



4th Session, 37th Parliament

OFFICIAL REPORT OF

DEBATES OF THE  
LEGISLATIVE ASSEMBLY

(HANSARD)

Tuesday, December 2, 2003

Afternoon Sitting

Volume 19, Number 7

THE HONOURABLE CLAUDE RICHMOND, SPEAKER

ISSN 0709-1281

**PROVINCE OF BRITISH COLUMBIA**  
(Entered Confederation July 20, 1871)

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**4TH SESSION, 37TH PARLIAMENT**

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Afternoon Sitting

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TUESDAY, DECEMBER 2, 2003

The House met at 2:03 p.m.

### Introductions by Members

**J. Les:** I'm delighted to introduce to the House this afternoon my legislative assistant, whom I share with the member for Chilliwack-Kent. She's an absolutely wonderful assistant to have, and I would like to ask the House to please make her very welcome.

Interjections.

**Mr. Speaker:** The member for Chilliwack-Sumas seeks the floor.

**J. Les:** I'm delighted to inform the House that she also has a name. It's Janet MacKenzie.

**Hon. G. Bruce:** I have three friends in the gallery today that all have names — absolutely. They're from that wonderful little community up-Island, Ladysmith, where we have thousands and thousands and thousands of lights lighting up the little town. I would like the House to make Ed, Sharon and Chase Bricker feel very, very welcome. I know they'd feel a whole pile better if, on your way home, those of you driving up and down the Island would pop into Ladysmith and have a look. It's absolutely brilliant. The Brickers.

[1405]

**R. Stewart:** Well, it's also my pleasure today to mention the names of two of our legislative staff in the east annex. Kerri Sieg and David Burnie are legislative assistants that work with me. Would the House please make the two of them welcome here.

### Statements (Standing Order 25b)

#### MISSION SCHOOL DISTRICT AND TEACHERS' CONTRACTS

**R. Hawes:** Nancy Wells, the superintendent of Mission school district 75, has accepted a position as the superintendent of the Gold Trail school district in order to be closer to her family. Many times over the last few years I have discussed the challenges of operating the Mission school district with Nancy, and as the eve of her departure nears, I've thought about what would be her ideal parting gift.

If she had a wish list, my guess is that it would include, first, standardization of the teachers' collective agreements throughout this province. There's a provincial master contract with BCTF, but there are also local contracts that provide big differences between school districts.

The Mission contract, for example, unlike others, stipulates that teacher layoffs will be based on local seniority but that severance will be paid on global sen-

iority. A little over a year ago, a teacher in Mission with only 18 months of local service and over 20 years of provincial service was laid off. Severance of over \$90,000 had to be paid, and that teacher was then free to seek employment at another school district immediately. Clearly, this is not in the public interest. I know Nancy would wish that a standard provincial contract could be implemented where such issues are handled fairly provincewide.

Her second wish would be that the personal harassment clause within the master provincial agreement be removed. In 1996 personal harassment was added to the collective agreement supposedly to protect teachers from being harassed by principals and vice-principals. Since '97 there have been 106 harassment charges levied and adjudicated. Of these, 105 have been dismissed, and in each case an innocent school administrator had to suffer through the personal stigma associated with this type of allegation. I'm sure Nancy's wish would be that the BCTF and the employer agree that this very costly failed initiative could be removed from the collective agreement.

Lastly, to Nancy, my wish for you would be that your wishes come true and that you have every success in your new life in the Cariboo.

### SKIING IN B.C.

**R. Sultan:** Dr. Perry Kendall, our provincial health officer, reports improvement in 41 of 91 health indicators but says we're at risk through physical inactivity. On Sunday, I took his advice. I went skiing. In what other fair-sized city can you exit your driveway at 1 p.m., make the tough decision of choosing among three ski areas in your neighbourhood, snap on the old Rossignols and be carving turns in the snow 30 minutes later?

I chose Grouse Mountain over our official Olympic venue, Cypress Bowl, because I wanted to check out a new high-speed quad chair christened by our Premier in September. It will escalate 2,000 skiers an hour to the peak of Vancouver. As media ran for cover, the Premier ignited a dynamite charge — symbolically, of course. Stuart McLaughlin says Grouse Mountain Resorts made this \$4 million investment because of the 2010 Olympic Games — tangible evidence of growing economic and recreational spinoff.

Sunday was brilliantly sunny. Snow conditions were good. Over 2,000 other snowboarders, ice skaters, snowshoers and old-fashioned skiers such as myself were also following Dr. Kendall's advice. Somewhere in the crowd was the President of Singapore and his first lady.

Let's face the facts. As I slouched on the deck nursing a hot cider and watching the lights come on and the sunset behind Nanaimo, I realized we're spoiled rotten. With snow and mountains like this in our back yards — virtually everywhere in British Columbia — is there any reason to spend the afternoon watching television or playing Nintendo? Certainly not. Ski on, British Columbia.

[1410]

2004 B.C. WINTER GAMES  
IN PORT ALBERNI

**G. Trumper:** One week ago in Port Alberni we celebrated the 100th day of the countdown to the B.C. Winter Games, which will be held at the end of February in Port Alberni, with the lighting of the torch.

The city of Port Alberni is the only city in British Columbia to have hosted all four B.C. Games. We had the opportunity to host the 1992 B.C. Summer Games, the 1995 B.C. Disability Games and the 1998 B.C. Seniors Games, and we'll soon host the 2004 B.C. Winter Games. If we had a little bit more snow, we might even host the B.C. northern games. More than 2,400 participants are expected to take part in this year's Winter Games, and we have always had enough volunteers to enable the games to be a success in our valley.

An addition to the B.C. Winter Games will be the B.C. Olympic youth leadership academy. The program is an ideal platform to provide leadership experience for students who have a commitment to sport. The B.C. Games are about bringing communities together. They are about instilling pride into our city and boosting our local economy. It's about our youth and providing them with a positive, healthy experience that would leave an impression for a lifetime.

I am looking forward to the opening ceremonies for the 2004 B.C. Winter Games, and I hope all members of the House will have the opportunity to take in some of the festivities.

**Mr. Speaker:** That concludes members' statements.

### Oral Questions

#### PUBLIC RELEASE OF B.C. RAIL-CN RAIL AGREEMENT

**J. Kwan:** For days now one Liberal backbencher after another has got up to say how wonderful it feels to break their promise not to sell B.C. Rail. The session was extended so Liberal MLAs could have a group hug on B.C. Rail. British Columbians...

Interjections.

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

**J. Kwan:** ...have no idea what these Liberal backbench MLAs are talking about, because they have not been let in on the details of the agreement with CN. Can the Minister of Transportation tell us which members of the Liberal caucus were shown the agreement with CN? Can she explain why the public has been shut out?

**Hon. J. Reid:** This agreement with CN has got so many benefits for this province, so many benefits for the north. Most everybody understands that. In fact, I believe it's the NDP's new leader, Carole James, who

said just this morning, in respect to this: "I think everyone appreciates the money that's coming to the north." Everyone.

Interjections.

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

**J. Kwan:** What the Minister of Transportation didn't say is that Carole James is on record saying that the selling of B.C. Rail is a bad deal for British Columbians and is a broken promise and a sellout for the Liberal Party.

Interjections.

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

**J. Kwan:** The deal to sell B.C. Rail breaks a fundamental election commitment, but all that the Premier has provided to the public is a bunch of press releases and bad spin for the backbench MLAs. Now we're debating legislation that says nothing, because the only people, as we understand from this morning, that are allowed to see the CN deal are a few special Liberal MLAs. Again to the minister: why should British Columbians have less access to information than a few of the special Liberal MLAs on the B.C. Rail deal?

[1415]

**Hon. J. Reid:** The details of this agreement have been published. They've been expressed, and they are so numerous. Just for the members' benefit — they don't seem to understand this — I'll be glad to reiterate some of those.

We're going to see 600 new railcars on the B.C. Rail system. We're going to see a new gateway proposal, where we're going to see better synergies. We're going to see a Chicago express that goes from Prince George to Chicago, cutting the time off. We're going to see the reopening of a line that's very important to the people of the Peace River country. We're going to see investment in the rail line. We're going to see a new wheel shop for Prince George. These benefits go on and on and on. Again, the people of the north, including Carole James, do believe that everyone appreciates the money.

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

**J. Kwan:** The minister only knows spin, and she's spinning as best she can. The government, the Premier, promised openness and accountability. British Columbians have a right to know what's in the contract the Premier has signed on their behalf. If the Premier wants British Columbians to trust him, he should have the courage to make the agreement with CN public. If he should have the courage to share the deal with his

own caucus members — who, one by one, have been singing his praises without knowing what's in it — then the contract should be released today.

Again to the minister — she sings the praises herself: prove it in this House. What is she hiding from the public? What is she hiding from her own MLAs? Why won't she release the contract today?

**Hon. J. Reid:** Mr. Speaker, for brevity's sake, which I know you appreciate, today in the committee stage debate I went over a whole list of the benefits that are embedded in contract. The member certainly can look at the *Hansard* for that entire list, and it is a long list. This morning we also went over the exhaustive process that has taken place, including the hard work and oversight of MLAs up and down along that line. We have been very clear that everything that is not sensitive commercial information will be released when the final deal is signed, subject to the...

Interjection.

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

**Hon. J. Reid:** ...competition bureau review, as again was thoroughly examined this morning in committee stage debate.

**J. MacPhail:** The minister said this morning that the legislation didn't have anything to do with the contract. In fact, she was really objecting to having to answer any questions. She said the legislation has nothing to do with the contract. Lord knows how much it's costing to keep the Legislature open so that frustrated backbench MLAs can jockey for that handful of cabinet posts the Premier is going to dole out next week. We see some really just wanting to get up there and prove their worth. Maybe this whole two days has been about the prize for the best lap-dog defence of the broken promise. If that's the case, the member for North Island is a shoo-in for cabinet. [Applause.] You betcha. He's a shoo-in. Yep. He's never seen the agreement.

Interjections.

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

**J. MacPhail:** He said he issued a news release saying that B.C. Rail doesn't have anything to do with his riding and that there won't be any benefit, but he's behind it 100 percent. Yes! Him for cabinet! Him for cabinet! That's the kind of quality of cabinet minister this Premier wants.

Interjections.

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

**J. MacPhail:** But without the agreement...

Interjections.

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

[1420]

**J. MacPhail:** ...it's all just an embarrassing spectacle and a waste of time. This morning the minister said she shared the contents of the deal with a few select Liberal MLAs, at least one mayor and maybe some shippers. She really wasn't sure about that. If they have a right to see the deal, so should everyone else. All we're asking the minister to do is show the same courtesy to her colleagues — all of those who have not yet seen the deal — and to the public. Make the deal public.

Interjection.

**Mr. Speaker:** Order.

**J. MacPhail:** Why is she refusing to do that?

**Hon. J. Reid:** The agreement that we have with CN — the benefits that have been listed.... Some of those are embedded in contract. Others are in legislation that is before the House at this point in time. Some of it is before the federal government because it pertains to their legislation. Again, that's all discussed in committee stage. The sensitive commercial aspects of this agreement will be protected, as is usual in these kinds of transactions. All the legal wording that supports a contract, other than that information, will be made public. I think that is clear for all of the House, and everyone can stand on that.

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

**J. MacPhail:** Clearly, some MLAs are more special than others, and the member for North Island is trying to be more special than others. He just ain't making it. I can hardly wait to see how B.C. Rail...

Interjections.

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

**J. MacPhail:** ...which has nothing to do for him...

Interjections.

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

**J. MacPhail:** ...is good for his riding.

Interjections.

**Mr. Speaker:** Hon. members, order.

**J. MacPhail:** The leader of the NDP said — and the minister knows it — that because of the terrible economic circumstances, the communities in the north welcome the money, but the Liberals are doing it the

wrong way by selling off B.C. Rail. That's exactly what was said, and she's right. The minister knows that.

Some MLAs get to see the deal. Others don't. Every British Columbian will just have to take the Premier's word for it. My gosh, Mr. Speaker, the cabinet didn't even approve the final deal. For the benefit of the Liberal backbench and, actually, the cabinet.... Maybe just the ones that are on their way out didn't approve it. But for the benefit of those who still have to sit in the Liberal caucus, the Liberal backbench, and who haven't seen the deal yet, and most importantly of all, for British Columbians who think they're getting the raw end of this deal, why is the minister hiding behind process that she doesn't even fully understand? Why doesn't she just release the deal?

**Hon. J. Reid:** That member is absolutely wrong in suggesting that cabinet didn't approve the deal. Cabinet did approve the final deal. It's unfortunate that something so simple could be misunderstood. Cabinet absolutely approved the final deal.

Interjection.

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

**Hon. J. Reid:** It was pending the agreement to that deal of CN, who agreed to that on the 24th — that is, final approval of the final deal. I'm not sure yet why this member does not understand or appreciate \$1 billion for the benefit of British Columbians.

#### PAYMENT OF FEES TO B.C. COLLEGE OF TEACHERS

**P. Nettleton:** I have a question...

Interjection.

**Mr. Speaker:** Order.

**P. Nettleton:** ...to the Minister of Education. In Prince George there are about 700 teachers who are in jeopardy of being forced from their classrooms due to Bill 51 and the dissolution of the College of Teachers. This follows 14 school closures and education funding shortfalls amounting to some \$15 million.

[1425]

I've spent five years in opposition, working with this member, opposing a government that we agreed had become increasingly arrogant and contemptuous. Sadly, actions of the minister to date suggest that that which she once loathed, she now typifies. Will this minister do the right thing and commit today on behalf of parents, communities, students and trustees to turn from confrontation and to begin working honestly with teachers, instead of holding them in contempt merely because she believes public opinion is on her side? Will this minister respond to concerned parents in these communities who are wondering when stability will be restored to the K-to-12 system and comment on how

she plans to resolve the situation, in which thousands of B.C. teachers have refused to pay their college fees?

**Hon. C. Clark:** You know, it's always easy on the last day of question period to stand up and engage in name-calling, I suppose, and start using that kind of...

Interjection.

**Hon. C. Clark:** What's really....

Interjection.

**Hon. C. Clark:** On the last day of session to stand up and reduce this kind of a debate to that kind of language.... But I will say this....

Interjection.

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

**Hon. C. Clark:** But I certainly will be happy to answer the member's question, no matter how he's chosen to pose it, and that is to say this. We will make sure that this dispute does not affect children in the classroom, because what's important here.... The independence of the college is important. The right of parents to be able to complain about what's happening in the system is important. Standards for teachers are important. All of those things are important.

But this dispute is a dispute between adults. And like all disputes between adults, we need to make sure that they don't affect kids in the classroom. That is something that I stood for every time I had the opportunity when I sat on that side of the House, and it's something that I stand for today.

Interjections.

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

#### MARITIME MUSEUM

**J. Bray:** My question is to the Minister of Community, Aboriginal and Women's Services. Victoria's Maritime Museum provides an important public service in my riding, as well as maintaining one of the largest maritime displays in North America. It's also a significant part of the cultural precinct here in the capital and provides a major tourism opportunity for Victoria. Media reports concerning the future of the Maritime Museum have caused some concern in my community.

Interjection.

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

**J. Bray:** Additionally, as the museum does have one of the largest collections of maritime assets in North America, there is a concern about the potential loss of these cultural assets.

Can the Minister of Community, Aboriginal and Women's Services explain what action is being taken to help the Maritime Museum continue to be a cultural anchor in our community?

Interjection.

**Hon. G. Abbott:** I appreciate the Leader of the Opposition pointing out that there's actually a scale model of the first fast ferry in the Maritime Museum. That fact alone, Mr. Speaker, leads me to be concerned about the future of that institution.

Seriously, though, we have had a couple of very good meetings with the Maritime Museum in the last couple of weeks. I think what I'm seeing from the Maritime Museum and its board is certainly a recognition of some of the challenges that they face.

The principal challenge, in fact, is that we have seen dramatically declining admissions or attendance at the Maritime Museum over the past decade. I think the board has come to the realization that the location of the Maritime Museum is one of the issues that they need to address.

Interjection.

**Hon. G. Abbott:** What impressed me, Mr. Speaker — apart from their tenacity, which is similar to the member across the way — is that they are very enthusiastic about the future. They are looking at what I think are some alternative venues that they are excited about.

[1430]

I'm looking forward to working with the Maritime Museum to try to see that, in fact, the Maritime Museum can continue to be a great amenity, a great attraction for the city of Victoria, for the province of British Columbia — including that scale model of the fast ferry, which I know we all covet.

[End of question period.]

### Reports from Committees

**B. Locke:** I have the honour to present the first report of the Select Standing Committee on Finance and Government Services for the fourth session of the thirty-seventh parliament, respecting contingency funding for statutory officers.

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

Motion approved.

**B. Locke:** I ask leave of the House to permit the moving of a motion to adopt the report.

Leave granted.

**B. Locke:** I move the report be adopted, and in moving the adoption of the report, I wish to make the following comments. The Select Standing Committee on Finance and Government Services, of which I am

the Chair, met earlier this year with the chief electoral officer to consider his request for reimbursement...

Interjections.

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

**B. Locke:** ...of the costs incurred under the Recall and Initiative Act, in administering eight recall petitions during the first three months of the current fiscal year. On June 12, 2003, the committee recommended that the sum of \$310,000 be paid out of the consolidated revenue fund to Elections B.C. for these recall expenses. As the Legislative Assembly was not in session at the time, the report was deposited with the Clerk of the House, and I now present it to the Legislative Assembly.

Motion approved.

**J. Les:** I have the honour to present the second report of the Special Committee on the Citizens' Assembly on Electoral Reform for the fourth session of the thirty-seventh parliament.

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

Motion approved.

**J. Les:** Mr. Speaker, I ask leave of the House to permit the moving of a motion to adopt the report.

Leave granted.

**J. Les:** I move that the report be adopted, and in moving the adoption of the report I wish to report to the House that the work of the Citizens' Assembly initiative is well underway. The special committee has confirmed an impressive group of senior staff appointees. They in turn have been hard at work laying the groundwork for the work of the Citizens' Assembly itself commencing early in January.

Delegate selection meetings have been conducted in all 79 ridings across the province. These have been well-organized and exciting events, the excitement only dampened by the disappointment of those who were not selected to be part of the assembly. This groundbreaking initiative in potential democratic reform has already intrigued many students of democracy across this country and abroad. British Columbians will be watching with great interest in the year ahead as the Citizens' Assembly conducts its deliberations.

Motion approved.

### Tabling Documents

**Mr. Speaker:** Hon. members, I have the honour to present the auditor general's *Strategic Direction and Funding Proposal — December 2003*.

**Hon. G. Collins:** I have the honour to present the annual report for 2003 of the Legislative Assembly pension plan.

**Hon. G. Collins:** By leave, I would like to move three motions to charge three legislative committees.

The first is a special committee to be appointed to appoint an individual to be the public service employee relations commissioner, the said members of the special committee to be John Les, convener; Ms. MacPhail; Mr. Hawes; Mr. Hunter; Ms. Locke; Ms. Orr and Mr. Harris.

Leave granted.

#### Motions without Notice

##### APPOINTMENT OF SPECIAL COMMITTEE TO APPOINT A PUBLIC SERVICE EMPLOYEE RELATIONS COMMISSIONER

**Hon. G. Collins:** I move the motion. It's in the hands of the opposition and the Table as well.

[That a Special Committee be appointed to select and unanimously recommend to the Legislative Assembly, (pursuant to section 5 of the Public Service Act, R.S.B.C. 1996, c.385) the appointment of an individual to be the Public Service Employee Relations Commissioner, Deputy Minister responsible for the Public Service Employee Relations Commission and to hold office as the Merit Commissioner for the Province of British Columbia, and that the Special Committee so appointed shall have the powers of a Select Standing Committee, and is also empowered:

- (a) to appoint of their number, one or more subcommittees and to refer to such subcommittees any of the matters referred to the Committee;
- (b) to sit during any period in which the House is adjourned, during the recess after prorogation until the next following Session and during any sitting of the House;
- (c) to adjourn from place to place as may be convenient; and
- (d) to retain such personnel as required to assist the Committee;

and shall report to the House as soon as possible, or following any adjournment of the House, or at the next following Session, as the case may be; to deposit the original of its reports with the Clerk of the Legislative Assembly during a period of adjournment and upon the resumption of the sittings of the House, the Chair shall present all reports to the Legislative Assembly.

The said Special Committee is to be composed of

John Les, Convener  
Joy MacPhail  
Randy Hawes  
Mike Hunter  
Brenda Locke  
Sheila Orr  
Roger Harris]

Motion approved.

[1435]

##### POWERS OF HEALTH COMMITTEE

**Hon. G. Collins:** I seek leave to move a motion to empower the Select Standing Committee on Health to examine, inquire into and make recommendation with

respect to finding effective strategies to change behaviour and encourage people to adopt lifelong health habits that will both improve their health and sustain the health care system.

[That the Select Standing Committee on Health be empowered to examine, inquire into and make recommendations with respect to finding effective strategies to change behaviour and encourage people to adopt lifelong health habits that will both improve their health and sustain the health care system.

1. Conduct consultations and report on recommendations from the Select Standing Committee on Health Reports from 2001 and 2002.

Investigate other successful health promotion campaigns in other jurisdictions to analyze their potential effectiveness in BC.

Undertake discussions on how to promote "healthy lifestyles" including the appropriate use of incentives and disincentives to help influence public behaviour.

2. Determine any potential financial savings to the Health Care system as a result of improved fitness of the general population and children and youth in particular.

In addition to the powers previously conferred upon the Select Standing Committee on Health and Social Services, the Committee shall be empowered:

- a) to appoint of their number, one or more subcommittees and to refer such subcommittees any of the matters referred to the Committee;
- b) to sit during a period in which the House is adjourned and during any sitting of the House;
- c) to adjourn from place to place as may be convenient;
- d) to retain such personnel as required to assist the Committee;

and shall report to the House no later than March 31, 2004; to deposit the original of its reports with the Clerk of the Legislative Assembly during a period of adjournment and upon resumption of the sittings of the House, the Chair shall present all reports to the Legislative Assembly.]

That motion is also in the hands of the Table and the opposition.

Leave granted.

Motion approved.

##### POWERS OF EDUCATION COMMITTEE

**Hon. G. Collins:** Finally, I seek leave to move a motion to empower the Select Standing Committee on Education to investigate measures to improve access, choice, flexibility and quality in public education and additional measures to strengthen our network of colleges, institutes and on-line learning throughout the province.

[That the Select Standing Committee on Education be empowered to examine, inquire into and make recommendations on the following matters:

1a) To follow up on the 2002 recommendations of A Future for Learners: A Vision for the Renewal of Education in British Columbia; and, in particular;

b) Based on the 2002 recommendation for a process for public post-secondary institutions to report back to the Select Standing Committee on Education on the enhanced tuition revenues to benefit students, the Committee is hereby empowered to request and receive

reports on this matter from public post-secondary institutions.

2. The Committee may consider any other matters referred to the Committee by the Minister of Education and the Minister of Advanced Education.

3. The Committee shall prepare a report no later than April 30, 2004 on the results of this review.

In addition to the powers previously conferred upon the Select Standing Committee on Education, the Committee shall be empowered:

- (a) to appoint of their number, one or more subcommittees and to refer such subcommittees any of the matters referred to in Committee;
- (b) to sit during a period in which the House is adjourned and during any sitting of the House;
- (c) to adjourn from place to place as may be convenient;
- (d) to retain such personnel as required to assist the Committee;

and shall report to the House as soon as possible, or following any adjournment or at the next following Session, as the case may be; to deposit the original of its reports with the Clerk of the Legislative Assembly during a period of adjournment and upon resumption of the sittings of the House, the Chair shall present all reports to the Legislative Assembly.]

Leave granted.

Motion approved.

#### Orders of the Day

**Hon. G. Collins:** I call Committee of the Whole for consideration of Bill 97.

#### Committee of the Whole House

##### MUNICIPALITIES ENABLING AND VALIDATING (No. 3) AMENDMENT ACT, 2003

The House in Committee of the Whole (Section B) on Bill 97; H. Long in the chair.

The committee met at 2:37 p.m.

Section 1 approved.

Title approved.

**Hon. G. Abbott:** I move that the committee rise and report the bill complete without amendment.

Motion approved.

The committee rose at 2:38 p.m.

The House resumed; Mr. Speaker in the chair.

#### Report and Third Reading of Bills

Bill 97, Municipalities Enabling and Validating (No. 3) Amendment Act, 2003, reported complete without amendment, read a third time and passed.

**Hon. G. Collins:** I call Committee of the Whole for consideration of Bill 89.

#### Committee of the Whole House

##### BRITISH COLUMBIA RAILWAY (REVITALIZATION) AMENDMENT ACT, 2003 (continued)

The House in Committee of the Whole (Section B) on Bill 89; H. Long in the chair.

The committee met at 2:40 p.m.

On section 1 (continued).

**P. Nettleton:** I have a number of straightforward questions to the minister for my own information, tied directly to section 1, the definitions section. Perhaps the minister could assist me in terms of getting some information.

I noticed with interest discussions with respect to properties that may — in fact, I expect will be... There's reference made to subdividable properties, which means there are some properties that will be subdivided at some point and presumably sold or somehow disposed of. I know the properties, as they relate to B.C. Rail or what was once B.C. Rail, are certainly considerable. I know this is kind of a general question, and perhaps it's not specific enough, but what is the nature and extent of BCR properties outside of those lands designated as rail corridor? Perhaps the minister could comment on that, please.

**Hon. J. Reid:** There are hundreds of these properties. Some of them are vacant, and some of them are occupied by commercial tenants.

**P. Nettleton:** Are these properties outside of the rail corridor all to be disposed of in some fashion following the finalization of this agreement?

**Hon. J. Reid:** The answer to the question is yes. These properties could go to communities; they could go to first nations; they could go to the tenants that are occupying them. In some cases, they could be returned to the Crown, if there isn't any active interest in them at this point in time.

**P. Nettleton:** That's very interesting, and I expect there would be a great deal of interest in terms of getting some sense as to where those properties are, the extent of those properties, the nature of those properties and also some time line for disposal. I wonder if perhaps the minister could assist not only myself but others in terms of when information might be made available with respect to the properties that will at some point be available for disposal, for sale — some sense of the time line, how the process works in terms of having some sort of information with respect to the

disposal of those properties — all of which would be very helpful.

[1445]

**Hon. J. Reid:** We anticipate that within the next six months, we'll have a fully engaged process in place. Right now we have had preliminary discussions with first nations, communities, tenants who have expressed interest in certain parcels of property. Those decisions won't be made until there's a fuller understanding of what the interests are. We can expect six months to get that process in place, and then I would anticipate up to 24 months before we see the completion of that.

**P. Nettleton:** I'm wondering if the minister has any sense as to the value of the properties that will be disposed of at some point in the future — some estimate as to the values — and also some sense beyond that as to where it is the moneys derived from the proceeds of those sales would be directed.

**Hon. J. Reid:** We have an estimate on those properties as being \$100 million. Those properties will be held in BCRC. That's the Crown corporation which, as we move forward, holds the land, holds the railbed, etc. So those proceeds will go there. That is the Crown corporation. Any decision on those proceeds, the expenditure of those proceeds, has not been made to date and would have to be made at some time in the future.

**P. Nettleton:** One final question for me, at least, on section 1. Within the context of municipal taxation and taxes flowing to municipalities as a result of this transaction — assuming, then, that BCR lands are subdivided and sold outside of the rail corridor — will this have any impact on municipalities and CN with respect to municipal taxation? Or does this have no bearing on that at all?

**Hon. J. Reid:** The answer to that question is that those properties are outside the estimate of the municipal taxation — the revenues that they're going to receive.

**J. MacPhail:** What is the value of the lease, and what are its terms?

**Hon. J. Reid:** Mr. Chair, we left off this morning.... The member had put a question forward with regard to the proceeds of the B.C. Rail agreement. I just wanted to be able to make sure that I had fully answered that question, had that opportunity, put that on the record, because I do believe this is very exciting news for the communities across the north and across this province.

[1450]

There is going to be a \$135 million northern development initiative, and that includes \$25 million operating endowment; \$60 million divided equally to four regions, \$15 million each to Prince George, the Peace, the northwest, the Cariboo-Chilcotin, including Lillooet; and \$50 million for a general trust to support

cross-regional investments. In addition to that, there's going to be another \$15 million for first nations for their benefit as well.

I just wanted to make sure, because of a discussion this morning of what was in contract and what wasn't in contract.... That is certainly being published by the government as the commitment moving forward on the proceeds. I just wanted to make sure that question had been answered. I'm quite happy now to take the member's following question.

**J. MacPhail:** Well, let's just finish up on that, then. Those commitments are not part of any deal with CN, though. Is that correct?

**Hon. J. Reid:** Those commitments are because of a deal with CN.

**J. MacPhail:** Does that mean that the \$4 million to the airport that the government has been promising forever wouldn't have gone ahead without the CN deal? That promise has been there from this government to the airport of Prince George for a long time. Is that what it is? It's a zero sum? The only thing the north gets now is money out of this deal, and anything else they've been promised by their backbench MLAs is a no go? How is that a gain for the north? What percentage of the CN proceeds goes into the communities?

**Hon. J. Reid:** I did leave out some of the expenditures that the province is making. The member does talk about \$4 million to Prince George Airport — a wonderful opportunity to make that into an international airport. That had not been agreed upon previously. The member might or might not know that there are a lot of airports across this province looking for funds for growth, for opportunities. This was a wonderful opportunity.

This is about transportation. As well, there's \$17.2 million from the province going to Prince Rupert to support the container development initiative there. These are transportation improvements that will have far-reaching and long-lasting effects upon the economy of the north, producing all sorts of synergies that the people in this House representing their constituencies can realize, can recognize.

In fact, the member for North Island, I believe, gave a very good example of somebody with some vision, somebody with confidence in the future of B.C., somebody looking for opportunities instead of somebody looking to be negative. The dollars that will flow into the province — the \$1.5 billion — are going against the debt, and the government gets to make the decision on those remaining proceeds. Some of them have already been committed, as I said, and some have yet to be committed.

**J. MacPhail:** Actually, what the member for North Island said was that maybe it will help if there's a cruise ship terminal — well, he didn't even make that clear — between Prince Rupert and his community.

The link was completely manufactured. It had nothing to do with B.C. Rail, had nothing to do with CN and was pretty much wishful thinking. But, hey, good on him. Any audition to get into cabinet is good, I guess.

What percentage of the proceeds is going into the communities as the minister has just listed?

**Hon. J. Reid:** I believe this is straightforward: \$1 billion in proceeds. The government gets to make the decision on those proceeds. The government has decided \$500 million — perhaps \$502 million — goes to pay down the debt. Then the government gets to make the decision on the remaining dollars. The government has made a number of commitments with regard to those proceeds, with more commitments to come in the days and months ahead.

**J. MacPhail:** I know why the minister never wants to answer these questions. It's because they're embarrassing for her. The announcements they made related to spending in the north, which have nothing to do with the CN deal and aren't guaranteed by any stretch of the imagination, are less than 17 percent of the proceeds of the sale of B.C. Rail.

[1455]

Let's be clear. When the minister said this morning... When I asked what sort of guarantee there is for the airport to be developed, she said: "Because the government said it would do it." Well, we got a flood of e-mails — from Prince George, it turns out. I'm not sure why. They said: "Ask her about her commitment not to sell B.C. Rail." That commitment about investing money in the north and four bucks will get you a cup of Starbucks coffee — not at the Prince George Airport. So let's just see....

Let's just talk about the port authority now at Prince Rupert. The government has committed \$17 million. What's the total cost of developing the port at Prince Rupert?

**Hon. J. Reid:** While I thoroughly believe in the development of Prince Rupert as a gateway port and the opportunities for containerization, I do not have all the material available to me. I did prepare to come here and talk about the legislation today, and I'm quite happy at some time in the future.... If this member is not familiar with those opportunities, never received a briefing from the port authority in Prince Rupert, which would be a shame at this point in time.... If the member does not understand what's at stake and all the work that's gone into developing that proposal and the different steps engaged in that, we are happy to provide that information.

I do believe that today we are looking at specific legislation that enables the completion of an agreement between B.C. Rail and CN. It talks about the port subdivision. It talks about consolidating the land values to protect the railway, the corridor, the rights-of-way and lines in government's hands. So if the member doesn't have that information and would like it, I'm quite happy to set up that briefing for her.

**J. MacPhail:** Well, in fact, that's why we're here. Or is that not why we're here? For the minister to answer questions about the deal that her government packaged up in a nice, expensive presentation, and now she doesn't want to answer questions.

It was her government that linked all of this together, not anyone else. It was her Premier that went over there and spent more than 50,000 bucks on a presentation that said: "Here's why this deal is so good." And now the minister doesn't want to answer questions? Now that we've extended the session for tens of thousands of bucks, she doesn't want to answer questions? What? Is all the glory over from the silly little second reading statements made on non-information from the back bench?

Here's the reason why I'm asking: because the minister justifies the sale of B.C. Rail. And by the way, it was the minister that changed the title to British Columbia Railway (Revitalization) Amendment Act, 2003. There's nothing that exists that they're amending to that, so it was she who added the word "revitalization." I'm trying to figure out where the revitalization is.

One of the great examples she gave was the Prince Rupert port. Well, it turns out that the Prince Rupert port expansion will be in direct competition with the Roberts Bank container expansion project. I received a letter from the Vancouver Port Authority, which runs the Roberts Bank container expansion project, just last week, saying how hard they were working to expand.

So I investigated to see who they were in competition with. They're looking for Canadian exports, so it's a zero-sum game. This revitalization scheme related to Prince Rupert is a zero-sum game. What will go through Prince Rupert now won't go through Delta Port. So the government again is claiming all sorts of benefits from a deal that simply aren't there. The benefits aren't there. No wonder the minister doesn't want to answer the questions.

[1500]

Mr. Chair, part of this is about the revitalization agreement, which is contained in section 1. That's all I'm trying to find out about: how's the revitalization going to occur? Well, we're not going to get any answers about how it's going to occur through the Prince Rupert Port Authority. Let me just put on the record, Mr. Chair, that 17 million bucks for the Prince Rupert port ain't going to be even a third.... Oh, it'll be a third of the money.

I guess the minister's just counting on that money flowing from the federal government, but the federal government is also being asked to invest in Roberts Bank. If the federal government does flow money to Prince Rupert, it will be at the expense of Roberts Banks, and there won't be one iota of increased economic activity as a result of this CN deal — not one. It's a zero-sum game. That's why it makes a mockery of the title "revitalization agreement."

My question was on the lease. Can the minister tell what the value of the lease is, over what term?

**Hon. J. Reid:** It is so telling, this member's pessimism about this province. Her absolute refusal to be-

lieve in the potential of British Columbia and her refusal to believe there can be growth in this province.... She fulfilled this when they were in government.

We believe there are opportunities for growth. We are searching them out. We are looking for them. We believe there's growth for Roberts Bank. We believe there's potential for Prince Rupert. We believe there are grain shipments and containerization. We believe there is opportunity.

That member doesn't want the revitalization of British Columbia. That member is totally against growth in British Columbia. That member is not interested in seeing this province grow, expand and do well economically for her own political interests. We are interested, and we care about this province.

With this agreement we are able to take a railway that was shrinking, Mr. Chair. We shrunk it on purpose to contain the leakage of the costs. We contained it so that it could function strictly as a freight railway business. But we weren't able to invest in it, so the revitalization is a company that believes it will put a billion dollars on the table in British Columbia to make sure it grows that business. They want to invest in it, and they believe in its potential. We weren't able to do that as taxpayers. That's the revitalization of the railway that this member refuses to accept and acknowledge and that everyone out there sees the potential of.

The opportunities for the other proceeds, in looking at other initiatives — whether it be an airport, whether it be the port, whether it be...

Interjection.

**The Chair:** Order, members. Order, members.

**Hon. J. Reid:** ...the \$135 million to the northern communities, where they get to make their own decisions and are able to invest in their communities.... She's belittling the amount of \$135 million. I am absolutely frustrated and concerned that she would not think this is a benefit to communities, because the communities understand it's a benefit.

To answer the last part of her question with regard to the value of the lease, the value of the lease at this point in time — and I listed earlier this morning the different influences on that value — is \$150 million. The term is 60 years with a 30-year renewal.

**J. MacPhail:** Perhaps if the member for Prince George–Mount Robson had actually campaigned on what the Minister of Transportation just said, maybe we wouldn't be having this debate now. But she campaigned on saying they weren't going to do what they're just doing right now.

[1505]

Let's be clear. This government doesn't have one piece of new financial information that they didn't have during the election. During the election they said: "We're not going to sell B.C. Rail." The member for Prince George–Mount Robson got elected on that basis, so it ain't me being cynical. It's the voters out there being cynical, wanting to know why the government flip-

flopped on their promise, and all they get in Prince George is a measly 27 million bucks.

Interjections.

**J. MacPhail:** A measly 27 million bucks — exactly.

**The Chair:** Order, members. Order.

**J. MacPhail:** In the 1990s...

Interjections.

**The Chair:** Order, members.

**J. MacPhail:** ...Prince George had invested in it almost a quarter of a billion dollars — a quarter of a billion dollars — and this government wants credit for investing 27 million bucks.

Interjections.

**The Chair:** Order, members.

**J. MacPhail:** It's the cynicism created around this government misleading the voters during the last election, and this minister feels frustrated that she has to answer questions.

We have a \$150 million lease for 60 years, and it's CN's option to extend it for another 30. Is that correct?

**Hon. J. Reid:** Yes.

**J. MacPhail:** How much will the lease payments increase if CN exercises that option?

**Hon. J. Reid:** The \$150 million would be for the 90-year period. At the end of 60 years there is an opportunity for them not to continue on with the agreement, but the \$150 million would include the 90 years, if they so choose.

**J. MacPhail:** Okay, so we have a 90-year lease where CN pays \$150 million for that. Let's say they take the full 90-year lease. You'd have to calculate the net present value of the lease, but at a minimum it's less than a couple of million bucks per year — probably closer to a million bucks a year on average — CN is paying to lease all of the tracks of British Columbia Rail all throughout British Columbia.

If CN exercises its use of those tracks during that 90-year period, who else gets to use it?

**Hon. J. Reid:** Through the RFP process, we are requiring CN to allow access for the tourism trains, and that's part of the contract as we move ahead. There is nothing that would prevent CN allowing others usage of the tracks under circumstances they would arrange.

**J. MacPhail:** But it's CN that gets to determine that use, not taxpayers. Is that correct?

**Hon. J. Reid:** It is CN that has the operating rights. That's what we wanted — to have an entity to take on the operation of the B.C. Railway, to invest in the B.C. Railway, to grow the business of the railway transportation sector in British Columbia. That indeed is the outcome that we have wanted all along, in response to the member's earlier statement. That is how we are revitalizing the rail transportation sector in British Columbia.

[1510]

**J. MacPhail:** So CN has exclusive rights to the use of the rail property and rail lines for 90 years at an average of less than \$2 million a year, yet the Premier still insists: "Oh no. British Columbia owns the right-of-way and owns the railbed." Well, for all intents and purposes, it's got zero value attached to it for British Columbians. CN has the lease. It's up to them to extend it or not. They have a veto on use of the track, and they get the profits from the use of that. So I don't know why the Premier still insists that there's anything in this for British Columbians.

I was corrected. I was very taken aback when I was told that the 7 percent reduction that CN is guaranteeing in fees charged, on average, only applies to interline. Now, of course, the documents do say that — interline shipments. But what the documents don't say is that 60 percent of B.C. Rail's business isn't interline shipping. It's intraline shipping, and that has no price guarantee attached to it whatsoever. Am I correct?

**Hon. J. Reid:** Mr. Chair, I believe there were two questions in there. One, in talking about the value of the lease, it's important for a reasonable person to understand that those tracks, without trains running on them, don't have much of a value to the province. What's important, what's valuable are the operations on those tracks, and that indeed is what this agreement is all about.

It's also important to realize that those tracks and those lines have to be returned to the province in the state they originally are used today. That is going to require, on today's financial terms, a \$40-million-a-year investment. So the member, if she wants to use that math of multiplying those kinds of figures as the years go ahead — as she's dividing the lease figures into the years — certainly realizes that there is a lot more investment and a lot more value. The value to British Columbia is also in the growth of this business, and that is a huge asset and value.

The other question was with regard to the shippers and their prices. First of all, it's important to note that the existing contracts are all honoured, and for the shipments that travel within B.C., their competition is mainly with the trucking industry. That puts them in a different situation. Their concerns were a different type of concern than the concerns of the shippers who take their goods and actually connect with other railway networks outside of B.C.

**J. MacPhail:** Clearly, the minister thinks she can just use this as an opportunity to use her spin without

answering my question, so I'll just assert it as the truth, because she didn't challenge it. When all these Liberal backbenchers stand up and say, "The interline shipping has an average reduction in price of 7 percent," that only refers to 40 percent of B.C. Rail's business. Fully 60 percent of B.C. Rail's business has no guarantee of reduction of shipping costs whatsoever.

The minister keeps on saying that the competition, now that CN has a freight rail monopoly in this province, will be with intermodal services. Does CN run any intermodal freight services in this province?

**Hon. J. Reid:** Yes.

[1515]

**J. MacPhail:** Yes. In fact, CN runs quite a substantial intermodal freight service in this province, and yet the minister is somehow saying: "Oh no. There will be lots of competition." Yeah. So we give CN a monopoly of freight rail traffic in this province, and then we expect that the way that the monopoly won't be exercised as a disadvantage to shippers is because they'll be competing with intermodal freight services. Turns out that the biggest intermodal freight service in the province is owned by CN. Gee, how's that going to produce a nice competitive situation? I didn't hear anybody in the Liberal caucus talking about that.

Let's just look at the definition of railbed assets, which is in section 1. Railbed assets are defined in section 1. I gather that the reason why railbed assets are there is because this is what the Premier rests all of his hat on that he's not breaking a promise he made during the election. This is what the government retains ownership of.

Looking at subsection (c), it states: "...all works of infrastructure under the control or ownership of the BC Rail Partnership, a subsidiary of the company or the revitalization rail operator that support the safety, security and operating integrity of the railway track, including, without limitation, cuttings, embankments, drainage works, bridges, tunnels, culverts, retaining walls, works of stabilization, signals and detection devices and at-grade road crossings and signals."

Given that definition, who actually is responsible for the safety and operating integrity of the track?

**Hon. J. Reid:** The revitalization rail operator would be.

**J. MacPhail:** So even though all those things are defined as railbed assets — and this is what the Premier uses to say B.C. still has some say in this — all of that for 90 years will be under the control of CN. Is that part of the contract that we can't see — the requirements there? Is that part of the...? What is it called now? I can't even remember the name of the agreement this morning — the agreement that's going off to the competition bureau.

**Hon. J. Reid:** The maintenance of the track and, as the member read out, what goes along with it are part

of the revitalization agreement, not the transaction agreement. It's the track, it is the land, and it's the right-of-way that are part of the revitalization agreement. The safety standards are all part of federal regulations and certainly are monitored.

**J. MacPhail:** CN is responsible for the upkeep of the rail lines, but the province owns them. What is the province responsible for in any of this?

**Hon. J. Reid:** The revitalization railway operator will be responsible for all the operations and all that is affected by those operations. When we get to section 6(51), we talk about some liabilities that the government will still have with regard to such things as environmental.... I'm not sure if the member would like to talk about that as we get to that part of the bill.

[1520]

**J. MacPhail:** Let's just be clear on this definition of railbed assets. The minister's using language.... I find it quite Liberalspeak for her to say the revitalization operator. It's CN, who now owns it. Why doesn't she just say that?

CN will be responsible for maintaining the railbed assets from beginning to end for 90 years. This government won't be investing one red cent in maintaining those. And 90 years from now, who will know whether the tracks will be returned in the condition in which this government sold them off?

Section 1 approved.

On section 2.

**J. MacPhail:** Section 2 adds 5.1, the port subdivision. The port subdivision is a 23-mile section of rail commencing near Cloverdale, B.C., and it ends at the Westshore Terminals at Roberts Bank coal terminal. Since 1970 the three major railway companies have held running rights on the port subdivision. Those are Burlington Northern, Canadian National — no, we're not allowed to call it Canadian National anymore; it has to be called CN — and the CPR. These running-rights agreements are for a 21-year term running from April 1, 1970, to April 1, 1991, with the right to renew for succeeding terms of 21 years. These terms of agreement were originally entered into between the railways and the British Columbia Harbours Board. They were then transferred from the Harbours Board to the railway when the railway acquired what is called the port subdivision in '83.

Pursuant to the running-rights agreements, CP Rail, CN and Burlington Northern have the right to handle their own traffic on this subdivision. Specifically, the user railways stack their own trains over the port subdivision, including switching and other ancillary movements required by their coal train or container train operations. Since April 1 of 1970 the railway has been responsible for managing and operating the port subdivision.

Article 6.3 of the port subdivision agreement between B.C. Rail and CP Rail provides, in part, that agreements are for terms of 21 years with the right of renewal. The unique character of the port subdivision agreement is reflected in the following abstract from the preamble to the agreement. I'm going to read it into the record:

"Whereas it is the desire of the government of Canada and the government of the province of British Columbia that Roberts Bank, British Columbia, be developed as a national port serving the whole of Canada.

"Whereas BCR and CP Rail agree on the principle that all parties involved in the development of Roberts Bank, British Columbia, as a national port shall be treated on a fair and equal basis, and that said principle shall apply to all railway companies that may serve Roberts Bank and related facilities now or in the future"

My questions flow from those "whereases," Mr. Chair, and the original agreement.

B.C. Rail currently employs 30 employees on the port subdivision. These are crews doing the track maintenance, the signal repair crews, the rail traffic controllers and the train supervisors at Roberts Bank terminal. There are 30 workers. Each railway company using the port subdivision pays their portion of the expenses depending on the number of trains. For instance, if CP ran 75 percent of the trains, they would pay 75 percent of the cost of the operation, the upkeep, the train control, etc. It is a cost-plus agreement between B.C. Rail and other railways. B.C. Rail owns, maintains and sometimes provides running crews on this section of track. All the costs are passed on to the private railway operators as they move their shipment to the port.

How much money does the port subdivision make for B.C. Rail on an annual basis, and where does that now flow?

[1525]

[K. Stewart in the chair.]

**Hon. J. Reid:** Those proceeds do flow into B.C. Rail's books, bottom line, but they aren't accounted for separately. They aren't separated out by the company. It's just part of the larger overall operation.

**J. MacPhail:** So what's the future of the port subdivision?

**Hon. J. Reid:** We do have an RFP issued right now for an operator for the port subdivision. It's important to note that before the RFP went out, we did meet with all the stakeholders who are involved in those operations — the people in the port, the people operating trains, etc. What we want to see here, once again, is a railway operator who is able to invest so as Delta Port expands, there is more investment put into that line. One of the main criteria of the RFP is that all users have equal access.

**J. MacPhail:** Well, it's a way of having equal access but still allowing for prices that aren't competitive. Will CN be allowed to bid on this sale?

**Hon. J. Reid:** The existing contracts will be honoured with regard to price going forward, and we are not prohibiting anybody from showing or expressing interest in this proposal.

**J. MacPhail:** Well, then I assume that the sale of the port subdivision will also have to go to the federal competition bureau.

**Hon. J. Reid:** We are getting that information with regard to the competition bureau and the port subdivision.

[1530]

I did want to respond to a comment made earlier by the member with regard to intermodal and intermodal operations. She said that CN does have intermodal trains that operate in B.C. Intermodal trains carry truck trailers or containers, so the trucking industry is still there. Just because a train can carry trucks doesn't remove the trucking industry that exists. That competition still exists, and I think the distinction is important to make — that an intermodal train has containers, truck containers or trucks, that actually travel on that train.

I will have the answer to the member's last question momentarily.

**J. MacPhail:** Could the minister please explain 5.1(2), which says: "A BCR collective agreement does not bind, and section 35 of the Labour Relations Code does not apply to, the Port Subdivision Subsidiary"?

**Hon. J. Reid:** This particular section ensures that B.C. Rail Ltd. employees remain with B.C. Rail Ltd. in order to make a distinction between the port subdivision. So while we have the....

And in response to an earlier question, the member was talking about why we don't just say CN is the revitalization rail operator. Obviously, we're looking for another operator on the port subdivision, and that's why I make the distinction.

We do believe it's important that the employees stay with B.C. Rail Ltd. That distinction is made so we can have a railway agreement, a separate process from that, because the railway operates quite separately, operates in a different format that is important to maintain and that we will be maintaining. So that's where we're making the distinction.

**J. MacPhail:** Mr. Chair, I'm going to predict that CN is going to buy the port subdivision as well. Call me crazy. I know the minister said I was crazy when I predicted that CN was going to win the B.C. Rail bid. Day after day she stood up in this House and said: "No, no, that's not the case." Well, I predict it is.

So the employees of port subdivision are now going to work for CN. Is that correct? What happens to their collective agreement? Let's be clear. B.C. Rail Ltd. is now CN. CN bought it lock, stock and barrel. What is the invocation of section 35 of the Labour Relations Code? What happens to these employees?

**Hon. J. Reid:** The current unionized employees — their certification, collective agreements — will remain with B.C. Rail Ltd., and that goes to the operator, which is CN.

**J. MacPhail:** What is the exemption from section 35 of the Labour Relations Code?

[1535]

**Hon. J. Reid:** While we are accessing some specific information, I want to go back to another question that was asked earlier with regard to the port subdivision and the competition bureau. Because of the size of this transaction, we don't believe it's automatically going to be reviewed by the competition bureau. They'll make that decision based partly on if there are shippers' concerns or not. This is a very different structure of deal, where access is going to be required on an ongoing basis and where the existing contracts are going to apply. Whether or not the competition bureau sees fit to review the port subdivision is not known at this time.

**J. MacPhail:** Sorry — did the minister say she was going to get back to me on section 35 of the Labour Relations Code? Yes.

Section 2 approved.

On section 3.

**J. MacPhail:** This section basically says that CN has no responsibility to provide rail service after a certain period of time. Much was made that this new partnership agreement would provide passenger rail service and freight rail service throughout the B.C. Rail line. However, this section would allow CN to abandon rail lines, just as was set out in a leaked CN Rail scenario document.

Let me ask this. There is a guarantee only for five years that CN won't abandon rail lines. After that, they can abandon rail lines as long as they go through the Canadian Transportation Act process. How can the government possibly guarantee passenger service if CN abandons rail service and maintenance south of Williams Lake, as has been part of their plan?

**Hon. J. Reid:** First of all, that is not part of their plan, but I think the member is misreading this section. This section is saying that the Crown corporation, the holder of the rail line, the holder of the right-of-way, does not have to provide the railway operations. I think that's a very important distinction to make here.

**J. MacPhail:** Well, I thought CN bought B.C. Rail Partnership. It did. It bought B.C. Rail Partnership completely. It says here: "...the company, any subsidiary, BC Rail Partnership or any person under the control of the company, any subsidiary or BC Rail Partnership may, but need not, provide rail service over all or any part of the lines of railway referred to in subsection (1)."

**Hon. J. Reid:** Once CN completes the deal and purchases the partnership units, there is no longer that partnership. Everything referred to here refers to government, refers to the government ownership. This does not refer to the revitalization railway operator. This all refers to the government.

[1540]

**J. MacPhail:** Well, how? Any subsidiary, the company.... Where does it possibly say it's government? We already know — CN announced — that it only has a service guarantee of five years. Is the minister somehow saying that this legislation protects against CN abandoning rail lines?

**Hon. J. Reid:** If we'd spent a little bit more time on definitions, this might be apparent. It's important in understanding this legislation that any reference to the company or its subsidiaries.... All of that refers back to government. The only time it refers to CN or the potential port subdivision operator is when the wording "revitalization rail operator" is used.

In discussing the other general question with regard to continued service on these lines, it has certainly been CN's intent to be able to grow that service. There are the provisions that there could be no application for abandonment of service for at least five years. Any application at that point would have to go through the CTA process, which usually takes several years and which investigates what has been done to keep that line in service. It's quite an exhaustive process. It also looks at opportunities for short-line.

Ultimately, at the end of the day, what's very important to the people of British Columbia is that the railway — the line, the track and the right-of-way — always stays in the public's hands and always has to be maintained to a condition as it is today. Upon any concern over the usage of any track in the future, it will always ultimately be government's decision as to what happens on that track if CN decides, through that exhaustive process, it no longer can operate on any section of track.

**J. MacPhail:** Cutting through all that, after five years CN can abandon a rail line as long as they follow the Canada Transportation Act process. They can abandon a rail line or a spur. In the RFP that CN is required to deliver on for passenger service, what guarantees that they will keep the track open south of Williams Lake? How is the RFP working in that area?

**Hon. J. Reid:** Contained in the RFP for the tourism rail services is a term of ten years, so that would be embedded in contract with any passenger service or tourism service that would contract with CN.

**J. MacPhail:** Where is the passenger service travel going to be? On what line?

**Hon. J. Reid:** The RFP is for the complete expanded network, so it's all the BCR line right now as well as the

CN line in British Columbia. The RFP was issued jointly from B.C. Rail and CN to include all of those lines.

**J. MacPhail:** So CN has to provide, through contract, passenger rail service on all of its lines? Or does it get to choose on which?

**Hon. J. Reid:** It opens it up for proposals. Whoever has an interest.... Whether it's going to Prince Rupert, whether it's going to Jasper or whether it's going to Whistler and Vancouver and up to Prince George, whoever has a proposal will put that proposal in. It's up to the proponents to suggest where those trains would run and CN to enter into a commercial agreement with them for that minimum of ten years.

**J. MacPhail:** What is the RFP for? What's the minimum passenger service that will now be required through this RFP that the government is touting as a restoration of passenger service? What's the minimum? [1545]

**Hon. J. Reid:** We have required CN to provide access for those services. It all depends on the proposals that come forward and who wants to use what lines to what extent. That is going to be the foundation of the tourism passenger services in the future. Until those proposals come in and are analyzed.... We know there has been interest. We know there has been adamant interest for over a year now. That interest continues, and people have publicly expressed interest. As to the extent of what lines they are going to put in a proposal for, I don't have that information.

**J. MacPhail:** Is there any requirement that says you have to guarantee 12-month passenger service?

**Hon. J. Reid:** Access is required to the lines for those passenger tourism trains, so again it's dependent on the proposals that come forward — whether somebody sees it as seasonal or whether somebody wants to run a service that is year-round. Those businesses will make those decisions and will put the proposals in to CN. CN has to provide access on a commercial basis.

**J. MacPhail:** In other words, there's no guarantee of 12-month passenger rail service, and the tourism service is going to be decided by CN Rail — another claim that's been blown way out of proportion by this government.

Section 3 approved.

On section 4.

**J. MacPhail:** Section 20 of the British Columbia Railway Act has been repealed, so there's no approval by cabinet of lease or sale of lines. The minister just said that if CN abandons lines, the government owns them and will decide the future of those lines. Who

decides it now? I predict lines will be abandoned, so by repealing this.... Who's in charge now?

**Hon. J. Reid:** Future decisions on the line. The line is going to be held in the B.C. Railway Company, and the shareholder of that company is the government, so future decisions on those lines still come back to government.

**J. MacPhail:** Not according to legislation. The government has removed cabinet approval for lease or sale of lines. It seems a weird thing to do when the Premier's travelling the entire province saying the taxpayers still own the railbed and the right-of-way. Does it mean that when CN abandons a line, it will just be abandoned? There are no future plans for lease or sale?

**Hon. J. Reid:** Rather than cabinet being able to make those decisions as it is now, in the future if that instance occurred, it would have to be through legislation. This provides the greater guarantee that while we have the ability to lease the line, we are keeping the line — the roadbed, the right-of-way — in perpetuity.

**J. MacPhail:** So every lease or sale of the lines — the actual sale and the actual lease — will come to this Legislature to be approved. If you're doing it then, why not now?

**Hon. J. Reid:** We are here in the Legislature debating a bill that enables us to take on a lease. In the future, the way this act is structured guarantees ownership in a vehicle that is so secure that it is not cabinet's decision to sell lines, and we're saying the lines will not be sold. That's what is ensured in this piece of legislation. It provides an extra hurdle, so if some day some future government has to make a decision, they will have to come back to the Legislature. It is not a decision of cabinet at that point. That's greater guarantee to the people of British Columbia.

[1550]

**J. MacPhail:** What are we debating right now? Are we debating a lease agreement and a sale agreement? If so, where is it?

We're not debating that now. This government isn't putting that up for debate. These members don't even know what they're debating. Where is it that we are debating the terms of the lease or the terms of the sale? Show me in the legislation.

**Hon. J. Reid:** This legislation enables a lease — in fact, more than one lease. As I've already said, there's the main line of B.C. Rail, and there's also the port subdivision. This enables both of those leases to take place.

**J. MacPhail:** So we're not debating the sale or the lease. We're debating enabling legislation about a lease, a contract, a sale, which is completely secret.

How dare the minister stand up and say: "We're debating the lease and the contract." She won't release

the details. In fact, everybody who votes in favour of this is putting up their hand and going, "Aye aye, Captain," when less than a handful of them actually know the details of the contract. This is all being done behind closed doors and breaking an election promise.

Sections 4 and 5 approved.

On section 6.

**J. MacPhail:** Section 6 adds new sections to the British Columbia Railway Act, sections 45 through 53. The entire section would allow CN to be part owner of B.C. Rail property and exempts CN property from certain municipal bylaws and regulations. In fact, the language is fairly strong in section 6, section 45(8). If I could just read this, subsection (8) says: "Despite any provision to the contrary in a security agreement or other agreement or record, a transfer of a railway property to the company effected under subsection (4) does not constitute a breach or contravention of...."

What's the purpose of this? Why is the government exempting itself from any other provisions to the contrary that might be in contracts elsewhere?

**Hon. J. Reid:** I'm going to answer this question on the land transfer and then the question the member posed earlier with regard to section 35. The purpose of this section is to consolidate the land. The land right now is under different titles under the subsidiaries of B.C. Rail. There is a requirement, a need, to consolidate it all under the B.C. Railway Company, which will then have the title for that right-of-way so that we can protect the title of that right-of-way. The transfer is really an intracompany transfer so all the terms and conditions that apply will continue to apply to that land going forward. This is a consolidation of the land under one title and the need to streamline that because of the large number of properties involved here — I believe over 2,500 properties.

[1555]

To answer the question the member posed earlier around section 35 of the Labour Code, section 35 says that if a business is transferred, the collective agreement follows. What we have done here is that the collective agreement does not follow the port subdivision, but the employees will stay with B.C. Rail Ltd. and stay under the existing collective agreement. So those employees, because they stay with B.C. Rail Ltd., are still protected by their existing collective agreement. The port subdivision, as I said earlier, is separated off so that we can negotiate a second agreement with a railway operator.

**J. MacPhail:** Back to the question on section 35 of the Labour Relations Code. What collective agreement does apply to the former employees of the B.C. port subdivision? Is it their current collective agreement, or is that ripped up and made null and void, and they have to assume the collective agreement of what?

**Hon. J. Reid:** It is a current collective agreement because they go with B.C. Rail Ltd., and that collective agreement goes with the operations.

**J. MacPhail:** Well, I hope somebody out there understands that. I'm confused. B.C. port subdivision has a separate collective agreement. B.C. Rail Ltd. has a separate collective agreement. They're shaking their heads, no. If there's one collective agreement, and they're staying under that same collective agreement, why exempt them from section 35 of the Labour Relations Code?

**Hon. J. Reid:** Right now it's all part of B.C. Rail Ltd., and it's all together. We want to make sure that those employees are looked after. Those employees will stay with their existing collective agreement that they will be taken into B.C. Rail Ltd. We will be separating off the port subdivision to be a separate entity. Right now it's together. It's going to be a separate entity, so we can enter into a separate lease agreement with a new operator for the port subdivision.

**J. MacPhail:** Okay. So then the new person who gets that contract isn't burdened by a collective agreement. Is that the purpose of it?

**Hon. J. Reid:** Just as CN, who's been the successful proponent for the main BCR line, has its collective agreements, the new port subdivision operator would have their collective agreements.

**J. MacPhail:** Back to section 6, Mr. Chair. In subsection (10) it states.... This is a section that I just simply can't understand. It says:

"(10) On and after any transfer referred to in subsection (4), all uses to which the transferred railway property was being or could be put immediately before the transfer, all modifications that had, before the transfer, been made to the railway property and all things and other improvements of any type that were, immediately before the transfer, located on, in, under or over the railway property, are deemed to be wholly consistent with the local government requirements that would otherwise apply to the railway property, including, without limitation, all local government zoning bylaws."

Reading that, on the face of it, it sounds like another Bill 75, the Significant Projects Streamlining Act.

[H. Long in the chair.]

**Hon. J. Reid:** This section basically grandfatheres the existing use. If CN wanted to do anything different in the future as a private corporation, they would have to apply for zoning applications, as anybody else would. This just grandfatheres the existing use that's there today.

**J. MacPhail:** So there's no forward-looking at this. CN, in the future, has to apply to city governments for zoning bylaw changes as would anyone else?

[1600]

**Hon. J. Reid:** The answer is yes.

**J. MacPhail:** Under section 48 of section 6, which basically is the section.... Section 6 is what gives life to CN buying this company. Therefore, the opposition will be voting by division against this section, Mr. Chair.

Section 48 says there will be no government liability after transfer. Let me just make sure. Yes, that's the title. It's pretty succinct: "No government liability after transfer." If the government owns the railbed and the right-of-way, why is it opting out of any liability? Who is liable, then?

**Hon. J. Reid:** As BCRC will be a passive landowner of the railway rights-of-way, we won't have control over the railway operations. This provision insulates BCRC against any claims made on the railway operator by third parties. It also ensures that BCRC will not have to be made responsible for maintenance of the railbed assets, which is the sole responsibility of the railway operator.

**J. MacPhail:** Yeah, but what if CN doesn't do it? The government still, according to the Premier, owns this. Why is the government opting out of liability for an asset that it owns?

**Hon. J. Reid:** The operator is responsible for the maintenance. It's responsible for the upkeep. It's responsible for the operations. Why would the taxpayer want to take on liability for their operations? That wouldn't make any sense. This makes sure that the operator that is managing the railway operations is liable, as it should be, for the results of its operations.

**J. MacPhail:** Call me crazy, but if a taxpayer says the owner....

Interjection.

**J. MacPhail:** Oh, another wonderful contribution from a member of cabinet.

If the taxpayer owns the asset, as the Premier says every day, why wouldn't the taxpayers want the government to have liability in case of abandonment by the operator? It's quite easily considered, easily contemplated that the contractor might not fulfil its contract. In fact, those very issues are facing this government right now in highway maintenance.

If this government is trying to claim that it still owns the asset, what allows it — other than through its heavy hand of legislation — to opt out completely from liability? What if CN abandons its responsibility? Is the person harmed or injured completely abandoned then as well, even though the government owns the asset?

**Hon. J. Reid:** I believe there are two different issues that the member is talking about. One is about liabilities for a company that is going to be running the operation. Again, I have no idea why the member would want the taxpayer to be liable for what might ensue from the operations of that company. That company should be liable.

The second part of the question, I believe, and the answer.... If there is eventually an abandonment of track, that comes back to the province, and the province then would have the liability over that section of track once again.

[1605]

**J. MacPhail:** Where does it say that?

**Hon. J. Reid:** If a piece of railway property that's been leased, through an abandonment process many years into the future, came back to the government, it would then no longer be part of the revitalization agreement. That enables the government to once again have the liability on it.

**J. MacPhail:** Where in the legislation does it confirm what the minister just purported?

**Hon. J. Reid:** The revitalization agreement is a lease agreement that is for the lands as so defined. That's set out in the legislation, obviously. Once a property is no longer part of that lease through an eventual abandonment — as I say, many years in the future, if there were an abandonment — then that is no longer part of the lease and would no longer be covered under this exemption. It is a straightforward process. The member doesn't want to accept that, but it is actually a logical progression. The act allows for the lease properties to be covered under this exemption from liability. If they were no longer part of the lease properties, then the government gets back and has full authority over those properties.

**J. MacPhail:** It's not a matter that I don't want to accept it. I just don't have any evidence in front of me. I guess it's in the revitalization agreement, which we don't have before us. There's nothing in the legislation that in any way confirms what the minister just said. Don't accuse me — Mr. Chair, through you — to say that I don't accept or don't want to accept it. I have no idea whether to accept it or not — just the same way that the minister said she wasn't going to sell B.C. Rail during the last election. We're now being asked to take her word for it on process.

Let's look at section 50 of this. It says: "No liability...." This is exactly the title. God, the person who wrote this legislation was being very frank. "No liability for failure to terminate or enforce revitalization agreement." The minister just said, "Oh, don't worry. It's all right there in the revitalization agreement," and that there would be no problem with how things are enforced. Section 50 says that either the government or CN can cancel the agreement at any time, and there's no penalty for anybody refusing to uphold the agreement.

[1610]

If I were a taxpayer and CN lines ran close to my business or close to my kids' school, and if there was going to be a spill or a fire, I'd sure want some guarantee that someone was going to be liable for what happened there — or a derailment that caused property

damage. I'd sure want to make sure there was somebody that had liability there.

We don't know, in the lease agreement.... We don't know from the revitalization agreement what the liability is of CN. We know the government isn't going to be liable for the assets it owns. The minister says: "Oh, why would the taxpayers be interested in that?" Well, we'll see. We'll see whether the taxpayers will be interested if CN abandons its responsibility.

Believe you me, it ain't a golden boy corporate customer. It doesn't have an exemplary record in this area. If it abandons its responsibility, government ain't liable. Someone is killed; property damage is done; pollution occurs. This minister doesn't see anything wrong with it. Then, why should she? They've also said that if CN abandons the agreement, there isn't any penalty. Why?

**Hon. J. Reid:** In speaking to this section, the clarification that's required here is that government fully intends to enforce the agreement. Government has the ability to decide how to do that, in enforcing that. What this does is not allow a third party to come in and say: "We don't like the way government is enforcing this agreement." It protects government from that. Unfortunately, that seems to be a reality in today's world — that we have to look at these possibilities and make sure they are included in legislation. It is a matter of government enforcing and being able to deal with the revitalization agreement, as it says here: "...may take such actions as they consider appropriate to terminate or enforce a revitalization agreement." This is a very important section here — that government has ensured that it is able to enforce this agreement.

**J. MacPhail:** What are the enforcement mechanisms?

**Hon. J. Reid:** Whatever is appropriate for the circumstances. Government will have to look at whatever is in breach and have to make a decision on what needs to be enforced. This gives government the power to even terminate this revitalization agreement if those enforcement measures are not complied with. This is a very, very important part of this legislation.

**J. MacPhail:** Well, sorry, I'm reading it differently. I'm asking the minister: what are the enforcement mechanisms available? I read it differently from the minister. It says right here: "...the revitalization agreement or any other agreement, no legal proceeding, whether for damages or compensation of any kind or otherwise, lies or may be commenced or maintained against the government, or any employee, agent, minister or ministry of the government, or the company, or any director, officer, employee or agent of the company, in respect of the failure or refusal."

The minister says I'm getting it wrong. Great. Tell me: what are the enforcement mechanisms the government has available to it if CN doesn't live up to its agreement?

**Hon. J. Reid:** In this subsection (2) we're looking at here — section 6, section 50(2) — it is talking about anyone who might disagree with the enforcement measures government takes. Certainly, the realm of opportunities that would be available to government, again, in enforcing that agreement would be wide and varied. This is not limiting, in any way, government's ability to enforce the revitalization agreement any way they see fit.

[1615]

What this does is that a third party isn't able to come and say: "We don't like the way you have enforced that, and we're going to take action against you in that means." It does not limit government's ability to enforce. In fact, it strengthens it by saying we can terminate, if necessary. I believe that's exceptionally strong, and it just does not allow the interpretation of other people with regard to government's enforcement to be a legal action.

**J. MacPhail:** What are the enforcement mechanisms contained in the revitalization agreement that the minister is touting with such confidence?

**Hon. J. Reid:** Under standard commercial contract, all those enforcement mechanisms would be "this agreement would be subject to..." Again, this allows government to take those enforcement measures necessary. It doesn't restrict government from any enforcement measures. That's as strong as this can possibly be. I can't see how the member would want anything stronger than that. I believe this is the ultimate enforcement.

**J. MacPhail:** The minister keeps asserting like she can't understand. I have no idea what the enforcement mechanisms are. Is there a financial penalty on CN Rail if it abandons operation?

**Hon. J. Reid:** The member is asking for specific examples, specific enforcement measures, specific issues. What we have done here is incorporated a principle of enforcement in the strongest way possible — the absolute strongest way possible — to say that the government could take action, including termination, to enforce. Whatever action is appropriate for those circumstances, government can consider. This is a principled approach. It allows government the ability to pursue actions — whatever is necessary. If the member has any suggestions of how to make this any stronger, I would like to hear them, because I do believe this is the ultimate strength.

**J. MacPhail:** I'd like to see the contract that backs up the words the minister is saying — that there are enforcement mechanisms there. That's what the public would like to see, because it ain't here in the legislation.

Under section 53, "Waiver of approvals," it says: "Subject to section 52 (1), the company may...." What company is that referring to? Is that B.C. Rail Company?

**Hon. J. Reid:** That is B.C. Railway Company. That is, of course, the Crown corporation.

**J. MacPhail:** Why is this allowing that further sales be allowed to take place without having to seek any approvals?

[1620]

**Hon. J. Reid:** This section allows more than one lease, so we have the main line of B.C. Rail; we have the port subdivision. If, as I say, many years in the future the government received a rail line back again and wanted to have a lease agreement with another operator, this allows us to do that.

**J. MacPhail:** Yes, I know. But it's removing all of the approval processes that the minister has to go through. Why?

**Hon. J. Reid:** I'm not sure what was not clear about the answer I gave — that there are multiple leases right now. We're looking at two of them. It's to say there could be another lease in the future. This presents that. If the member wants to re-ask the question, I'll try and get further clarification.

**J. MacPhail:** No, Mr. Chair. I'll tell you something. This is just becoming a wasted exercise in trying to find out answers. I asked a very specific question about why the minister is exempting herself from future approval processes for future leases, and I can't get an answer. I can't get an answer to the fact that so much of this detail is reflected in a contract that we can't see. We're being asked to take the guarantee of the minister's word when we see what that means with her government, the Premier. I'll tell you, Mr. Chair. This is an exercise in futility to actually find out what's going on with this sale.

[1625]

Section 6 approved on the following division:

YEAS — 42

Hogg	Hawkins	Cheema
Hansen	J. Reid	van Dongen
Roddick	Wilson	Hagen
Murray	Coleman	Penner
Harris	Brenzinger	Bell
Chutter	Trumper	Johnston
Bennett	R. Stewart	Hayer
Krueger	McMahon	Bray
Les	Locke	Nijjar
Bhullar	Wong	Bloy
Cobb	K. Stewart	Visser
Lekstrom	Brice	Sultan
Hamilton	Sahota	Hawes
Kerr	Manhas	Hunter

NAYS — 3

Nettleton MacPhail Kwan

Section 7 approved.

Title approved.

**Hon. J. Reid:** I move that the committee rise and report the bill complete without amendment.

Motion approved.

The committee rose at 4:30 p.m.

The House resumed; Mr. Speaker in the chair.

### Personal Statement

**Hon. C. Clark:** I rise to make a personal statement. Today I received advice from the conflict commissioner in response to my earlier request. He advised that out of an abundance of caution, I should absent myself from any consideration of this bill. I have done that, and I have previously absented myself from cabinet discussions on this matter.

### Report and Third Reading of Bills

Bill 89, British Columbia Railway (Revitalization) Amendment Act, 2003, reported complete without amendment, read a third time and passed on division.

**Hon. S. Hawkins:** I call committee stage on Bill 92.

### Committee of the Whole House

#### MEDICARE PROTECTION AMENDMENT ACT, 2003

The House in Committee of the Whole (Section B) on Bill 92; H. Long in the chair.

The committee met at 4:34 p.m.

Sections 1 to 3 inclusive approved.

On section 4.

[1635]

**R. Harris:** Section 3 starts to deal with third-party billing. My question to you is around organizations like WCB and ICBC that presently use these clinics. How are they impacted by this section?

**Hon. C. Hansen:** This legislation only affects medical services that are, under the Canada Health Act,

required to be paid for out of our public health system. The Canada Health Act actually explicitly exempts the provincial workers compensation boards across Canada. If we look at work that is done now and paid for directly by Workers Compensation Board, ICBC and other government bodies like that, they are specifically exempted.

There is also a list of federal acts. Just to mention a few, there's the Aeronautics Act, the Civilian War Pensions Act and the Government Employees Compensation Act. It includes things like the Royal Canadian Mounted Police Act, for example, and the National Defence Act. In the Canada Health Act there is provision for them to be explicitly exempted. This bill will not affect the delivery of any of those services.

**R. Harris:** In this section it refers to "in relation to a benefit." I think there's been a lot of confusion among doctors on what this section means. Right now it seems there are a lot of things they're allowed to charge for and it's not deemed to be medically necessary. Can the minister clarify in this section what will be prohibited — if it's in any way related to the benefits that are covered by MSP? How does it impact those benefits today?

I'd like to get some specific examples of what those would look like.

**Hon. C. Hansen:** This is an area that we've had some very good discussions with the B.C. Medical Association around. What we are trying to get at with this particular amendment is procedures that are charged for — for example, for a procedure that is covered under the Canada Health Act and therefore must be paid for by the public health care system. There have been examples that have been brought forward to us where individuals, patients, have been charged for things like tray fees or consultation fees that were in relation to the actual procedure but still are not permitted by Health Canada in their interpretation of the Canada Health Act.

A specific example of something that would not be considered in relation to a procedure would be something like a fibreglass cast. If you have a broken limb and you go into a hospital and they need to put a cast on, what is covered under our health system and paid for by our health budget would be your normal plaster cast that would get put on. If you as a patient or the family of a patient were to choose to have the more expensive fibreglass cast, it would still be permissible for the physician or the facility to charge extra for that additional service over and above what is medically required.

There is provision in the legislation that says the Medical Services Commission can specifically exempt certain procedures. It could also be done by regulation if necessary. We're going to be working with the B.C. Medical Association and with physicians around the province to make sure we give them the certainty they need around what is or is not covered under this particular section. The term "in relation to" is not meant to include those various extra services that are considered

by Health Canada to be appropriate under the Canada Health Act today. Essentially, we're not changing any of those provisions, but if the need to be explicit is there, we have the power to do that either through the Medical Services Commission or by regulation.

[1640]

**W. Cobb:** I would like to go back to the WCB or ICBC exemption for a minute, if I could. Basically, what you're telling me, then, is that if I get hurt at work or in a car accident and need a knee operation, I could get bumped to the head of the line because of whatever reason — because of ICBC or WCB — to go to a private clinic.

If I got hurt playing basketball and I couldn't work — but I need to work because I'm not covered by WCB or whatever — I could not go and pay somebody to give me my knee operation and not have to wait. Say it's a six-month waiting period. I don't know what the waiting period is, but say it's a six-month waiting period. Therefore, I couldn't as an individual go and pay for that coverage myself. That doctor would be in jeopardy if he gave me that operation, yet they can go to the head of the line with WCB or ICBC. If that's the case, whom do we have to go to on this to try and get it settled?

**Hon. C. Hansen:** It's not a case of whether somebody gets to go to the head of the line or not. What it is saying is if somebody is injured on the job and they are covered by the Workers Compensation Board, then the Workers Compensation Board is authorized to pay for that procedure directly.

For the example that you cited with an individual injured while not on the job — playing basketball, let's say — that individual would have two choices. He can get his surgery through the public system in which case it is covered by the Canada Health Act, and we have to abide by Health Canada's interpretation of that.

The only other way is if he was to go to a de-enrolled physician. Any physicians who are part of our Medical Services Plan of B.C. are covered by this legislation, and they must be in compliance with Health Canada's interpretation of the Canada Health Act in how they provide those services. If he was to go to a de-enrolled physician, of which there are very few in British Columbia, he could actually wind up getting service totally outside of the public system, and that would be appropriate under this legislation.

**W. Cobb:** That's under the Canada Health Act, then. ICBC or WCB can pay for it, but I can't pay for it myself.

**Hon. C. Hansen:** The only way you could pay for it directly is if it was through a de-enrolled physician who was not part of the Medical Services Plan structure in this province. I just want to emphasize that this is not.... The fact that a person can or cannot access that care is not as a result of provincial legislation. That

is as a result of the Canada Health Act and Health Canada's interpretation of that as it currently stands.

We as a province are obligated to follow up on patient complaints. We are obligated to ensure there is compliance with the Canada Health Act, even though it's not our statute. We, in essence, become the policemen for this. We don't write the Canada Health Act. It's not our statute. But we have the obligation as a province, as does every province in Canada, to ensure that the practices in place in this province are in compliance, and we have an obligation to follow up on complaints that come to us from individual patients.

**W. Cobb:** Who would fall under that de-categorized...? Who could I go to, to get my knee operated on? Who would fall under that category, then, if it isn't a GP or a hospital?

[1645]

**Hon. C. Hansen:** It proved to be an interesting question because we don't actually keep track of who is not enrolled as a physician in the province. We keep track of all the physicians who are enrolled in the Medical Services Plan. That is listed on our website. We actually print a listing every year of all the physicians who are enrolled in the Medical Services Plan and what their billings are to the plan. That's something that comes out every year. While we print and publish the names of those who are enrolled, we do not track those who are not enrolled, but I'm informed that there's a very small number of physicians currently in this province who are not enrolled in MSP.

Section 4 approved.

On section 5.

**Hon. C. Hansen:** I would like to move an amendment to section 5 that stands on the order paper in my name.

[SECTION 5,

(a) in the proposed section 18 (1) by deleting "be a benefit" and substituting "be a benefit under this Act or the Hospital Insurance Act",

(b) in the proposed section 18 (1) (a) by deleting "or",

(c) in the proposed section 18 (1) (b) by deleting "charge." and substituting "charge, or",

(d) by adding the following paragraph:

(c) the amount that would be payable under the Hospital Insurance Act, for the service if rendered by an enrolled medical practitioner. ,

(e) in the proposed section 18 (2) by deleting paragraph (d) and substituting the following:

(d) a medical facility or diagnostic facility if

(i) a regional health board as designated under section 4 of the Health Authorities Act, or

(ii) the Provincial Health Services Authority has contracted to have the service rendered. , and

(f) by deleting the proposed section 18.1 (1) and substituting the following:

(1) Unless a service is rendered by a medical practitioner who is not enrolled, a person must not charge another person for, or in relation to, the service if that service

- (a) would be a benefit under this Act, or a benefit under the Hospital Insurance Act, if rendered to a beneficiary at
  - (i) an approved diagnostic facility,
  - (ii) a hospital, or
  - (iii) a diagnostic facility under an agreement with a regional health board, the Nisga Nation or the Provincial Health Services Authority, and
- (b) is rendered to a beneficiary at a diagnostic facility that is not approved under section 33.]

Amendment approved.

On section 5 as amended.

**S. Brice:** I think my question most appropriately falls under section 5, although it is somewhat of a continuation of the discussion we had under section 4. I appreciate the fact that the minister is going to be having some discussion with the medical profession, because I think there is need for clarity.

I would ask the minister whether or not procedures are in and of themselves exempt or not exempt. Or could it possibly depend upon what state the patient is in? To give you two examples, a couple of them brought to my attention in the last couple of days are patients that had been slated to have either hernia or bladder repair, neither of which would be construed as life-threatening. They had thought they were going to be able to do this under a private clinic but now find that apparently it's not going to be possible.

**Hon. C. Hansen:** Given the interpretation that Health Canada has of the Canada Health Act, which we are bound to follow, it is the service or the procedure that is either covered or not covered, as opposed to the particular circumstance of an individual patient or their degree of acuity leading to the need for that particular service.

**S. Brice:** Thank you for that clarification, minister. Another series of procedures seem to have fallen within the practice of eye surgery. I would be interested in getting clarification as to what the situation is with procedures that occur incidental to cataract surgery and just where the line is about what can and cannot be covered.

[1650]

**Hon. C. Hansen:** There are services, as I was talking about earlier, that are considered enhanced services. I used the example of the fibreglass cast. In addition to that, there would also be, as the member noted, issues around lenses that ophthalmologists can utilize in a patient. Those would still be outside of this. If somebody is going to have a specialty lens implanted, which is an enhanced service, at the time of a cataract procedure, there is nothing in this legislation that will prevent this.

This would be a good example of one area where we will be explicit in the exemptions that are brought through to make it very clear to ophthalmologists in

the province that it is still totally appropriate, as it was in the past, for them to provide for additional enhanced services such as the specialty lenses. They may charge their patient directly for that, because that would not be considered a violation of the Canada Health Act.

**S. Brice:** I thank the minister for that response. I think that will give a certain degree of comfort not only to those who perform those procedures but also to those who have received the benefit of them.

One final question that I have in this area has to do with diagnostics and just what exactly this now limits — I would say, particularly, the MRIs. I think there's a fair amount of discussion and perhaps even confusion out there as to what impact this might have on that service.

**Hon. C. Hansen:** First of all, diagnostic services are pulled into the Medicare Protection Act explicitly, whereas before they were not explicit. That was as a result of a very direct request from Health Canada. They expected us to make sure that was covered in order for us to maintain our compliance with the Canada Health Act, so that is included.

The other thing I want to point out is that one of the amendments we have just brought in to this particular section gives radiologists the same kind of opportunity to de-enrol as other specialists have as well. The amendment we have brought in makes it clear that radiologists and other specialists involved in diagnostic services are able to de-enrol. Once this legislation is brought into force, what it will mean is that an enrolled specialist, an enrolled physician cannot extra-bill for any of these charges. We wanted to make sure that those specialists involved in diagnostic services have the same provisions for enrolment and de-enrolment as other specialists would have.

**B. Penner:** I've got a question, as well, on section 5 of the bill. Just to follow up on a question the member for Saanich South asked a little bit earlier, I'm seeking some clarification around the impact this legislation will have on people currently providing cataract surgery in what are commonly referred to as private clinics. Will this amendment contained in this legislation essentially restrict or outlaw the provision of private cataract surgery in the province?

[1655]

**Hon. C. Hansen:** There's nothing in this bill that changes whether cataract surgery is or is not covered under the Canada Health Act. All this bill says — which is the same after this bill is in force as it was previously — is that cataract surgery is considered a medically necessary procedure by Health Canada, and we therefore have to ensure that it is reflected in practices in British Columbia. So if a practitioner is enrolled in the Medical Services Plan, all this says is that they cannot extra-bill over and above what MSP would provide for.

There is certainly the opportunity for the public system to contract with some of these private clinics for the provision of cataract surgery. We saw an example of that over the last number of years with the service that was being provided in North Vancouver, where the health authority had contracted out for cataract services to a private clinic. But if the physicians involved are enrolled in MSP, then Health Canada expects us to ensure that there is not extra billing that is being charged to the patient.

**B. Penner:** I thank the minister for that answer. I think this may be my last question, then, on this topic.

In the Fraser Valley — actually, located in Abbotsford — there is a cataract eye centre. My understanding of their practice is that the physicians will bill the Medical Services Plan for their service in terms of providing cataract eye surgery. Then the clinic itself turns around and sends a separate invoice to the private patient who has elected, rather than wait six to nine months on a waiting list for the public system to deliver the cataract surgery, to avail themselves of this service at the clinic in Abbotsford.

Will this legislation impede or prohibit the practice of the clinic sending a separate invoice directly to the patient, where the physician that comes in to perform the service is billing separately to the Medical Services Plan?

**Hon. C. Hansen:** I want to make it clear that this bill does nothing to change whether a procedure is or is not covered under the Canada Health Act. All this bill does is ensure that we have the ability to follow up on patient complaints, because we as provinces have the obligation to ensure compliance. Now, whether a clinic is or is not compliant with the Canada Health Act does not change as a result of this legislation.

In the case of the example the member used, if the bill that is sent to the patient directly for the patient to pay.... If that is in relation to an enhanced service such as the specialty lens that we were talking about earlier, then it is appropriate. If they are sending a bill to the patient for fees in relation to the actual cataract surgery, then it is not appropriate. It was not appropriate last month and will not be appropriate once this bill is brought into force.

**R. Hawes:** I have two questions for the minister, Mr. Chair. The first one surrounds the contracting-out. I'm just looking for clarity here now. If the health authority decides to contract with an outside clinic to provide services, I'm assuming that the bill for the extra cost over and above the physician cost would go to the health authority, and that would be in compliance.

**Hon. C. Hansen:** The member is correct.

**R. Hawes:** The last question I had surrounds the calls I have been getting, and I know other members have been getting, from those who provide specialty services in private clinics and from some of the diag-

nostic providers. The MRI clinics claim that this is probably going to stop private surgeries, for example — which will exacerbate the problems we already have with lineups because, of course, the people who were going to the private clinics are now going to be back into the public system — and that diagnostic clinics are going to go broke all over the place.

There's a lot of doom and gloom being spread out there. I'm hoping the minister can, for the benefit of those who are calling us, perhaps cast some light on what their future would be under this bill.

[1700]

**Hon. C. Hansen:** Just to reiterate, I think we are doing nothing in this bill that changes whether a procedure is or is not appropriate under the Canada Health Act. The initiatives around diagnostic care were explicitly requested of us by Health Canada, by the federal Minister of Health, and I assume other provinces are being asked to make similar provisions if they do not already have it. I know that other provinces already have that provision in place. But there is nothing that changes whether a procedure is or is not permissible.

The only way this could have an impact on waitlists is if there are currently physicians who are providing procedures that are contrary to the Canada Health Act, and that's up to Health Canada. There are obviously many in this province who feel there should be more flexibility around the interpretation of the Canada Health Act, and that is clearly an issue they should take up with the federal government and with federal politicians.

Our role is not the Canada Health Act. Our role, our responsibility as a province, is simply to ensure that we have the tools to follow up on patient complaints and to satisfy Health Canada that we are doing our due diligence to ensure that there is compliance with the Canada Health Act.

For those individuals who feel there should be more flexibility, they should be taking that message to the federal government, because our obligation is just simply around the follow-up and the due diligence that is required of us by Health Canada.

Section 5 as amended approved.

On section 6.

**Hon. C. Hansen:** I move the amendment to this section that is on the order paper in my name.

[SECTION 6, by deleting the proposed section 19 (1) and substituting the following:

(1) Before a beneficiary is rendered a service described in subsection (1.1), the person who intends to charge another person for, or in relation to, the service must advise the beneficiary, in a manner the beneficiary can understand, of the following:

- (a) that the person intends to collect the amount from the other person;
- (b) how much the person who intends to charge will charge for, or in relation to, the service;

(c) how much, if anything, the person who intends to charge reasonably expects that the commission will reimburse the other person for the rendering of the service.

(1.1) A service for the purposes of subsection (1) means a service that

- (a) would be a benefit if rendered by a practitioner, or
- (b) would be a benefit under this Act, or a benefit under the Hospital Insurance Act, if rendered by a practitioner to a beneficiary at
  - (i) an approved diagnostic facility,
  - (ii) a hospital, or
  - (iii) a diagnostic facility under an agreement with a regional health board, the Nisga Nation or the Provincial Health Services Authority.]

Amendment approved.

Section 6 as amended approved.

Sections 7 to 9 inclusive approved.

On section 10.

**R. Harris:** This section deals a lot with audits. What does it take to generate an audit? What is it that would have to happen to bring this process into being?

**Hon. C. Hansen:** The way an audit would get triggered would be by a specific patient-driven complaint. Where a patient feels there may have been a violation of the Canada Health Act in the care they had received, they would then come to us. We would be obligated, under our responsibilities to Health Canada, to follow up on that particular complaint. We also have to report those complaints to Health Canada, and we have to satisfy Health Canada that we have done our due diligence around that.

The other source of follow-up would be when Health Canada themselves would come to us and ask us to follow up on a particular alleged violation or something they feel may have been a violation. Those are really the two avenues by which we would establish this audit procedure.

[1705]

**G. Trumper:** Following on the same lines of an audit, a question that was asked of me by someone who has a very great interest in this particular issue.... His question to me was: why can they do it in Alberta and not here? My thoughts on it, in having discussed it with someone else, are that in Alberta they are under the same rules, but they don't have as many complaints as we may have. Is that a rational explanation?

**Hon. C. Hansen:** The Alberta legislation is not less rigorous than our Medicare Protection Act as we are proposing to amend it with this bill that's before us now.

**S. Brice:** On the business of the commission appointing inspectors, I would be interested in hearing

from the minister what he would anticipate would fall under the expression "patterns of practice." I mean, billing seems kind of obvious, given the kind of thrust of the bill. But what would the inspectors be looking for under patterns of practice?

**Hon. C. Hansen:** The first thing I want to point out to the member is that this is expanding very slightly the scope of what the auditors would look at, because the existing wording that's in the Medicare Protection Act today is the first part of this. We are deleting the section but then restating it as well.

[1710]

What currently is there is: "The commission may appoint inspectors to audit claims for payment by practitioners and the patterns of practice or billing followed by practitioners under this Act." What we do with the amendment is clarify that they can also look at the practices of facilities that are engaged in the provision of these services and the other things that are mentioned in the rest of that particular section.

When auditors go in, they will be looking at patterns of practice just like they have in the past. There's not a change there. These are procedures that are set up by the Medical Services Commission, where they actually involve.... The BCMA is involved in determining those approaches. The B.C. Medical Association has three representatives who sit on the Medical Services Commission, so they are part of developing that approach.

The other thing the auditors would be looking at, for example, is where there were billings directly to patients to make sure those are appropriate. Like, is it in relation to the fibreglass cast, or was it in relation to something else that should not have been billed for? This legislation will actually give them the ability to make those kinds of investigations. They currently have that power to follow up with practitioners, and this simply extends that function to some of these other areas. The change is not as broad as it appears, because that ability to investigate patterns of practice has always been there under the legislation up till now.

**S. Brice:** I appreciate that clarification. I'm reading now that it should be patterns of practice for billing — certainly, sort of hanging out there on its own. I had an interpretation that it was more to do with patterns of practice of the medical practice.

The member for Oak Bay-Gordon Head and I were talking about this particular section earlier today. She would like to be here to ask her own questions but is tied up at a very important meeting.

I will ask just for a bit of elaboration on the relationship between the BCMA and the commission in terms of the auditing. The minister has already alluded to that sort of relationship and that sort of practice they have of working together. Just for the record, could he clarify that for me, please?

**Hon. C. Hansen:** Just for clarification on the earlier point the member made before she posed her ques-

tion.... She was referring to the current wording in the legislation. It is that the audits are for "...claims for payment by practitioners and the patterns of practice or billing followed by practitioners under this Act." That is the language currently in the legislation, so we are not amending that particular provision that's there. We simply add more clarity to the extent of the authority of the auditors.

To answer her question specifically about the Medical Services Commission, it is composed of nine members. Three are appointed by the B.C. Medical Association, three are from the Ministry of Health Services, and three are public members to represent the public interest. So it is a tripartite body in that sense. The audit provisions that are there are done under the direction of the Medical Services Commission.

[1715]

My apologies. I've just been handed a correction. The three government members are there as government members, not as Ministry of Health Services.

Sections 10 to 13 inclusive approved.

On section 14.

**Hon. C. Hansen:** I'd like to move the amendment to section 14 that stands in my name on the order paper.

[SECTION 14, by deleting "S.B.C. 2003," and substituting "S.B.C. 2002,".]

Amendment approved.

Section 14 as amended approved.

Sections 15 and 16 approved.

Title approved.

**Hon. C. Hansen:** I move that the committee rise and report the bill complete with amendments.

Motion approved.

The committee rose at 5:16 p.m.

The House resumed; Mr. Speaker in the chair.

### Reporting of Bills

Bill 92, Medicare Protection Amendment Act, 2003, reported complete with amendments.

### Third Reading of Bills

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

**Hon. S. Hawkins:** With leave, now, Mr. Speaker.

Leave granted.

Bill 92, Medicare Protection Amendment Act, 2003, read a third time and passed.

**Mr. Speaker:** Hon. members, I've been informed that Her Honour the Lieutenant-Governor is on her way to the Legislature. I would ask members to stay in the precincts, if they would. We will ring the division bells when she is here. It should be about 25 minutes. The House will recess until that time.

The House recessed from 5:17 p.m. to 5:30 p.m.

[Mr. Speaker in the chair.]

### Royal Assent to Bills

Her Honour the Lieutenant-Governor entered the chamber and took her place in the chair.

#### Clerk Assistant:

Significant Projects Streamlining Act  
Parks and Protected Areas Statutes Amendment Act, 2003

British Columbia Railway (Revitalization) Amendment Act, 2003

Miscellaneous Statutes Amendment Act (No. 3), 2003

Medicare Protection Amendment Act, 2003

Insurance (Motor Vehicle) Amendment Act, 2003

Health Sector Partnerships Agreement Act

Railway and Ferries Bargaining Assistance Amendment Act, 2003

Timber Licences Settlement Act

Municipalities Enabling and Validating (No. 3) Amendment Act, 2003

Canadian Pentecostal Seminary Act

In Her Majesty's name, Her Honour the Lieutenant-Governor doth assent to these acts.

#### Clerk of the House:

Supply Act, 2003-2004 (Supplementary Estimates No. 2)

In Her Majesty's name, Her Honour the Lieutenant-Governor doth thank Her Majesty's loyal subjects, accept their benevolence and assent to this act.

**Hon. I. Campagnolo (Lieutenant-Governor):** I'd like to wish you all a happy holiday season, and for those to whom it applies, happy Hanukkah and merry Christmas. I look forward to seeing you all in 2004.

Her Honour the Lieutenant-Governor retired from the chamber.

[Mr. Speaker in the chair.]

**Hon. G. Collins:** I move that the House at its rising do stand adjourned until it appears to the satisfaction of the Speaker, after consultation with the government, that the public interest requires that the House shall meet or until the Speaker may be advised by the government that it is desired to prorogue the fourth session of the thirty-seventh parliament of the province of British Columbia. The Speaker may give notice that he

is so satisfied or has been so advised, and thereupon the House shall meet at the time stated in such notice and, as the case may be, may transact its business as if it had been duly adjourned to that time and date, and that in the event of the Speaker being unable to act owing to illness or other cause, the Deputy Speaker shall act in his stead for the purpose of this order.

I wish everyone a happy and safe holiday, and I move this House do now adjourn.

Hon. G. Collins moved adjournment of the House.

Motion approved.

**Mr. Speaker:** I, too, wish everyone a very merry Christmas and a happy holiday season as you return to your constituencies. The House is adjourned till the call of the Chair.

The House adjourned at 5:35 p.m.