "The director may refuse to accept an application for arbitration if...(b) the applicant owes outstanding fees under this Act to the government." This is, of course, concerning because it's very likely that it would apply to low-income people who may owe a previous filing fee. This, of course, could prevent them from disputing an eviction or any other issues that arise from this act. Isn't this deemed to be a barrier to access to justice?

[2010]

Hon. R. Coleman: Actually, it's directed the other way. The member's description of it could be correct, but we have the ability to waive the fee for those that reasonably can't afford to pay it. If we waive that and then, subsequently, the tenant actually wins, in the case of a tenant, because I would suspect that we wouldn't decide that a landlord couldn't afford to pay the fee.... If we waived that and then we found for the tenant, there's actually no way for us to collect outstanding fees from a landlord who now has lost at arbitration, and there's been no fee applied. This allows us to basically make sure that the fees that are payable to government can be collected. At the same time, if they can't reasonably afford to pay, subsection (4)(a) would have applied in advance of this. So, this is really for us to be able to deal with the inability, at this point in time, to actually go back — in the case of a dispute between a landlord and tenant, where the fee has actually been waived for the tenant — and say to the landlord: "Actually, you have a cost of arbitration here we want to collect on."

J. Kwan: The process is such that, let's say — just so that I'm clear — if I was a person who filed a claim and I have an outstanding fee which I couldn't afford to pay previously, and now I have another claim which I'm filing and I'm not able to pay that fee as well, then the director could actually waive the fee that is required if I'm able to show that I cannot afford to pay. Is that what the minister is saying? If a person who files a claim with the residential tenancy branch is not able to pay and is able to establish that the person cannot afford to pay, then the fees would be exempted, and therefore he or she would not lose their right to file an arbitration?

If I'm understanding that correctly in that process, then I don't have a problem with it. What I'm concerned about is that it would be a barrier to access on the issue around affordability to pay.

Hon. R. Coleman: Waived fees are not fees that are owing or outstanding. So if they are waived in a previ-

ous arbitration, they are not owing or outstanding. What we're talking about, basically, is if a fee was paid at arbitration and it came back as NSF, or if there was an order to pay a fee by the arbitrator to the branch and it wasn't paid, then it would apply to this. It does not apply if somebody comes in and asks for the fee to be waived, and we waive the fee. Then it's waived; it is no longer considered to be owed or due under any circumstances. I don't know if that answers the member's question or not.

J. Kwan: Sub (5) actually specifically deals with: "The director may refuse to accept an application for arbitration if"— sub (b) — "the applicant owes outstanding fees under this Act to the government." Under this provision, on the question about affordability to pay, if it's a previous filing fee that a person could not afford to pay, and then they may well also apply with the current application with the current fee, then that person could be denied — will be denied, actually, under this subsection — to file this second arbitration. Isn't that how sub (5) would be interpreted?

Hon. R. Coleman: Just for clarification, maybe I'll sort of throw a question back to the member. Is it my understanding that the member's concerned that if a person actually paid a fee that, let's say, was NSF or whatever the case may be and couldn't afford to pay it and didn't pay it but never asked for it to be waived, they would now owe an outstanding fee under this act and therefore would be refused an acceptance to the application for arbitration by the director? Or they could be, because of those circumstances? Is that the circumstance we're trying to describe? Because if it's somebody that can't afford to pay, their fee gets waived. Once it's waived, it no longer applies to something that's owed to government. It's only if you were to pay a fee and for whatever reason the payment did not come through and is now owing, or you were ordered to pay a fee by a previous arbitration and you didn't pay it and never asked for a waiver, that you would have an outstanding bill.

[2015]

Maybe the member can be a bit more clear on her concern, because I think we probably have.... You know, in addition to it, there's nothing stopping an applicant from coming forward on another arbitration and saying, "I can't afford to pay the previous fee because these are my circumstances," and then the director could waive that fee, I would think, retroactively.

J. Kwan: I think the minister answered my question in his last statement. That is to say, if an applicant came forward to file a claim at this time, but that person was not able to pay for a previous fee or an outstanding fee and did not ask for it to be waived, then in that instance the person could actually be faced with a situation where he or she would not be able to file a claim. I heard the minister say that there would be a provision by which the arbitrator or the director could consider waiving that fee retroactively, and therefore access to

justice would not be denied. If I heard the minister say that correctly, then we can move on.

Hon. R. Coleman: The member makes a good point, so what I will undertake to her is.... I don't know if it's included in current policy, but we will include it in future policy.

J. Kwan: Just to be totally clear, that would be done by regulation or in policy, whatever that means — in policy by government. When that policy is set, if it's not already in place, could the minister share a copy of that with the opposition caucus?

Sections 59 to 62 inclusive approved.

On section 63.

J. Kwan: Section 63 deals with the opportunity to settle disputes. In this section, the concern I have is that under the old act the arbitrator could "set aside a notice to end a tenancy agreement, with or without conditions, if the arbitrator is satisfied, having regard to all the circumstances, that ending the tenancy agreement would create unreasonable hardship in relation to the conduct, breach or circumstances that led to the issue of the notice."

While I recognize that this clause is rarely used in the old act, the intent was to allow an arbitrator flexibility to ensure that the punishment was in keeping with the crime. As an example — this is a real case — a single mother has a child who has attention deficit disorder, and the child is hyperactive and makes a lot of noise. She's responsible for another disabled child and her elderly mother. The other tenants in the building petitioned the landlord to evict the family, but the notice was set aside, as the arbitrator recognized that the impact of the eviction on the family would cause undue hardship and be disproportionate to the impact on the quiet enjoyment of the other tenants.

The hardship provision should be retained, but in this act it appears that it isn't. The hardship provision is eliminated. Therefore, such scenarios could not even be contemplated by the arbitrator to overturn an eviction for reasons of hardship. Could the minister please explain why the provision of hardship is being eliminated from this act?

Hon. R. Coleman: It caused a lot of inconsistency with regards to what could or could not be defined as a hardship, as well as with regards to unreasonable hardship. This section allows the arbitrator to assist the parties or to offer the parties the opportunity to settle their dispute. If the parties settle their dispute during the arbitration process, "the arbitrator may record the settlement in the form of a decision or an order."

[2020]

The hardship issue just caused a great deal of inconsistency, difficulty in interpretation and, frankly, hardship on both parties with regards to how it would be handled and the understanding of it, so it was re-

moved. We've left the rest of the arbitration system intact.

J. Kwan: That doesn't make any sense. If the issue is around consistency, one would think that when we get to 64, one would want to see arbitration decisions to be binding and therefore precedents being set, so there would be consistency with respect to that. But when you look at 64, the language actually says that it should not be bound, so the consistency issue simply doesn't ring true in this act. But that's 64, and we'll get to 64 in one second.

For 63, one would think that the application of hardship would be determined by the arbitrator, and it would be up to the arbitrator to make that decision — in what circumstances hardship would be applied. Eliminating it altogether doesn't necessarily address the issue of consistency. It just simply takes away a provision that allows the arbitrator some flexibility in making decisions, and that is to take hardship situations into consideration. For the purposes of discussion, we can use the example of turning down an eviction notice. This actually eliminates that ability altogether. There's nothing wrong in the act to suggest that, yes, one should have the arbitrator assist the parties to come together to settle the dispute. I don't disagree with that. The issue, though, is that when the matter comes to a head and the arbitrator is required to make a decision, one would hope that the arbitrator has some capacity or flexibility to arrive at decisions, especially in cases where hardship would be invoked. Then it would be up to the arbitrator to decide under what circumstances hardship would be applicable.

It really doesn't make sense for the minister to say that the issues are around consistency, but taking away flexibility doesn't actually ensure consistency at all. Could the minister please explain?

Hon. R. Coleman: The act establishes grounds for which the relationship between landlord and tenant and disputes are to be handled, the reasons for cause and the reason for cause to be able to go to an arbitrator. That establishes those grounds. Frankly, that is how this relationship should be dealt with, rather than having another clause that actually overrides everything that is supposed to establish a relationship between a landlord and tenant that can basically step over all the boundaries of that relationship between the two parties. That is why that clause is not here in this act.

J. Kwan: Well, that raises a major concern on my part. It simply doesn't make sense to me for the minister to suggest that to ensure consistency, we have to take away the provision of applying hardship for consideration. It doesn't match, and as I mentioned before, in 64 it actually encourages inconsistency. I'll go into that in one second.

[2025]

Before I do that, I want to raise another issue that has just been brought to my attention today from the

Tenants Rights Action Coalition with respect to section 63. The new act, of course, under 63(1) states that an arbitrator may assist the parties or offer the parties an opportunity to settle their dispute. Under the existing act, that is prescribed under section 53, "Assisting parties to a dispute." "In addition to other powers and duties under this Act, the director and the persons working under the director's supervision may (a) give a landlord or a tenant information about rights and duties under this Act, or (b) assist landlords and tenants to resolve any dispute that can be or has been referred to an arbitrator under this Act."

As it stands now, some of the arbitrators are assisting the parties to settle in the course of an arbitration hearing, while others adjourn the hearing and call on an information officer to help settle it. Some have taken the new section to mean that the arbitrators will now be using mediation as a tool to help settle disputes. I do not believe that this is the intent, and perhaps the minister can clarify. Is this the intent, then, to actually put forward a mediation tool under this section of the act to resolve disputes?

Hon. R. Coleman: No, the intent isn't to turn it into this. It's to give informal flexibility to mediation and to provide some enforcement, once the decision between.... If the two parties actually decide to settle their dispute, by putting the settlement in the form of a decision or an order to provide enforcement of what the parties have agreed to....

J. Kwan: An issue has been raised particularly with respect to this. The landlord-tenant relationship, some would argue, is an inherent power imbalance, if you will. That is, of course, that the tenant may well be put in a situation where the tenant would have to accept a settlement because they have no other choice. In fact, there was such a scenario where someone was present at a hearing where the arbitrator worked on a settlement. On the surface of it, it seemed that the arbitrator was working on bringing the parties together, but it was obvious that if it was not agreed to by one party, that person may well have lost their case. All the signals were there.

Of course in the process of assisting the parties to settle or to come together, that may well be in the process of establishing a predetermined course or settlement, if you will. Now, this is particularly problematic if the arbitrator who sat on the case that dealt with the issue is later on the same person who's dealing with the mediation or bringing the parties together. Is there any requirement that the people who bring or attempt to bring the parties together, assist the parties to come together, be different people other than the arbitrator who actually presided over a particular hearing?

Hon. R. Coleman: This is if the two parties are inclined to settle their dispute, and the arbitrator can assist in that. Both parties have to agree. This is not a mediation process. This is if, as they're going through the arbitration, the arbitrator identifies with the parties

an opportunity to settle their dispute that they both agree to. Then they can assist in that regard.

Section 63 approved on division.

On section 64.

J. Kwan: I'm sorry. I should just make it clear why I voted against 63. I'm primarily concerned with the doing away with the notion of hardship and for that to be considered by the arbitrator. I should just simply put that on record. My apologies.

[2030]

Section 64(2) reads: "An arbitrator must make each decision or order on the merits of the case as disclosed by the evidence admitted and is not bound to follow other arbitration decisions under this Act." Earlier, in 63, the Solicitor General talked about the importance of consistency, yet this actually promotes inconsistency within decisions. This is one thing that I think both landlords and tenants are in agreement on — that is, they want to see consistency, and they want to have confidence in the system. Of course, one way to do that is to have arbitrated decisions be bound by legal precedent. Why is it the case that under 64...? It specifically reads in this section of the act for decisions not to be bound by other decisions. Why would that be the case, and how does that further consistency?

Hon. R. Coleman: This is sort of the rub between what is done in some jurisdictions, whereby there is no arbitration system and people simply go to the courts — whether it be to small claims court or whatever — to deal with these issues versus having an arbitration system. Under subsection (1) of section 64, we say that before making a decision or an order, an arbitrator must consider any applicable policy guidelines established by the director for the purposes of assisting arbitrators in applying this act and encouraging consistency of decision-making. That's something that even under the previous government.... It's actually brought forward some guidelines for arbitrators that will be built on as we go through this process.

The second issue is that the arbitrators are actually bound by legal precedent, but they're not necessarily bound by another decision that may have taken place. Oftentimes, although it may seem like it's exactly the same circumstance, it isn't.

The other side of it is that we want the system to be such that it isn't going to become that the tenant or the landlord are having to find ways to argue legal precedent with regards to an arbitration process which is supposed to be just that — an arbitration process. Rather than having somebody going and researching the decisions of 20,000 arbitrations a year, an arbitration system that works actually operates best with guidelines that are established. They stand within legal precedent because they are bound by that as arbitrators, but individual circumstances on an arbitration can be taken into account by an arbitrator while applying those policy guidelines so that we're not ending up in a

legal precedent and having to have people hire lawyers to argue, basically, standing precedent that may go back one, two, three, four or five years. With regards to an individual case, it may be something that's as simple as a disagreement over some of the issues we've discussed within this legislation.

[2035]

I think, to the member's direction, that it isn't that we want to be unclear. It's that the arbitration system is supposed to be friendly to the participants in such a way that they're not being put into a legal system or a court system versus an arbitration system which, although bound by some legal precedents, is actually operating on guidelines so that there is the flexibility to be looked at by an arbitrator on a case-by-case basis.

J. Kwan: With all due respect, I disagree with the Solicitor General. You can't say, on the one hand, that decisions are bound by legal precedent and, on the other hand, actually write within the act that it is not bound by other decisions made. Yes, circumstances are never exactly the same, but the fact is that the principles still apply. That is what is at issue here, and that's how a precedent is set. In the case of arbitration decisions, a precedent is set by the arbitrator; therefore those principles ought to apply. It really doesn't make sense to say, on the one hand, yes, they are bound by legal precedent but, on the other hand, within the provision of the act to say specifically that they are not bound.

Sections 64 and 65 approved.

On section 66.

J. Kwan: Section 66 deals with "Arbitrator orders: changing time limits." Section 66(1) reads: "An arbitrator may extend or modify time limits under this Act if exceptional circumstances exist." The issue of concern here is that an erosion may well take place, meaning that extensions will be given only in exceptional circumstances. One arbitrator may actually define something as exceptional; another one may not. We've just dealt with the section that says arbitrator decisions are not bound, so we know that inconsistency actually applies.

Under the current act right now, one can apply for an extension in the broadest terms, and the arbitrator can make that decision. I'll use one example, where a person with a mental illness was being evicted. Actually, a person could then go and apply for an extension because the person with the mental illness, for one reason or another, did not realize that they actually received an eviction notice. That was a situation in which a person could actually apply for an extension.

In terms of extensions and its definition of exceptional circumstances, once again, I'm unclear as to what constitutes exceptional circumstances. Could the minister please explain?

Hon. R. Coleman: This is really to tighten up so that.... Actually, the time limits in the previous act had

little or no meaning because of how they could be so flexibly modified. Any time limits could be modified. This clarifies that, but also the circumstance that the member just described with regards to that notice, I would think, would be an exceptional situation with regards to having the arbitrator be able to modify the time limits under that act if the exceptional circumstances exist.

I think that we have to, as much as possible in defining legislation, identify the parameters we want to operate within with regards to residential tenancy. But I don't think that we can actually clearly define in black and white every circumstance that an arbitrator may come across in the performance of their duties. I think there has to be some ability for them to extend or modify time limits under exceptional circumstances like the member described.

J. Kwan: I can get into a debate with the minister about whether or not there will be a list that actually talks about what are exceptional circumstances. It is unclear from this act what they are. Will the minister, then, be establishing that by regulation? Or is that again just up to the arbitrator to make that decision on a case-by-case basis?

[2040]

Hon. R. Coleman: The director could issue a policy guideline if the application of this section gives us some issues in and around consistency and how it's applied. You know, those are the types of things, as the operational side evolves, that you may have to develop a policy on to more clearly define. At this time I think we would want to see whether the section was being used in a proper manner first.

J. Kwan: I'll be looking forward to seeing those policy guidelines.

On this issue, on section 66(2), which actually allows for.... Actually, let me just read this section of the act onto the record: "As restrictions on subsection (1), an arbitrator may not... (b) extend, beyond the effective date of the notice, the time limit to apply for arbitration to dispute a notice to end a tenancy." That's another issue that arises. Again, perhaps one could contemplate exceptional circumstances with non-payment of rent.

I could actually use one example that has just come to my attention most recently. That is someone who suffered a medical emergency, is in the hospital and has missed the rent payment and, of course, also missed the eviction notice as the result of non-payment of rent. That, to me, would be deemed to be an exceptional circumstance that ought to warrant an extension or allow for extension through an arbitration to not end the tenancy. Yet as prescribed in this act, it would actually effectively eliminate that opportunity for people who are faced with those exceptional circumstances. Why would the minister do that?

Hon. R. Coleman: It's when the tenant actually receives the notice. There are some rebuttable pre-

sumptions with regard to that. For instance, if you post it on the door and three days later you say that's deemed to have been served, and there is a plane ticket in your hand when you come to rebut the actual service, there's a rebuttable presumption with regard to that. The time frame is ten days under some circumstances, 15 days under others, when the tenant is deemed to have received the notice to end the tenancy.

J. Kwan: Would there be circumstances in which, if you were in the hospital and actually didn't receive the notice, as an example...? I mean, the last thing one would want to see take place is that after you've come out of a medical emergency and are back home, the next thing you know you find you've been evicted because you missed your rental payment. Are there provisions within the act that would allow for non-payment of rent under extenuating circumstances, for that notice to be withdrawn by an arbitrator?

[2045]

Hon. R. Coleman: The notice comes into effect ten to 15 days after the tenant has received the notice. If the tenant is in hospital and hasn't received the notice, therefore the ten to 15 days for them to file for arbitration haven't started either. They have to have received the notice before, and then the ten to 15 days that they have to deal with the issue start. With regard to someone the member describes, it's when they actually received the notice with regards to it that it starts, not because they happen to be in hospital and miss the notice.

J. Kwan: How does one prove that? Is it that if that's the case, when you apply for an arbitration, in your application you show the people that you didn't receive this notice? How would one prove that, and what's the onus of proof?

Hon. R. Coleman: You're presumed to have received the notice unless you have something that's rebuttable to the presumption. I would think a plane ticket where you're on holidays in Florida or a hospital record that you were in hospital would be things that would be used for being rebuttable to their end and would be able to identify that the notice hadn't started until such time as you had been able to receive that information.

Sections 66 to 68 inclusive approved.

On section 69.

J. Kwan: Section 69 deals with rent increases once again and is under the arbitrator's orders. In this instance, under this section of the act, the landlord could actually get more than the stipulated amount, which would be the cost of living plus 3 or 4 percent, if they can convince the arbitrator that the rent is below market, meaning that there is no certainty for the tenants under this scheme.

It is really quite astounding, actually, that the landlord would not only have a provision under previous sections of the act to increase rent on an annual basis automatically without proof of incurring costs. You now have a situation under this section of the act where the landlord could actually increase the rent beyond the amount that was stipulated in earlier sections.

It simply is unbelievable, actually, that the government would introduce such a section to allow for landlords to increase the cost of rent beyond what was already stipulated in this section of the act. One could only assume that when one decides to rent the apartment or rental unit, they are starting at the place of market rent, and it's whatever the market could bear at that time. How could it be that later or after the fact, one can overturn that decision and go to an arbitrator and decide that they want to move the rent up beyond the rate at which it is being prescribed?

Hon. R. Coleman: The intent is to have it under exceptional circumstances. We will define that in regulation. A landlord may apply to an arbitrator for approval of a rent increase. That doesn't necessarily mean that it actually is going to be approved. It could be a case where a major renovation is taking place on a substantially older building, a situation where they have been advised that they have to increase significant capital investment in the building because of the addition of sprinkler systems, fire systems, changing of the whole plumbing that may be faulty or whatever the case may be. Those are the types of circumstances that....

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It was deliberately done that the case would have to be made to an arbitrator by what would be defined in regulations. It wouldn't be something that would be, as the member referred to, automatic. It would be something that you have to satisfy the arbitrator that the circumstances prescribed under the section of the act apply, and then the arbitrator may order that the landlord is permitted to increase the rent by that amount. Frankly, that's what it's for. It's for, over a prescribed amount, making it go to an arbitrator. The arbitrator has to be satisfied that the circumstances are prescribed for the purpose of section 43(3).

J. Kwan: If the increase of the rent is such that that principle applied — that is, if the landlord had substantive increased costs or increased costs for their investment and, therefore, that increased cost is to be shared with the tenants or with the people to whom the rental suite is applied — then increases in rent would therefore follow. That makes sense, and I don't dispute that. The problem here is that in addition to what is the actual cost to be incurred, we now have a situation of a CPI plus the 3 or 4 percent.

The minister is actually trying to create a scenario to allow the landlord, quite frankly, to have their cake and eat it, too, in both instances. Not only would you be able to increase rent as a result of increased costs,

but you would also be able to do it as a matter of fact under a different provision, a different section of the act — to automatically increase the rent by the cost of living as well as the 3 or 4 percent. It's onerous for the tenants in those situations, particularly low-income, fixed-income tenants, particularly those in Vancouver-Burrard as an example.

I've just received another bunch of e-mails today, with people raising their concerns around that. It's not my wish to re-debate the issue around rent increases, but I find it unbelievable that we have yet another section that would allow the landlord to increase rents, which would exceed what was already prescribed under an earlier section of this act. The opposition cannot support this section of the act.

Section 69 approved on division.

Hon. R. Coleman: Noting the time, I would move that the committee rise, report progress and seek leave to sit again.

Motion approved.

The committee rose at 8:52 p.m.

The House resumed; Mr. Speaker in the chair.

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

Hon. G. Plant moved adjournment of the House.

Motion approved.

The House adjourned at 8:53 p.m.